



Government Operations Subcommittee

Tuesday, March 29, 2011
12:00 PM
306 HOB

Meeting Packet

Dean Cannon
Speaker

Jimmy Patronis
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Government Operations Subcommittee

Start Date and Time: Tuesday, March 29, 2011 12:00 pm
End Date and Time: Tuesday, March 29, 2011 03:00 pm
Location: 306 HOB
Duration: 3.00 hrs

Consideration of the following bill(s):

HB 121 Pub. Rec./Donors to Performing Arts Centers or DSO of Florida Historic Capitol & Legislative Research Center & Museum by Thurston
HB 411 Pub. Rec./Photographs and Video and Audio Recordings Depicting or Recording the Killing of a Person by Burgin
HB 449 Criminal Justice by Taylor
HB 553 Violations of the Florida Election Code by Eisnaugle
HB 867 Broward County by Jenne
HB 985 Hillsborough County by Burgin
HB 1473 Pub. Rec./Florida Health Choices Program by Corcoran
HB 4167 Florida Faith-based and Community-based Advisory Council by Ford

Consideration of the following proposed committee bill(s):

PCB GVOPS 11-12 -- OGSR Competitive Solicitations
PCB GVOPS 11-16 -- Procurement

Consideration of the following proposed committee substitute(s):

PCS for HB 43 -- Public Employee Compensation
PCS for HB 1059 -- Request for Information by the Department of Lottery

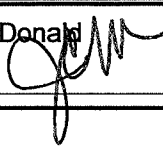
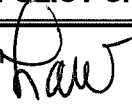
NOTICE FINALIZED on 03/25/2011 16:23 by Godwin.Chandra

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 43 Public Employee Compensation

SPONSOR(S): Government Operations Subcommittee

TIED BILLS: IDEN./SIM. BILLS: CS/SB 88

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		McDonald 	Williamson 

SUMMARY ANALYSIS

Extra compensation claims are prohibited under current law, with some exceptions. No extra compensation may be made to any officer, agent, employee, or contractor after service has been rendered or the contract made, with the following exceptions:

- Extra compensation given to state employees who are included within the senior management group pursuant to rules adopted by the Department of Management Services;
- Extra compensation given to county, municipal, or special district employees pursuant to policies adopted by county or municipal ordinances or resolutions of governing boards of special districts or to employees of the clerk of the circuit court pursuant to written policy of the clerk; or
- A clothing and maintenance allowance given to plainclothes deputies.

Notwithstanding the prohibition against extra compensation, cities and counties may, under their respective governing statutes, provide for an extra compensation program, including a lump-sum bonus payment program, to reward outstanding employees whose performance exceeds standards, if the program provides that a bonus payment may not be included in an employee's regular base rate of pay and may not be carried forward in subsequent years.

Severance pay for water management district employees is specifically prohibited.

The proposed committee substitute makes the following changes with respect to public employee compensation:

- Prohibits the payment of severance pay with certain exceptions;
- Restricts bonus schemes;
- Deletes provisions of law inconsistent with these restrictions; and
- Prohibits confidentiality agreements related to any agreement or contract involving extra compensation.

The bill has an indeterminate fiscal impact. See "Fiscal Comments."

The bill takes effect July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Extra compensation claims are prohibited under s. 215.425, F.S., with some exceptions. The section provides that no extra compensation may be made to any officer, agent, employee, or contractor after service has been rendered or the contract made, with the following exceptions:

- Extra compensation given to state employees who are included within the senior management group pursuant to rules adopted by the Department of Management Services;
- Extra compensation given to county, municipal, or special district employees pursuant to policies adopted by county or municipal ordinances or resolutions of governing boards of special districts or to employees of the clerk of the circuit court pursuant to written policy of the clerk; or
- A clothing and maintenance allowance given to plainclothes deputies pursuant to s. 30.49, F.S.

Numerous attorney general opinions have been issued interpreting this section of law.¹ According to the Attorney General opinions, the following forms of remuneration violate s. 215.425, F.S.:

- Severance pay or wages in lieu of notice of termination;²
- Bonuses to existing employees for services for which they have already performed and been compensated, in the absence of a preexisting employment contract making such bonuses a part of their salary;³ and
- Lump-sum payments made as an incentive for an employee to end his or her employment.

The following do not violate s. 215.425, F.S.:

- Certain settlements;
- Lump-sum supplemental payments as an increased benefit to qualified current employees who elect early retirement; and
- Accrued annual or sick leave.⁴

The key issue in the Attorney General opinions seems to be whether the benefits are benefits that were anticipated as part of the initial contract or hiring policy, or whether they are additional payment for services over and above that fixed by contract or law when the services were rendered.⁵ Benefits that were anticipated as part of the hiring process are deemed to be included in the salary or payment for services. Whereas, additional benefits not anticipated at the hiring date or available to all employees as part of a retirement plan, are deemed to be extra compensation prohibited by current law.

Notwithstanding the prohibition against extra compensation set forth in s. 215.425, F.S., cities and counties are allowed, under their respective governing statutes, to "provide for an extra compensation program, including a lump-sum bonus payment program, to reward outstanding employees whose performance exceeds standards, if the program provides that a bonus payment may not be included in an employee's regular base rate of pay and may not be carried forward in subsequent years."⁶

Section 110.1245, F.S., tasks the Department of Management Services (DMS) with paying bonuses when funds are specifically appropriated by the Legislature for bonuses. Statutory eligibility criteria include the following:

¹ See Op. Att'y Gen. Fla. 2009-03 (2009); Op. Att'y Gen. Fla. 2007-26 (2007); Op. Att'y Gen. Fla. 97-21 (1997); and Op. Att'y Gen. Fla. 91-51 (1991).

² Op. Att'y Gen. Fla. 2007-26 (2007); Op. Att'y Gen. Fla. 91-51 (1991).

³ Op. Att'y Gen. Fla. 91-51 (1991).

⁴ Op. Att'y Gen. Fla. 2009-03 (2009).

⁵ Op. Att'y Gen. Fla. 2007-26 (2007).

⁶ See ss. 166.021(7) and 125.01(1)(bb), F.S.

- The employee must be employed prior to July 1 of that fiscal year and be continuously employed through the date of distribution.
- The employee may not be on leave, without pay, consecutively for more than 6 months during the fiscal year.
- The employee may not have sustained disciplinary action during the period beginning July 1 through the date the bonus checks are distributed. Disciplinary actions include written reprimands, suspensions, dismissals, and involuntary or voluntary demotions that were associated with a disciplinary action.
- The employee must demonstrate a commitment to the agency mission by reducing the burden on those served, continually improving the way business is conducted, producing results in the form of increased outputs, and working to improve processes.
- The employee must demonstrate initiative in work and exceed normal job expectations.
- The employee must display agency values of fairness, cooperation, respect, commitment, honesty, excellence, and teamwork.

DMS also has rules for:

- A process for peer input that is fair, respectful of employees, and affects the outcome of the bonus distribution.
- A division of the agency by work unit for purposes of peer input and bonus distribution.
- A limitation on bonus distributions equal to 35 percent of the agency's total authorized positions. This requirement may be waived by the Office of Policy and Budget in the Executive Office of the Governor upon a showing of exceptional circumstances.

Bonuses are authorized in specified circumstances to leased employees authorized by the legislature, an agency, or the judicial branch.⁷

Severance pay for water management district employees is specifically prohibited under s. 373.0795, F.S. Severance pay is defined as the actual or constructive compensation, in salary, benefits or perquisites, of an officer or employee of a water management district, or any subdivision or agency thereof, for employment services yet to be rendered for a term greater than 4 weeks before or immediately following termination of employment (excluding leave time and retirement).

Effect of Changes

The proposed committee substitute revises existing law that prohibits extra compensation made to a public employee after service has been rendered or the contract made by deleting current provisions allowing counties, municipalities, special districts, and clerks of the circuit court from giving bonuses as long as they had policies in place. The proposed committee substitute creates requirements for any policy, ordinance, rule, or resolution designed to implement a bonus scheme. The scheme must:

- Base the award of a bonus on work performance;
- Describe the performance standards and evaluation process by which a bonus will be awarded;
- Notify all employees of the policy, ordinance, rule, or resolution before the beginning of the evaluation period on which a bonus will be based; and
- Consider all employees for the bonus.

The proposed committee substitute prohibits units of government from contracting to give severance pay to an officer, agent, employee, or contractor. Severance pay may only be received by the officer, agent, employee, or contractor if:

- Paid wholly from private funds and is not a violation of the employee code of ethics;⁸
- It is part of an interstate interchange of employees;⁹
- It is given as part of a settlement agreement if there is no prohibition against publicly discussing the settlement; or

⁷ See s. 110.191, F.S.

⁸ Under part III of chapter 112, F.S.

⁹ Under part II of chapter 112, F.S.

- It is expressly included in a contract for employment that was entered into before July 1, 2011.

The proposed committee substitute clarifies that it does not create an entitlement to severance pay in the absence of its authorization.

Additionally, the term "severance pay" is defined as the actual or constructive compensation, including salary, benefits, or perquisites, for employment services yet to be rendered which is provided to an employee who has recently been or is about to be terminated. The term does not include compensation for earned and accrued annual, sick, compensatory, or administrative leave or early retirement under provisions established in an actuarially funded pension plan subject to part VII of chapter 112, F.S.

Any agreement or contract involving extra compensation between a unit of government and an officer, agent, employee, or contractor cannot include any provision that limits the ability of a party to the agreement or contract to discuss such agreement or contract.

Finally, the proposed committee substitute deletes provisions in other sections of law that specifically give municipalities and counties the authority to provide extra compensation programs and repeals a section of law governing severance pay for water management districts because of inconsistencies in definitions.

B. SECTION DIRECTORY:

Section 1 amends s. 215.425, F.S., deleting current provisions exempting counties, municipalities, or special districts or clerks of the circuit court from the provisions of the section if they have policies in place; creating requirements for implementation of a bonus scheme; prohibiting units of government from contracting to give severance pay; providing conditions under which a person may receive severance pay; clarifying that an entitlement to severance pay is not created in the absence of its authorization; defining the term "severance pay"; prohibiting any agreement or contract involving extra compensation in certain circumstances.

Section 2 deletes subsection (7) of s. 166.021, F.S., allowing municipalities to provide extra compensation programs.

Section 3 amends s. 112.061, F.S., conforming cross references.

Section 4 deletes paragraph (bb) of s. 125.01(1), F.S., allowing counties to provide extra compensation programs; and repeals s. 373.0795, F.S., which prohibits severance pay for water management districts.

Section 5 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:

Indeterminate. See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate. See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Cost savings may arise from the prohibition against severance pay. Under current law, employees likely could receive severance pay as part of their initial contract, but not in an ad hoc manner subsequent to negotiating their terms of employment. Therefore, since ad hoc severance pay is already prohibited under s. 215.425, F.S., the bill prohibits government employers from using severance pay as a recruitment tool.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

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 employee compensation; amending
 3 s. 215.425, F.S.; revising provisions relating to the
 4 prohibition against the payment of extra compensation;
 5 providing for bonuses; specifying the conditions for
 6 paying bonuses; prohibiting provisions in contracts that
 7 provide for severance pay; allowing for severance pay
 8 under specified circumstances; defining the term
 9 "severance pay"; prohibiting a contract provision that
 10 provides for extra compensation to limit the ability to
 11 discuss the contract; amending s. 166.021, F.S.; deleting
 12 a provision that allows a municipality to pay extra
 13 compensation; amending s. 112.061, F.S.; conforming cross-
 14 references; repealing s. 125.01(1)(bb), F.S., relating to
 15 the power of a local government to pay extra compensation;
 16 repealing s. 373.0795, F.S., relating to a prohibition
 17 against severance pay for officers or employees of water
 18 management districts; providing an effective date.

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

21
 22 Section 1. Section 215.425, Florida Statutes, is amended
 23 to read:

24 215.425 Extra compensation claims prohibited; bonuses;
 25 severance pay.-

26 (1) No extra compensation shall be made to any officer,
 27 agent, employee, or contractor after the service has been
 28 rendered or the contract made; nor shall any money be

29 appropriated or paid on any claim the subject matter of which
 30 has not been provided for by preexisting laws, unless such
 31 compensation or claim is allowed by a law enacted by two-thirds
 32 of the members elected to each house of the Legislature.

33 However, when adopting salary schedules for a fiscal year, a
 34 district school board or community college district board of
 35 trustees may apply the schedule for payment of all services
 36 rendered subsequent to July 1 of that fiscal year.

37 (2) The provisions of This section does de not apply to:

38 (a) Extra compensation given to state employees who are
 39 included within the senior management group pursuant to rules
 40 adopted by the Department of Management Services; ~~to extra~~
 41 ~~compensation given to county, municipal, or special district~~
 42 ~~employees pursuant to policies adopted by county or municipal~~
 43 ~~ordinances or resolutions of governing boards of special~~
 44 ~~districts or to employees of the clerk of the circuit court~~
 45 ~~pursuant to written policy of the clerk; or to~~

46 (b) A clothing and maintenance allowance given to
 47 plainclothes deputies pursuant to s. 30.49.

48 (3) Any policy, ordinance, rule, or resolution designed to
 49 implement a bonus scheme must:

50 (a) Base the award of a bonus on work performance;

51 (b) Describe the performance standards and evaluation
 52 process by which a bonus will be awarded;

53 (c) Notify all employees of the policy, ordinance, rule,
 54 or resolution before the beginning of the evaluation period on
 55 which a bonus will be based; and

56 (d) Consider all employees for the bonus.

57 (4) (a) On or after July 1, 2011, a unit of government may
 58 not enter into a contract or employment agreement that contains
 59 a provision for severance pay with an officer, agent, employee,
 60 or contractor.

61 (b) On or after July 1, 2011, an officer, agent, employee,
 62 or contractor may receive severance pay only if:

63 1. The severance pay is paid from wholly private funds,
 64 the payment and receipt of which do not otherwise violate part
 65 III of chapter 112;

66 2. The severance pay is administered under part II of
 67 chapter 112 on behalf of an agency outside this state and would
 68 be permitted under that agency's personnel system;

69 3. The severance pay represents the settlement of an
 70 employment dispute. Such settlement may not include provisions
 71 that limit the ability of any party to the settlement to discuss
 72 the dispute or settlement; or

73 4. Provision for the severance pay is expressly included
 74 in a contract for employment which was entered into before July
 75 1, 2011.

76 (c) This subsection does not create an entitlement to
 77 severance pay in the absence of its authorization.

78 (d) As used in this subsection, the term "severance pay"
 79 means the actual or constructive compensation, including salary,
 80 benefits, or perquisites, for employment services yet to be
 81 rendered which is provided to an employee who has recently been
 82 or is about to be terminated. The term does not include
 83 compensation for:

84 1. Earned and accrued annual, sick, compensatory, or

85 administrative leave; or

86 2. Early retirement under provisions established in an
 87 actuarially funded pension plan subject to part VII of chapter
 88 112.

89 (5) Any agreement or contract involving extra compensation
 90 between a unit of government and an officer, agent, employee, or
 91 contractor may not include provisions that limit the ability of
 92 any party to the agreement or contract to discuss the agreement
 93 or contract.

94 Section 2. Present subsections (8) through (10) of section
 95 166.021, Florida Statutes, are redesignated as subsections (7)
 96 through (9) respectively, and present subsection (7) of that
 97 section is amended, to read:

98 166.021 Powers.—

99 ~~(7) Notwithstanding the prohibition against extra~~
 100 ~~compensation set forth in s. 215.425, the governing body of a~~
 101 ~~municipality may provide for an extra compensation program,~~
 102 ~~including a lump-sum bonus payment program, to reward~~
 103 ~~outstanding employees whose performance exceeds standards, if~~
 104 ~~the program provides that a bonus payment may not be included in~~
 105 ~~an employee's regular base rate of pay and may not be carried~~
 106 ~~forward in subsequent years.~~

107 Section 3. Paragraphs (a) and (c) of subsection (14) of
 108 section 112.061, Florida Statutes, are amended to read:

109 112.061 Per diem and travel expenses of public officers,
 110 employees, and authorized persons.—

111 (14) APPLICABILITY TO COUNTIES, COUNTY OFFICERS, DISTRICT
 112 SCHOOL BOARDS, SPECIAL DISTRICTS, AND METROPOLITAN PLANNING

113 ORGANIZATIONS.—

114 (a) The following entities may establish rates that vary
 115 from the per diem rate provided in paragraph (6) (a), the
 116 subsistence rates provided in paragraph (6) (b), or the mileage
 117 rate provided in paragraph (7) (d) if those rates are not less
 118 than the statutorily established rates that are in effect for
 119 the 2005-2006 fiscal year:

120 1. The governing body of a county by the enactment of an
 121 ordinance or resolution;

122 2. A county constitutional officer, pursuant to s. 1(d),
 123 Art. VIII of the State Constitution, by the establishment of
 124 written policy;

125 3. The governing body of a district school board by the
 126 adoption of rules;

127 4. The governing body of a special district, as defined in
 128 s. 189.403(1), except those special districts that are subject
 129 to s. 166.021(9) ~~166.021(10)~~, by the enactment of a resolution;
 130 or

131 5. Any metropolitan planning organization created pursuant
 132 to s. 339.175 or any other separate legal or administrative
 133 entity created pursuant to s. 339.175 of which a metropolitan
 134 planning organization is a member, by the enactment of a
 135 resolution.

136 (c) Except as otherwise provided in this subsection,
 137 counties, county constitutional officers and entities governed
 138 by those officers, district school boards, special districts,
 139 and metropolitan planning organizations, other than those
 140 subject to s. 166.021(9) ~~166.021(10)~~, remain subject to the

PCS for HB 43

ORIGINAL

2011

141 requirements of this section.

142 Section 4. Paragraph (bb) of subsection (1) of section
143 125.01 and section 373.0795, Florida Statutes, are repealed.

144 Section 5. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 121 Pub. Rec./Donors to Performing Arts Centers or DSO of Florida Historic Capitol & Legislative Research Center & Museum

SPONSOR(S): Thurston, Jr.

TIED BILLS: IDEN./SIM. BILLS: SB 106

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Williamson <i>haw</i>	Williamson <i>haw</i>
2) Rules & Calendar Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Current law provides several public record exemptions for the identity of a donor or prospective donor to an organization who wishes to remain anonymous. Examples include the Cultural Endowment Program, the direct support organization for the Florida Agricultural Museum, and the direct support organization for the John and Mable Ringling Museum of Art.

The bill creates a public record exemption for the identity of a donor or prospective donor to a publicly owned performing arts center who desires to remain anonymous. It also creates a public record exemption for the identity of a donor or prospective donor to the direct-support organization of the Legislative Research Center and Museum at the Historic Capitol who desires to remain anonymous.

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 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.¹

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

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

Public Record Exemptions, Donor Information

Current law provides several public record exemptions for the identity of a donor or prospective donor to an organization who wishes to remain anonymous. Examples include the Cultural Endowment Program,³ the direct support organization for the Florida Agricultural Museum,⁴ and the direct support organization for the John and Mable Ringling Museum of Art.⁵

Performing Arts Centers

Background

Spending on arts and cultural events in Florida generated nearly \$250 million in state and local tax revenues in 2008. The overall return on investment by governments on art and cultural spending is five to one.⁶ Florida has many performing arts centers in every region of the state. Their ownership, management, and financing vary.⁷

Effect of Bill

The bill creates a public record exemption for the identity of a donor or prospective donor of a donation made for the benefit of a publicly owned performing arts center who desires to remain anonymous.

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

² Section 119.15, F.S.

³ Section 265.605(2), F.S.

⁴ Section 570.903(6), F.S.

⁵ Section 1004.45(2)(h), F.S.

⁶ Senate Bill Analysis and Fiscal Impact Statement for SB 106 (March 9, 2011), at 7. SB 106 is the companion bill to HB 107.

⁷ See <http://funandsun.com/1tocf/artf/perfs.html> for an unofficial list.

Information that would identify the name, address, or telephone number of the donor or prospective donor is confidential and exempt⁸ from public records requirements.

The bill defines "publicly owned performing arts center" to mean

[A] facility consisting of at least 200 seats, owned and operated by a county or municipality, which is used and occupied to promote development of any or all of the performing, visual, or fine arts or any or all matters relating thereto and to encourage and cultivate public and professional knowledge and appreciation of the arts.

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.⁹

Direct-Support Organization, Legislative Research Center and Museum

Background

In 2009, the Legislature authorized the Legislative Research Center and Museum, at the Historic Capitol, and the Capitol Curator¹⁰ to establish a direct-support organization (DSO) in order to provide assistance and promotional support through fundraising for the Florida Historic Capitol and the Legislative Research Center and Museum.¹¹ The DSO must be a not for profit, Florida corporation that is incorporated under chapter 617, F.S.,¹² and approved by the Department of State.¹³

The DSO is governed by a nine-member board of directors who must have a demonstrated capacity for supporting the mission of the Historic Capitol. Initial appointments to the board are made by the President of the Senate and the Speaker of the House of Representatives and, thereafter, by the board.¹⁴

If the DSO is no longer authorized or fails to comply with the statutory requirements, fails to maintain its tax-exempt status, or ceases to exist, then all funds obtained through grants, gifts, and donations in the DSO's account revert to the state and are deposited into an account designated by the Legislature.¹⁵

The DSO received its not-for-profit designation in October 2010, and has been receiving contributions.

Effect of Bill

The bill creates a public record exemption for the identity of a donor or prospective donor to the DSO who desires to remain anonymous. The personal identifying information is confidential and exempt

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

⁹ Section 24(c), Art. I of the State Constitution.

¹⁰ The Florida Historic Capitol Curator is appointed by and serves at the pleasure of the President of the Senate and the Speaker of the House of Representatives. The curator is responsible for: promoting and encouraging state knowledge and appreciation of the Florida Historic Capitol; collecting, researching, exhibiting, interpreting, preserving and protecting the history, artifacts, objects, furnishings and other materials related to the Florida Historic Capitol, other than archaeological materials; and developing, directing, supervising, and maintaining the interior design and furnishings within the Florida Historic Capitol. In conjunction with the Legislative Research Center and Museum at the Historic Capitol, the curator also may assist the Florida Historic Capitol in the performance of certain monetary duties. *See* s. 272.135, F.S.

¹¹ Section 3, chapter 2009-179, L.O.F.; codified as s. 272.136, F.S.

¹² Chapter 617, F.S., relates to not for profit corporations.

¹³ Section 272.136(2), F.S.

¹⁴ Section 272.136(1), F.S.

¹⁵ Section 272.136(6), F.S.

from public records requirements. The anonymity of a donor or prospective donor must be maintained in the auditor's report for annual financial audits.

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.¹⁶

B. SECTION DIRECTORY:

Section 1 creates an unnumbered section law to create a public record exemption for publicly owned performing arts centers.

Section 2 amends s. 272.136, F.S., to create a public record exemption for the direct-support organization for the Legislative Research Center and Museum at the Historic Capitol.

Section 3 provides a public necessity statement.

Section 4 provides an effective date of October 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax

¹⁶ Section 24(c), Art. I of the State Constitution.

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.

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; defining the term
 3 "publicly owned performing arts center"; creating an
 4 exemption from public records requirements for information
 5 that identifies a donor or prospective donor of a donation
 6 made for the benefit of a publicly owned performing arts
 7 center if the donor desires to remain anonymous; providing
 8 for future legislative review and repeal of the exemption
 9 under the Open Government Sunset Review Act; amending s.
 10 272.136, F.S.; creating an exemption from public records
 11 requirements for information identifying a donor or
 12 prospective donor to the direct-support organization of
 13 the Legislative Research Center and Museum at the Historic
 14 Capitol; providing for future legislative review and
 15 repeal of the exemption under the Open Government Sunset
 16 Review Act; providing a statement of public necessity;
 17 providing an effective date.

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

20
 21 Section 1. Confidentiality of certain donor information
 22 related to a publicly owned performing arts center.-

23 (1) As used in this section, the term "publicly owned
 24 performing arts center" means a facility consisting of at least
 25 200 seats, owned and operated by a county or municipality, which
 26 is used and occupied to promote development of any or all of the
 27 performing, visual, or fine arts or any or all matters relating
 28 thereto and to encourage and cultivate public and professional

29 knowledge and appreciation of the arts.

30 (2) If a donor or prospective donor of a donation made for
 31 the benefit of a publicly owned performing arts center desires
 32 to remain anonymous, information that would identify the name,
 33 address, or telephone number of that donor or prospective donor
 34 is confidential and exempt from s. 119.07(1), Florida Statutes,
 35 and s. 24(a), Article I of the State Constitution.

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

40 Section 2. Subsection (7) is added to section 272.136,
 41 Florida Statutes, to read:

42 272.136 Direct-support organization.—The Legislative
 43 Research Center and Museum at the Historic Capitol and the
 44 Capitol Curator may establish a direct-support organization to
 45 provide assistance and promotional support through fundraising
 46 for the Florida Historic Capitol and the Legislative Research
 47 Center and Museum, including, but not limited to, their
 48 educational programs and initiatives.

49 (7) (a) The identity of a donor or prospective donor to the
 50 direct-support organization who desires to remain anonymous and
 51 all information identifying such donor or prospective donor is
 52 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 53 of the State Constitution. Such anonymity shall be maintained in
 54 any auditor's report created pursuant to the annual financial
 55 audits required under subsection (5).

56 (b) This subsection is subject to the Open Government

57 Sunset Review Act in accordance with s. 119.15 and shall stand
 58 repealed on October 2, 2016, unless reviewed and saved from
 59 repeal through reenactment by the Legislature.

60 Section 3. The Legislature finds that it is a public
 61 necessity that information that would identify the name,
 62 address, or telephone number of a donor or prospective donor of
 63 a donation made for the benefit of a publicly owned performing
 64 arts center be made confidential and exempt from public records
 65 requirements if such donor or prospective donor desires to
 66 remain anonymous. The Legislature further finds that it is a
 67 public necessity that information identifying a donor or
 68 prospective donor to the direct-support organization for the
 69 Florida Historic Capitol and the Legislative Research Center and
 70 Museum be made confidential and exempt from public records
 71 requirements if such donor or prospective donor desires to
 72 remain anonymous. In order to encourage private support for
 73 publicly owned performing arts centers and the direct-support
 74 organization, it is a public necessity to promote the giving of
 75 gifts to, and the raising of private funds for, the acquisition,
 76 renovation, rehabilitation, and operation of publicly owned
 77 performing arts centers and the programming and preservation of
 78 the Florida Historic Capitol and the Legislative Research Center
 79 and Museum. An essential element of an effective plan for
 80 promoting the giving of private gifts and the raising of private
 81 funds is the need to protect the identity of prospective and
 82 actual donors who desire to remain anonymous. If the identity of
 83 prospective and actual donors who desire to remain anonymous is
 84 subject to disclosure, there is a chilling effect on donations

HB 121

2011

85 because donors are concerned about disclosure of personal
86 information leading to theft and, in particular, identity theft,
87 including personal safety and security. Therefore, the
88 Legislature finds that it is a public necessity to make
89 confidential and exempt from public records requirements
90 information that would identify a donor or prospective donor of
91 a donation made for the benefit of a publicly owned performing
92 arts center or a donor or prospective donor to the direct-
93 support organization for the Florida Historic Capitol and the
94 Legislative Research Center and Museum if such donor or
95 prospective donor wishes to remain anonymous.

96 Section 4. This act shall take effect October 1, 2011.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 121 (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 Thurston offered the following:

4
5 **Amendment**

6 Remove line 25 and insert:
7 200 seats, owned and operated by a county, municipality, or
8 special district, which

Amendment No.

#2

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 Thurston offered the following:

Amendment (with title amendment)

6 Remove lines 40-96 and insert:

7 Section 2. The Legislature finds that it is a public
 8 necessity that information that would identify the name,
 9 address, or telephone number of a donor or prospective donor of
 10 a donation made for the benefit of a publicly owned performing
 11 arts center be made confidential and exempt from public records
 12 requirements if such donor or prospective donor desires to
 13 remain anonymous. In order to encourage private support for
 14 publicly owned performing arts centers, it is a public necessity
 15 to promote the giving of gifts to, and the raising of private
 16 funds for, the acquisition, renovation, rehabilitation, and
 17 operation of publicly owned performing arts centers. An
 18 essential element of an effective plan for promoting the giving
 19 of private gifts and the raising of private funds is the need to

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 121 (2011)

Amendment No.

20 protect the identity of prospective and actual donors who desire
21 to remain anonymous. If the identity of prospective and actual
22 donors who desire to remain anonymous is subject to disclosure,
23 there is a chilling effect on donations because donors are
24 concerned about disclosure of personal information leading to
25 theft and, in particular, identity theft, including personal
26 safety and security. Therefore, the Legislature finds that it is
27 a public necessity to make confidential and exempt from public
28 records requirements information that would identify a donor or
29 prospective donor of a donation made for the benefit of a
30 publicly owned performing arts center if such donor or
31 prospective donor wishes to remain anonymous.

32 Section 3. This act shall take effect October 1, 2011.
33
34
35

36 -----
37 **T I T L E A M E N D M E N T**

38 Remove lines 9-16 and insert:


39 under the Open Government Sunset Review Act; providing a
40 statement of public necessity;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 411 Pub. Rec./Photographs and Video and Audio Recordings Depicting or Recording the Killing of a Person

SPONSOR(S): Burgin

TIED BILLS: IDEN./SIM. BILLS: HB 163, SB 416

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

SUMMARY ANALYSIS

The bill creates a public record exemption for photographs and video and audio recordings that depict or record the killing of a person. It is identical to the public record exemption provided for photographs and video and audio recordings of an autopsy.

Such photograph or video or audio recording is confidential and exempt from public records requirements; however, a surviving spouse or other enumerated relatives may view and copy a photograph or video recording or listen to or copy the audio recording of the decedent. The surviving relative with whom authority rests to obtain such confidential and exempt records may designate in writing an agent to obtain those records.

Pursuant to a written request and in the furtherance of its duties and responsibilities, a local governmental entity or a state or federal agency may view or copy a photograph or video recording or may listen to or copy an audio recording of the killing of a person.

Without a court order, the custodian of such records may not permit any other person to view or copy a photograph or video recording or to listen to or copy the audio recording of the killing of a person. A person must file a petition and obtain a court order in order to view, listen to, or copy such records. A surviving spouse or other enumerated relative must receive reasonable notice of the petition and of the opportunity to be present and heard at any hearing on the matter. Upon a showing of good cause, the court may issue an order authorizing a person to view or copy a photograph or video recording or to listen to or copy the audio recording of the killing of a person.

The bill provides that the public record exemption does not apply to such photographs or video or audio recordings submitted as part of a criminal or administrative proceeding; however, a court in such proceeding is not prohibited from restricting or controlling the disclosure of such records upon a showing of good cause.

The bill provides penalty provisions for violating the public record exemption.

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 for retroactive application of the exemption.

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.¹

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

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

Public Record Exemption, Criminal Intelligence and Criminal Investigative Information

Current law provides a public record exemption for criminal intelligence information³ and criminal investigative information.⁴ Active criminal intelligence information⁵ and active criminal investigative information⁶ are exempt⁷ from public records requirements.

Public Record Exemption, Autopsy Photos and Video Audio Recordings

Current law provides a public record exemption for photographs and video and audio recordings of an autopsy held by a medical examiner.⁸ Such photographs and video and audio recordings are

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

² Section 119.15, F.S.

³ 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."

⁴ 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."

⁵ Criminal intelligence information is considered "active" as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities. Section 119.011(3)(d)1., F.S.

⁶ Criminal investigative information is considered "active" as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future. Section 119.011(3)(d)2., F.S.

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

⁸ Section 406.135(2), F.S.

confidential and exempt from public records requirements, except that a surviving spouse and other enumerated family members may obtain the records.

Pursuant to a written request and in the furtherance of its duties and responsibilities, a local governmental entity or a state or federal agency may view or copy a photograph or video recording or may listen to or copy an audio recording of an autopsy. The identity of the deceased must remain confidential and exempt.⁹

Other than these exceptions, a custodian of the photographs and video and audio recordings is prohibited from releasing such photographs and recordings to any other person not authorized under the exemption, without a court order.¹⁰

Effect of Bill

The bill creates a public record exemption for photographs and video and audio recordings that depict or record the killing of a person. The public record exemption is identical to the public record exemption provided for photographs and video and audio recordings of an autopsy.

The bill defines "killing of a person" to mean

[A]ll acts or events that cause or otherwise relate to the death of any human being, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death.

Such photograph or video or audio recording is confidential and exempt from public records requirements; however, a surviving spouse may view and copy a photograph or video recording or listen to or copy the audio recording of the decedent. If there is no surviving spouse, then the surviving parents have access to such records. If there is no surviving spouse or parent, then an adult child has access to such records. The surviving relative with whom authority rests to obtain such confidential and exempt records may designate in writing an agent to obtain those records.

Pursuant to a written request and in the furtherance of its duties and responsibilities, a local governmental entity or a state or federal agency may view or copy a photograph or video recording or may listen to or copy an audio recording of the killing of a person. The identity of the deceased must remain confidential and exempt.

Without a court order, the custodian of such records may not permit any other person to view or copy a photograph or video recording or to listen to or copy the audio recording of the killing of a person. A person must file a petition and obtain a court order in order to view, listen to, or copy such records. A surviving spouse must receive reasonable notice of the petition and of the opportunity to be present and heard at any hearing on the matter. If there is no surviving spouse, then such notice must be provided to the deceased's parents, and if the deceased has no living parent, then to the adult child of the deceased.

Upon a showing of good cause, the court may issue an order authorizing a person to view or copy a photograph or video recording or to listen to or copy the audio recording of the killing of a person. The bill provides that, in determining good cause, the court must consider:

- Whether such disclosure is necessary for the public evaluation of governmental performance;
- The seriousness of the intrusion into the family's right to privacy and whether such disclosure is the least intrusive means available; and
- The availability of similar information in other public records, regardless of form.

The bill provides that the public record exemption does not apply to such photographs or video or audio recordings submitted as part of a criminal or administrative proceeding; however, it appears to apply to

⁹ Section 406.135(3)(b), F.S.

¹⁰ Section 406.135(4), F.S.

such information submitted as part of a civil proceeding. In addition, a court in such proceeding is not prohibited from restricting or controlling the disclosure of such records upon a showing of good cause.

It is a third degree felony for any:

- Custodian of such photograph or video or audio recording who willfully and knowingly violates the provisions of the exemption.
- Person who willfully and knowingly violates a court order issued pursuant to the exemption.

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,¹¹ and provides for retroactive application¹² of the public record exemption.

B. SECTION DIRECTORY:

Section 1 creates an unnumbered section of law to create a public record exemption for photographs and video and audio recordings that depict or record the killing of a person.

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:

See Fiscal Comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires a person to petition the court for access to photographs and video and audio recordings of a killing of a person. As such, a person petitioning the court would be subject to court costs and fees.

D. FISCAL COMMENTS:

On March 2, 2011, SB 416¹³ was on the Criminal Justice Impact Conference agenda. As such, the fiscal impact was deemed insignificant because of low volume and because of the unranked third degree felonies.

¹¹ Section 24(c), Art. I of the State Constitution.

¹² 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).

¹³ SB 416 is the companion to HB 411.

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.

Overly Broad

Article I, s. 24(c) of the State Constitution, requires that an exemption be no broader than necessary to accomplish its stated purpose.

In *Campus Communications, Inc., v. Earnhardt*,¹⁴ the Fifth District Court of Appeal upheld a similar law exempting autopsy photographs and video and audio recordings against an unconstitutional over breadth challenge brought by a newspaper. The court went on to certify the question of constitutionality to the Florida Supreme Court. On July 1, 2003, the Florida Supreme Court, per curiam, denied review of this case, leaving in place the appellate court's holding.¹⁵

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Opponents of the bill have expressed concerns because, according to opponents, the bill restricts oversight of governmental actions and creates less accountability. Opponents have listed as examples the Martin Lee Anderson incident at the Bay County Boot Camp,¹⁶ and the execution of Jesse Joseph Tafero.¹⁷

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

¹⁴ 821 So.2d 388 (Fla. 5th DCA 2002), review denied, 848 So.2d 1153 (Fla. 2003).

¹⁵ 848 So.2d 1153 (Fla. 2003).

¹⁶ In January 2006, Martin Lee Anderson, a resident of the Bay County Boot Camp, which was operated by the Bay County Sheriff's Office, died from suffocation a day after entering boot camp. A videotape of the events surrounding his death, specifically the activities of boot camp employees, resulted in the Legislature closing boot camps, but only after the news media and others made the video public. Letter from the First Amendment Foundation to Representative Burgin (February 25, 2011), on file with the Government Operations Subcommittee.

¹⁷ In 1990, the execution of Jesse Joseph Tafero was botched causing his head to catch fire. Videos or photos of this event would be protected under this bill, also limiting oversight. *Id.*

1 A bill to be entitled
 2 An act relating to public records; providing a definition;
 3 providing an exemption from public records requirements
 4 for photographs and video and audio recordings that depict
 5 or record the killing of a person; authorizing access to
 6 such photographs or video or audio recordings by specified
 7 members of the immediate family of the deceased subject of
 8 the photographs or video or audio recordings; providing
 9 for access to such records by local governmental entities
 10 or state or federal agencies in furtherance of official
 11 duties; providing for access pursuant to court order;
 12 providing guidelines of the court in issuing an order
 13 authorizing such photographs or video or audio recordings
 14 to be viewed, copied, or heard; requiring specified notice
 15 of a court petition to view or copy such records;
 16 providing penalties; exempting criminal or administrative
 17 proceedings from the act; providing for retroactive
 18 application; providing for future legislative review and
 19 repeal of the exemption; providing a finding of public
 20 necessity; providing an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:
 23

24 Section 1. (1) As used in this section, the term "killing
 25 of a person" means all acts or events that cause or otherwise
 26 relate to the death of any human being, including any related
 27 acts or events immediately preceding or subsequent to the acts
 28 or events that were the proximate cause of death.

29 (2) A photograph or video or audio recording that depicts
 30 or records the killing of a person is confidential and exempt
 31 from section 119.07(1), Florida Statutes, and s. 24(a), Art. I
 32 of the State Constitution, except that a surviving spouse of the
 33 decedent may view and copy any such photograph or video
 34 recording or listen to or copy any such audio recording. If
 35 there is no surviving spouse, then the surviving parents shall
 36 have access to such records. If there is no surviving spouse or
 37 parent, then an adult child shall have access to such records.

38 (3)(a) The deceased's surviving relative, with whom
 39 authority rests to obtain such records, may designate in writing
 40 an agent to obtain such records.

41 (b) A local governmental entity, or a state or federal
 42 agency, in furtherance of its official duties, pursuant to a
 43 written request, may view or copy a photograph or video
 44 recording or may listen to or copy an audio recording of the
 45 killing of a person and, unless otherwise required in the
 46 performance of their duties, the identity of the deceased shall
 47 remain confidential and exempt.

48 (c) The custodian of the record, or his or her designee,
 49 may not permit any other person to view or copy such photograph
 50 or video recording or listen to or copy such audio recording
 51 without a court order.

52 (4)(a) The court, upon a showing of good cause, may issue
 53 an order authorizing any person to view or copy a photograph or
 54 video recording that depicts or records the killing of a person
 55 or to listen to or copy an audio recording that depicts or

56 records the killing of a person and may prescribe any
 57 restrictions or stipulations that the court deems appropriate.

58 (b) In determining good cause, the court shall consider:

59 1. Whether such disclosure is necessary for the public
 60 evaluation of governmental performance;

61 2. The seriousness of the intrusion into the family's
 62 right to privacy and whether such disclosure is the least
 63 intrusive means available; and

64 3. The availability of similar information in other public
 65 records, regardless of form.

66 (c) In all cases, the viewing, copying, listening to, or
 67 other handling of a photograph or video or audio recording that
 68 depicts or records the killing of a person must be under the
 69 direct supervision of the custodian of the record or his or her
 70 designee.

71 (5) A surviving spouse shall be given reasonable notice of
 72 a petition filed with the court to view or copy a photograph or
 73 video recording that depicts or records the killing of a person
 74 or to listen to or copy any such audio recording, a copy of such
 75 petition, and reasonable notice of the opportunity to be present
 76 and heard at any hearing on the matter. If there is no surviving
 77 spouse, then such notice must be given to the parents of the
 78 deceased and, if the deceased has no living parent, then to the
 79 adult children of the deceased.

80 (6) (a) Any custodian of a photograph or video or audio
 81 recording that depicts or records the killing of a person who
 82 willfully and knowingly violates this section commits a felony

83 of the third degree, punishable as provided in section 775.082,
 84 section 775.083, or section 775.084, Florida Statutes.

85 (b) Any person who willfully and knowingly violates a
 86 court order issued pursuant to this section commits a felony of
 87 the third degree, punishable as provided in section 775.082,
 88 section 775.083, or section 775.084, Florida Statutes.

89 (c) A criminal or administrative proceeding is exempt from
 90 this section but, unless otherwise exempted, is subject to all
 91 other provisions of chapter 119, Florida Statutes, provided
 92 however that this section does not prohibit a court in a
 93 criminal or administrative proceeding upon good cause shown from
 94 restricting or otherwise controlling the disclosure of a
 95 killing, crime scene, or similar photograph or video or audio
 96 recordings in the manner prescribed herein.

97 (7) This exemption shall be given retroactive application
 98 and shall apply to all photographs or video or audio recordings
 99 that depict or record the killing of a person, regardless of
 100 whether the killing of the person occurred before, on, or after
 101 July 1, 2011.

102 (8) This section is subject to the Open Government Sunset
 103 Review Act in accordance with s. 119.15, Florida Statutes, and
 104 shall stand repealed on October 2, 2016, unless reviewed and
 105 saved from repeal through reenactment by the Legislature.

106 Section 2. The Legislature finds that is a public
 107 necessity that photographs and video and audio recordings that
 108 depict or record the killing of any person be made confidential
 109 and exempt from the requirements of section 119.07(1), Florida
 110 Statutes, and Section 24(a) of Article I of the State

HB 411


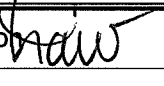
2011

111 Constitution. The Legislature finds that photographs or video or
 112 audio recordings that depict or record the killing of any person
 113 render a visual or aural representation of the deceased in
 114 graphic and often disturbing fashion. Such photographs or video
 115 or audio recordings provide a view of the deceased in the final
 116 moments of life, often bruised, bloodied, broken, with bullet
 117 wounds or other wounds, cut open, dismembered, or decapitated.
 118 As such, photographs or video or audio recordings that depict or
 119 record the killing of any person are highly sensitive
 120 representations of the deceased which, if heard, viewed, copied
 121 or publicized, could result in trauma, sorrow, humiliation, or
 122 emotional injury to the immediate family of the deceased, as
 123 well as injury to the memory of the deceased. The Legislature
 124 recognizes that the existence of the World Wide Web and the
 125 proliferation of personal computers throughout the world
 126 encourages and promotes the wide dissemination of such
 127 photographs and video and audio recordings 24 hours a day and
 128 that widespread unauthorized dissemination of photographs and
 129 video and audio recordings would subject the immediate family of
 130 the deceased to continuous injury. The Legislature further
 131 recognizes that there continue to be other types of available
 132 information, such as crime scene reports, which are less
 133 intrusive and injurious to the immediate family members of the
 134 deceased and which continue to provide for public oversight. The
 135 Legislature further finds that the exemption provided in this
 136 act should be given retroactive application because it is
 137 remedial in nature.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 449 Criminal Justice
SPONSOR(S): Taylor and others
TIED BILLS: IDEN./SIM. BILLS: CS/SB 146

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Meadows 	Williamson 
2) Criminal Justice Subcommittee			
3) Government Operations Appropriations Subcommittee			
4) State Affairs Committee			

SUMMARY ANALYSIS

The civil rights of a convicted felon are suspended until restored by pardon or restoration of civil rights. The power to restore civil rights is granted by the Florida Constitution to the Governor with the consent of at least two Cabinet members.

The bill provides that restoration of civil rights cannot be required as a condition of eligibility for public employment or to obtain a license, permit, or certificate. It further requires state agencies and regulatory boards to submit to the Governor and the Legislature a report that outlines current disqualifying policies on the employment or licensure of ex-offenders and possible alternatives that are compatible with protecting public safety.

The bill also requires an employer to review and consider the results of a criminal history background investigation and take certain steps consistent with the findings of the investigation in order to satisfy a statutory presumption against civil liability for negligent hiring.

Additionally, the bill provides that an ex-offender may lawfully deny or fail to acknowledge any arrests or subsequent dispositions covered by a sealed or expunged record and that a person cannot be liable for perjury for doing so on an employment application. The bill further provides that the subject of the records may authorize the disclosure of the expunged records without a court order. Finally, the bill allows for a second sealing of a criminal record.

The bill provides for an effective date of July 1, 2011.

This bill appears to have a fiscal impact on state government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Restoration of Civil Rights

The civil rights of a convicted felon are suspended until restored by pardon or restoration of civil rights. The Florida Constitution specifies only the loss of the right to vote and the right to hold public office as consequences of a felony conviction.¹ Other civil rights that are lost in accordance with statute include the right to serve on a jury, to possess a firearm, and to engage in certain regulated occupations or businesses.²

The power to restore civil rights is granted by the Florida Constitution to the Governor with the consent of at least two Cabinet members pursuant to Article IV, s. 8(a) of the Florida Constitution.

Eligibility for restoration of civil rights requires that a felon have completed all sentences, that all conditions of supervision have been satisfied or expired, and that there is no outstanding victim restitution. Once eligibility has been established, felons fall into one of three categories based upon the Clemency Board's assessment of the seriousness of the offense:

- Immediately eligible for automatic approval of restoration;
- Immediately eligible for restoration without a hearing; or
- Eligible for restoration without a hearing after 15 years.

The Florida Parole Commission acts as the agent of the Clemency Board in verifying eligibility, and has prioritized processing of the automatic approval cases for which it conducts a less extensive review. A more extensive investigation is conducted for those who are immediately eligible for restoration without a hearing.

Restrictions on the Employment of Ex-Offenders

A person may not be disqualified from employment by the state, any of its agencies or political subdivisions, or any municipality solely because of a prior conviction for a crime, except for those drug offenses specified in s. 775.16, F.S.³ An ex-offender may be denied employment by those entities by reason of the prior conviction for a crime if the crime was a felony or first-degree misdemeanor and directly related to the position of employment sought. In addition, some licensing boards have interpreted this statute to imply a requirement for restoration of civil rights.⁴

State agencies restrict occupational licenses and employment to ex-offenders based upon statute, administrative rule, or agency policy. The nature and variety of occupational licenses and employment with state agencies dictates that different standards apply to different types of employees and licensees.⁵

Employer Presumption against Negligent Hiring

In civil actions premised upon the death or injury of a third person as a result of intentional conduct of an employee, the employer is presumed not to have been negligent in hiring the employee if, prior to

¹Article VI, s. 4 of the Florida Constitution.

²Section 944.292, F.S., provides: “[u]pon conviction of a felony as defined in s. 10, Art. X of the State Constitution, the civil rights of the person convicted shall be suspended in Florida until such rights are restored by a full pardon, conditional pardon, or restoration of civil rights granted pursuant to s. 8, Art. IV of the State Constitution.”

³Section 112.011(1)(a), F.S.

⁴In the space of two months, three District Courts of Appeal overturned licensing board decisions to deny licenses based upon interpreting s. 112.011(1)(b), F.S., to require restoration of civil rights. See *Yeoman v. Construction Industry Licensing Bd.*, 919 So. 2d 542 (Fla. 1st DCA 2005); *Scherer v. Dep't of Business and Professional Regulation*, 919 So. 2d 662 (Fla. 5th DCA 2006); *Vetter v. Dep't of Business and Professional Regulation, Electrical Contractors' Licensing Bd.*, 920 So. 2d 44 (Fla. 2d DCA 2005).

⁵*Id.*

hiring, the employer conducted a background check on the employee which revealed no information that would cause an employer to conclude that the employee was unfit for work.⁶ The background investigation must include:

- A criminal background check obtained from the Department of Law Enforcement (FDLE or department).⁷
- Reasonable efforts to contact references and former employers.
- A job application form that includes questions requesting detailed information regarding previous criminal convictions.
- A written authorization allowing a check of the applicant's driver's license record if relevant to the work to be performed.
- An interview of the prospective employee.⁸

If the employer elects not to conduct an investigation prior to hiring, there is no presumption that the employer failed to use reasonable care in hiring an employee.⁹

Sealing and Expunction of Criminal History Records

Sections 943.0585 and 943.059, F.S., set forth procedures for sealing and expunging criminal history records. The courts have jurisdiction over their own judicial records containing criminal history information and over their procedures for maintaining and destroying those records.

When a record is expunged, it is physically destroyed and no longer exists if it is in the custody of a criminal justice agency other than FDLE.¹⁰ Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order. When a record is sealed, it is not destroyed, but access is limited to the subject of the record, his or her attorney, law enforcement agencies for their respective criminal justice purposes, and certain other specified agencies for their respective licensing and employment purposes. Records that have been sealed or expunged are confidential and exempt from public records law.¹¹

Persons who have had their criminal history records sealed or expunged may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain types of employment,¹² petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.¹³

Effect of Proposed Changes

The bill provides that the act may be cited as the "Jim King Keep Florida Working Act."

Restrictions on the Employment of Ex-Offenders

The bill requires each state agency, including professional and occupational regulatory boards, to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2011, and resubmit the report every eight years thereafter. The report includes policies imposed by the agency or board that disqualify a person who has been convicted of a crime from employment or licensure. It must take into account these disqualifications and consider less restrictive ways to protect public safety while offering employment opportunities for ex-offenders.

⁶ Section 768.096(1), F.S.

⁷ The employer must request and obtain from FDLE a check of the information as reported in the Florida Crime Information Center system as of the date of the request. Section 768.096(2), F.S.

⁸ Section 768.096(1)(a)-(e), F.S.

⁹ Section 768.096(3), F.S.

¹⁰ Section 943.0585(4), F.S.

¹¹ Section 943.0585(4)(c), F.S.

¹² These types of employment include: law enforcement; the Florida Bar; working with children, the developmentally disabled, or the elderly through the Department of Children and Family Services, the Department of Juvenile Justice, the Department of Education, any district school board, or local governmental entity licensing child care facilities; or a Florida seaport.

¹³ Section 943.0585(4)(a), F.S.

Restoration of Civil Rights

This bill provides that the restoration of rights may no longer be used as a measure of fitness for public employment and licensure. It amends s. 112.011(1)(b), F.S., to exclude any reference to restoration of civil rights.

The bill authorizes a government entity to deny an application for a license, permit, or certificate to engage in an occupation, trade, vocation, profession, or business if the applicant was convicted of a felony or first-degree misdemeanor. The denial must be relevant to the standards normally associated with or determined by the regulatory authority to be necessary for the protection of the public or other parties for which the license, permit, or certificate is required.

The bill precludes the disqualification of a person from receiving a license, permit, or certificate or from obtaining public employment on the grounds that his or her civil rights have not been restored. However, exemptions for county and municipal positions deemed to be critical to security or public safety, law enforcement agencies, correctional agencies, and fire departments are retained.

The bill provides that otherwise qualified persons may not be precluded from employment if they have a prior conviction for a crime not related to the position or permit for which they seek.

Employer Presumption against Negligent Hiring

An employer is permitted to receive the presumption against negligent hiring if the employer conducts a background investigation of the prospective employee. Under current law, the background investigation must satisfy at least one of the five requirements provided in current law. The bill revises the background investigation criteria to require the employer to complete each of the five items in order to satisfy the requirements of the background investigation.

The bill also revises the criminal background investigation required as one of the elements of the presumption. It provides that the employer must review and consider the results of the criminal background investigation and, if the prospective employee has engaged in past criminal conduct, the employer must: ensure the employee is not assigned to work that will place the employee in a position in which conduct that is similar to the employee's past criminal conduct is facilitated; and determine whether other information revealed by the investigation demonstrates the unsuitability of the employee for the particular work or the context of the employment in general.

Sealing and Expunging of Criminal Records

The bill requires the website for the office of the clerk of court to include information related to procedures to seal or expunge criminal history records. The information must include a link to related information on the FDLE website.

In addition, the bill clarifies that an individual cannot be held liable for perjury when denying or failing to acknowledge arrests and subsequent dispositions when the records were properly sealed or expunged. An individual may lawfully deny or fail to acknowledge arrests and subsequent dispositions covered by sealed or expunged records when completing a job application.

The bill authorizes the department to disclose the contents of an expunged record to the subject of the record upon receipt of a written, notarized request.

Finally, the bill provides that criminal records may be sealed for a second time if the subject of the records has obtained a certificate from the department to seal the criminal history records. The department shall only issue the certificate if the individual has not been arrested during the previous five year period following the date of the court order which initially sealed or expunged the records.

B. SECTION DIRECTORY:

Section 1 provides a short title.

Section 2 provides legislative intent; requires state agencies and regulatory boards to prepare reports that identify and evaluate restrictions on licensing and employment of ex-offenders.

Section 3 amends s. 112.011, F.S., to prohibit state agencies from denying an application for a license, permit, certification, or employment based on a person's lack of civil rights; to provide exceptions.

Section 4 amends s. 768.096, F.S., to require an employer to review the results of a criminal background investigation; to require an employer not to place an employee who has a criminal record in a position where certain conduct would be facilitated; to require an employer to determine that the criminal background investigation does not demonstrate that the employee is unsuitable for the particular work to be performed or the context of the employment in general.

Section 5 amends s. 943.0585, F.S., to clarify under what circumstances a person may legally deny the existence of an expunged criminal history record; to authorize disclosure of the contents of an expunged record; to require clerks of the court to post information relating to procedures to seal or expunge criminal history records.

Section 6 amends s. 943.059, F.S., to clarify under what circumstances a person may legally deny the existence of a sealed criminal history record; to authorize a court to seal a criminal history record of a person who had a prior criminal history record sealed or expunged.

Section 7 provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to FDLE, the bill will generate \$498,525 in recurring revenues for FY 11-12, FY 11-13, and FY 11-14 as a result of the application fee for a Certification of Eligibility to Seal and Expunge Records.¹⁴

2. Expenditures:

According to FDLE, the bill will increase the overall volume of Applications for Certification of Eligibility requests for the Seal and Expunge Section, as well as court orders to seal an additional criminal history record for qualified individuals. In addition, the bill will generate the following expenditures for FDLE:¹⁵

	FY 11-12	FY 12-13	FY 13-14	
Positions 2 Criminal Justice Customer Service Specialists	\$87,388	\$87,388	\$87,388	Salary & Benefits
Standard Expense for 2 Positions	\$20,906	\$13,110	\$13,110	Expenses
Standard HR Services for 2 Positions	\$712	\$712	\$712	Human Resources Services
System Programming to include analysis, design, documentation and testing	\$36,000	0	0	Contracted Services
TOTAL 2 Positions	\$145,006	\$101,210	\$101,210	

¹⁴ Substantive analysis, Florida Department of Law Enforcement, January 28, 2011 at 2 (on file with the House Government Operations Subcommittee).

¹⁵ *Id.*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A greater number of persons with a Florida criminal history record may be eligible to have a criminal history record sealed.¹⁶

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to authorize nor require any additional grants of rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The following comments were provided by FDLE:¹⁷

FDLE cannot complete necessary computer programming for a July 1, 2011 effective date. The department recommends an effective date of October 1, 2011. The previous year's analysis of a similar bill did not include programming cost due to an oversight. Programming changes are needed to identify a second sealed record.

There is a waiting period of 5 years, during which the applicant cannot have been arrested. The restriction is not limited to Florida arrests, but attempting to use non-Florida arrests as a disqualifier is not practical. Not all arrests are reported to the Florida Department of Law Enforcement (FDLE), but, as a practical matter, arrests not reported to FDLE (and not appearing on the sites checked, e.g., Comprehensive Case Information System, Driver and Vehicle Information Database) would not count if not acknowledged. While an arrest is not likely to remain pending for 5 years, an arrest with no (or unknown) disposition would not be a disqualifier once the waiting period ended. By making eligibility hinge on the

¹⁶ *Id.* at 3.

¹⁷ *Id.* at 3 and 4.

fact of arrest within a fixed period, rather than on the disposition of the arrest, an applicant with (for example) any number or arrests or withholds of adjudication more than 5 years after the initial sealing or expunction order would not be disqualified, while an applicant with a single arrest within the applicable period, even if all charges were later dismissed, would not be eligible. This discrepancy (and apparent inequity) could perhaps be resolved by referring to "has not been arrested or had the charges stemming from an arrest disposed of in Florida during the period between the initial sealing or expunction order and the application for a certificate of eligibility to seal.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not Applicable.

1 A bill to be entitled

2 An act relating to criminal justice; providing a short
3 title; providing legislative intent; requiring state
4 agencies and regulatory boards to prepare reports that
5 identify and evaluate restrictions on licensing and
6 employment for ex-offenders; amending s. 112.011, F.S.;
7 prohibiting state agencies from denying an application for
8 a license, permit, certificate, or employment based on a
9 person's lack of civil rights; providing an exception;
10 amending s. 768.096, F.S.; requiring an employer to review
11 the results of a criminal background investigation;
12 requiring an employer not to place an employee who has a
13 criminal record in a position where conduct similar to the
14 employee's past criminal conduct would be facilitated;
15 requiring an employer to determine that the criminal
16 background investigation does not demonstrate that the
17 employee is unsuitable for the particular work to be
18 performed or the context of the employment in general;
19 amending s. 943.0585, F.S.; clarifying under what
20 circumstances a person may legally deny the existence of
21 an expunged criminal history record; authorizing the
22 disclosure of the contents of an expunged record upon
23 receipt of a written, notarized request from the record
24 subject; requiring clerks of the court to post information
25 relating to procedures to seal or expunge criminal history
26 records on the clerk's website; amending s. 943.059, F.S.;
27 clarifying under what circumstances a person may legally
28 deny the existence of a sealed criminal history record;

29 | authorizing a court to seal a criminal history record of a
 30 | person who had a prior criminal history record sealed or
 31 | expunged; providing an effective date.

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

35 | Section 1. This act may be cited as the "Jim King Keep
 36 | Florida Working Act."

37 | Section 2. Restrictions on the employment of ex-offenders;
 38 | legislative intent; state agency reporting requirements.-

39 | (1) The Legislature declares that a goal of this state is
 40 | to clearly identify the occupations from which ex-offenders are
 41 | disqualified based on their specific offenses. The Legislature
 42 | intends to make employment opportunities available to ex-
 43 | offenders in a manner that encourages them to become productive
 44 | members of society and preserves the safety of the public. To
 45 | this end, all state agencies shall identify all restrictions on
 46 | employment imposed by the agencies or by boards that regulate
 47 | professions and occupations and attempt to define each
 48 | restriction as narrowly as possible while continuing to maintain
 49 | public safety.

50 | (2) Each state agency, including, but not limited to,
 51 | professional and occupational regulatory boards, shall, by
 52 | December 31, 2011, and every 8 years thereafter, submit to the
 53 | Governor, the President of the Senate, and the Speaker of the
 54 | House of Representatives a report that includes:

55 | (a) A list of all agency or board policies that disqualify
 56 | from employment or licensure persons who have been convicted of

57 | a crime and have completed any incarceration and restitution to
 58 | which they have been sentenced for such a crime.

59 | (b) A determination of whether the disqualifying policies
 60 | are readily available to prospective employers and licensees.

61 | (c) The identification and evaluation of alternatives to
 62 | the disqualifying policies which promote the employment of ex-
 63 | offenders and protect the public.

64 | (d) An evaluation of whether the disqualifying polices are
 65 | too broad and whether crimes or acts of moral turpitude that
 66 | disqualify a person from licensure should be more specifically
 67 | or narrowly identified.

68 | Section 3. Section 112.011, Florida Statutes, is amended
 69 | to read:

70 | 112.011 Disqualification from licensing and public
 71 | employment based on criminal conviction ~~Felons; removal of~~
 72 | ~~disqualifications for employment, exceptions.-~~

73 | (1) (a) Except as provided in s. 775.16, a person may ~~shall~~
 74 | not be disqualified from employment by the state, any of its
 75 | agencies or political subdivisions, or any municipality solely
 76 | because of a prior conviction for a crime. However, a person may
 77 | be denied employment by the state, any of its agencies or
 78 | political subdivisions, or any municipality by reason of the
 79 | prior conviction for a crime if the crime was a felony or first
 80 | degree misdemeanor and directly related to the position of
 81 | employment sought.

82 | (b) Except as provided in s. 775.16, a person ~~whose civil~~
 83 | ~~rights have been restored shall not be disqualified to practice,~~
 84 | ~~pursue, or engage in any occupation, trade, vocation,~~

85 ~~profession, or business for which a license, permit, or~~
 86 ~~certificate is required to be issued by the state, any of its~~
 87 ~~agencies or political subdivisions, or any municipality solely~~
 88 ~~because of a prior conviction for a crime. However, a person~~
 89 ~~whose civil rights have been restored~~ may be denied a license,
 90 permit, or certification to pursue, practice, or engage in an
 91 occupation, trade, vocation, profession, or business by reason
 92 of the prior conviction for a crime if the crime was a felony or
 93 first-degree first-degree misdemeanor that is relevant to the
 94 standards normally associated with, or determined by the
 95 regulatory authority to be necessary for the protection of the
 96 public or other parties for, and directly related to the
 97 specific occupation, trade, vocation, profession, or business
 98 for which the license, permit, or certificate is sought.

99 (c) Notwithstanding any law to the contrary, a state
 100 agency may not deny an application for a license, permit,
 101 certificate, or employment based on the applicant's lack of
 102 civil rights. However, this paragraph does not apply to
 103 applications for a license to carry a concealed weapon or
 104 firearm under chapter 790.

105 (2) (a) This section does ~~shall~~ not apply ~~be applicable~~ to
 106 any law enforcement or correctional agency.

107 (b) This section does ~~shall~~ not apply ~~be applicable~~ to the
 108 employment practices of any fire department relating to the
 109 hiring of firefighters. An applicant for employment with any
 110 fire department who has ~~with~~ a prior felony conviction shall be
 111 excluded from employment for a period of 4 years after
 112 expiration of sentence or final release by the Parole Commission

113 unless the applicant, before ~~prior to~~ the expiration of the 4-
 114 year period, has received a full pardon or has had his or her
 115 civil rights restored.

116 (c) This section does ~~shall~~ not apply ~~be applicable~~ to the
 117 employment practices of any county or municipality relating to
 118 the hiring of personnel for positions deemed to be critical to
 119 security or public safety pursuant to ss. 125.5801 and 166.0442.

120 (3) Any complaint concerning the violation of this section
 121 shall be adjudicated in accordance with the procedures set forth
 122 in chapter 120 for administrative and judicial review.

123 Section 4. Section 768.096, Florida Statutes, is amended
 124 to read:

125 768.096 Employer presumption against negligent hiring.—

126 (1) In a civil action for the death of, or injury or
 127 damage to, a third person caused by the intentional tort of an
 128 employee, such employee's employer is presumed not to have been
 129 negligent in hiring such employee if, before hiring the
 130 employee, the employer conducted a background investigation of
 131 the prospective employee and the investigation did not reveal
 132 any information that reasonably demonstrated the unsuitability
 133 of the prospective employee for the particular work to be
 134 performed or for the context of the employment in general. A
 135 background investigation under this section must include:

136 (a) Obtaining a criminal background investigation on the
 137 prospective employee under subsection (2);

138 (b) Making a reasonable effort to contact references and
 139 former employers of the prospective employee concerning the
 140 suitability of the prospective employee for employment;

141 (c) Requiring the prospective employee to complete a job
 142 application form that includes questions concerning whether he
 143 or she has ever been convicted of a crime, including details
 144 concerning the type of crime, the date of conviction and the
 145 penalty imposed, and whether the prospective employee has ever
 146 been a defendant in a civil action for intentional tort,
 147 including the nature of the intentional tort and the disposition
 148 of the action;

149 (d) Obtaining, with written authorization from the
 150 prospective employee, a check of the driver's license record of
 151 the prospective employee if such a check is relevant to the work
 152 the employee will be performing and if the record can reasonably
 153 be obtained; and ~~or~~

154 (e) Interviewing the prospective employee.

155 (2) To satisfy the criminal-background-investigation
 156 requirement of this section, an employer must request and obtain
 157 from the Department of Law Enforcement a check of the
 158 information as reported and reflected in the Florida Crime
 159 Information Center system as of the date of the request. The
 160 employer must review and consider the results of the criminal
 161 background investigation. If the prospective employee has
 162 engaged in past criminal conduct, the employer must ensure that
 163 the employee will not be assigned to particular work that will
 164 place the employee in a position in which conduct that is
 165 similar to the employee's past criminal conduct is facilitated.
 166 The employer must also determine that, notwithstanding the past
 167 criminal conduct of the employee, any information revealed by
 168 the investigation did not otherwise demonstrate the

169 | unsuitability of the employee for the particular work to be
 170 | performed or the context of the employment in general.

171 | (3) The election by an employer not to conduct the
 172 | investigation specified in subsection (1) does not raise any
 173 | presumption that the employer failed to use reasonable care in
 174 | hiring an employee.

175 | Section 5. Section 943.0585, Florida Statutes, is amended
 176 | to read:

177 | 943.0585 Court-ordered expunction of criminal history
 178 | records.—The courts of this state have jurisdiction over their
 179 | own procedures, including the maintenance, expunction, and
 180 | correction of judicial records containing criminal history
 181 | information to the extent such procedures are not inconsistent
 182 | with the conditions, responsibilities, and duties established by
 183 | this section. Any court of competent jurisdiction may order a
 184 | criminal justice agency to expunge the criminal history record
 185 | of a minor or an adult who complies with the requirements of
 186 | this section. The court may ~~shall~~ not order a criminal justice
 187 | agency to expunge a criminal history record until the person
 188 | seeking to expunge a criminal history record has applied for and
 189 | received a certificate of eligibility for expunction pursuant to
 190 | subsection (2). A criminal history record that relates to a
 191 | violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
 192 | s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
 193 | 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
 194 | 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
 195 | any violation specified as a predicate offense for registration
 196 | as a sexual predator pursuant to s. 775.21, without regard to

197 whether that offense alone is sufficient to require such
 198 registration, or for registration as a sexual offender pursuant
 199 to s. 943.0435, may not be expunged, without regard to whether
 200 adjudication was withheld, if the defendant was found guilty of
 201 or pled guilty or nolo contendere to the offense, or if the
 202 defendant, as a minor, was found to have committed, or pled
 203 guilty or nolo contendere to committing, the offense as a
 204 delinquent act. The court may only order expunction of a
 205 criminal history record pertaining to one arrest or one incident
 206 of alleged criminal activity, except as provided in this
 207 section. The court may, at its sole discretion, order the
 208 expunction of a criminal history record pertaining to more than
 209 one arrest if the additional arrests directly relate to the
 210 original arrest. If the court intends to order the expunction of
 211 records pertaining to such additional arrests, such intent must
 212 be specified in the order. A criminal justice agency may not
 213 expunge any record pertaining to such additional arrests if the
 214 order to expunge does not articulate the intention of the court
 215 to expunge a record pertaining to more than one arrest. This
 216 section does not prevent the court from ordering the expunction
 217 of only a portion of a criminal history record pertaining to one
 218 arrest or one incident of alleged criminal activity.
 219 Notwithstanding any law to the contrary, a criminal justice
 220 agency may comply with laws, court orders, and official requests
 221 of other jurisdictions relating to expunction, correction, or
 222 confidential handling of criminal history records or information
 223 derived therefrom. This section does not confer any right to the
 224 expunction of any criminal history record, and any request for

225 expunction of a criminal history record may be denied at the
 226 sole discretion of the court.

227 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each
 228 petition to a court to expunge a criminal history record is
 229 complete only when accompanied by:

230 (a) A valid certificate of eligibility for expunction
 231 issued by the department pursuant to subsection (2).

232 (b) The petitioner's sworn statement attesting that the
 233 petitioner:

234 1. Has never, before ~~prior to~~ the date on which the
 235 petition is filed, been adjudicated guilty of a criminal offense
 236 or comparable ordinance violation, or been adjudicated
 237 delinquent for committing any felony or a misdemeanor specified
 238 in s. 943.051(3)(b).

239 2. Has not been adjudicated guilty of, or adjudicated
 240 delinquent for committing, any of the acts stemming from the
 241 arrest or alleged criminal activity to which the petition
 242 pertains.

243 3. Has never secured a prior sealing or expunction of a
 244 criminal history record under this section, former s. 893.14,
 245 former s. 901.33, or former s. 943.058, or from any jurisdiction
 246 outside the state, unless expunction is sought of a criminal
 247 history record previously sealed for 10 years pursuant to
 248 paragraph (2)(h) and the record is otherwise eligible for
 249 expunction.

250 4. Is eligible for such an expunction to the best of his
 251 or her knowledge or belief and does not have any other petition
 252 to expunge or any petition to seal pending before any court.

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Any person who knowingly provides false information on such sworn statement to the court commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Before ~~Prior to~~ petitioning the court to expunge a criminal history record, a person seeking to expunge a criminal history record must ~~shall~~ apply to the department for a certificate of eligibility for expunction. The department shall, by rule adopted pursuant to chapter 120, establish procedures pertaining to the application for and issuance of certificates of eligibility for expunction. A certificate of eligibility for expunction is valid for 12 months after the date stamped on the certificate when issued by the department. After that time, the petitioner must reapply to the department for a new certificate of eligibility. Eligibility for a renewed certification of eligibility must be based on the status of the applicant and the law in effect at the time of the renewal application. The department shall issue a certificate of eligibility for expunction to a person who is the subject of a criminal history record if that person:

(a) Has obtained, and submitted to the department, a written, certified statement from the appropriate state attorney or statewide prosecutor which indicates:

1. That an indictment, information, or other charging document was not filed or issued in the case.
2. That an indictment, information, or other charging

281 document, if filed or issued in the case, was dismissed or nolle
 282 prosequi by the state attorney or statewide prosecutor, or was
 283 dismissed by a court of competent jurisdiction, and that none of
 284 the charges related to the arrest or alleged criminal activity
 285 to which the petition to expunge pertains resulted in a trial,
 286 without regard to whether the outcome of the trial was other
 287 than an adjudication of guilt.

288 3. That the criminal history record does not relate to a
 289 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
 290 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
 291 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
 292 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
 293 any violation specified as a predicate offense for registration
 294 as a sexual predator pursuant to s. 775.21, without regard to
 295 whether that offense alone is sufficient to require such
 296 registration, or for registration as a sexual offender pursuant
 297 to s. 943.0435, where the defendant was found guilty of, or pled
 298 guilty or nolo contendere to any such offense, or that the
 299 defendant, as a minor, was found to have committed, or pled
 300 guilty or nolo contendere to committing, such an offense as a
 301 delinquent act, without regard to whether adjudication was
 302 withheld.

303 (b) Remits a \$75 processing fee to the department for
 304 placement in the Department of Law Enforcement Operating Trust
 305 Fund, unless such fee is waived by the executive director.

306 (c) Has submitted to the department a certified copy of
 307 the disposition of the charge to which the petition to expunge
 308 pertains.

309 (d) Has never, before ~~prior to~~ the date on which the
 310 application for a certificate of eligibility is filed, been
 311 adjudicated guilty of a criminal offense or comparable ordinance
 312 violation, or been adjudicated delinquent for committing any
 313 felony or a misdemeanor specified in s. 943.051(3)(b).

314 (e) Has not been adjudicated guilty of, or adjudicated
 315 delinquent for committing, any of the acts stemming from the
 316 arrest or alleged criminal activity to which the petition to
 317 expunge pertains.

318 (f) Has never secured a prior sealing or expunction of a
 319 criminal history record under this section, former s. 893.14,
 320 former s. 901.33, or former s. 943.058, unless expunction is
 321 sought of a criminal history record previously sealed for 10
 322 years pursuant to paragraph (h) and the record is otherwise
 323 eligible for expunction.

324 (g) Is no longer under court supervision applicable to the
 325 disposition of the arrest or alleged criminal activity to which
 326 the petition to expunge pertains.

327 (h) Has previously obtained a court order sealing the
 328 record under this section, former s. 893.14, former s. 901.33,
 329 or former s. 943.058 for a minimum of 10 years because
 330 adjudication was withheld or because all charges related to the
 331 arrest or alleged criminal activity to which the petition to
 332 expunge pertains were not dismissed before ~~prior to~~ trial,
 333 without regard to whether the outcome of the trial was other
 334 than an adjudication of guilt. The requirement for the record to
 335 have previously been sealed for a minimum of 10 years does not
 336 apply when a plea was not entered or all charges related to the

337 | arrest or alleged criminal activity to which the petition to
 338 | expunge pertains were dismissed before ~~prior to~~ trial.

339 | (3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.—

340 | (a) In judicial proceedings under this section, a copy of
 341 | the completed petition to expunge must ~~shall~~ be served upon the
 342 | appropriate state attorney or the statewide prosecutor and upon
 343 | the arresting agency; however, it is not necessary to make any
 344 | agency other than the state a party. The appropriate state
 345 | attorney or the statewide prosecutor and the arresting agency
 346 | may respond to the court regarding the completed petition to
 347 | expunge.

348 | (b) If relief is granted by the court, the clerk of the
 349 | court shall certify copies of the order to the appropriate state
 350 | attorney or the statewide prosecutor and the arresting agency.
 351 | The arresting agency is responsible for forwarding the order to
 352 | any other agency to which the arresting agency disseminated the
 353 | criminal history record information to which the order pertains.
 354 | The department shall forward the order to expunge to the Federal
 355 | Bureau of Investigation. The clerk of the court shall certify a
 356 | copy of the order to any other agency which the records of the
 357 | court reflect has received the criminal history record from the
 358 | court.

359 | (c) For an order to expunge entered by a court before
 360 | ~~prior to~~ July 1, 1992, the department shall notify the
 361 | appropriate state attorney or statewide prosecutor of an order
 362 | to expunge which is contrary to law because the person who is
 363 | the subject of the record has previously been convicted of a
 364 | crime or comparable ordinance violation or has had a prior

365 criminal history record sealed or expunged. Upon receipt of such
 366 notice, the appropriate state attorney or statewide prosecutor
 367 shall take action, within 60 days, to correct the record and
 368 petition the court to void the order to expunge. The department
 369 shall seal the record until such time as the order is voided by
 370 the court.

371 (d) On or after July 1, 1992, the department or any other
 372 criminal justice agency is not required to act on an order to
 373 expunge entered by a court when such order does not comply with
 374 the requirements of this section. Upon receipt of such an order,
 375 the department must notify the issuing court, the appropriate
 376 state attorney or statewide prosecutor, the petitioner or the
 377 petitioner's attorney, and the arresting agency of the reason
 378 for noncompliance. The appropriate state attorney or statewide
 379 prosecutor shall take action within 60 days to correct the
 380 record and petition the court to void the order. A ~~No~~ cause of
 381 action, including contempt of court, does not ~~shall~~ arise
 382 against any criminal justice agency for failure to comply with
 383 an order to expunge if ~~when~~ the petitioner for such order failed
 384 to obtain the certificate of eligibility as required by this
 385 section or such order does not otherwise comply with the
 386 requirements of this section.

387 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
 388 criminal history record of a minor or an adult which is ordered
 389 expunged by a court of competent jurisdiction pursuant to this
 390 section must be physically destroyed or obliterated by any
 391 criminal justice agency having custody of such record; except
 392 that any criminal history record in the custody of the

393 department must be retained in all cases. A criminal history
 394 record ordered expunged that is retained by the department is
 395 confidential and exempt from the provisions of s. 119.07(1) and
 396 s. 24(a), Art. I of the State Constitution and not available to
 397 any person or entity except upon order of a court of competent
 398 jurisdiction. A criminal justice agency may retain a notation
 399 indicating compliance with an order to expunge.

400 (a) The person who is the subject of a criminal history
 401 record that is expunged under this section or under other
 402 provisions of law, including former s. 893.14, former s. 901.33,
 403 and former s. 943.058, may lawfully deny or fail to acknowledge
 404 the arrests and subsequent dispositions covered by the expunged
 405 record, except when the subject of the record:

- 406 1. Is a candidate for employment with a criminal justice
 407 agency;
- 408 2. Is a defendant in a criminal prosecution;
- 409 3. Concurrently or subsequently petitions for relief under
 410 this section or s. 943.059;
- 411 4. Is a candidate for admission to The Florida Bar;
- 412 5. Is seeking to be employed or licensed by or to contract
 413 with the Department of Children and Family Services, the Agency
 414 for Health Care Administration, the Agency for Persons with
 415 Disabilities, or the Department of Juvenile Justice or to be
 416 employed or used by such contractor or licensee in a sensitive
 417 position having direct contact with children, the
 418 developmentally disabled, the aged, or the elderly as provided
 419 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
 420 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5),

421 chapter 916, s. 985.644, chapter 400, or chapter 429;

422 6. Is seeking to be employed or licensed by the Department
 423 of Education, any district school board, any university
 424 laboratory school, any charter school, any private or parochial
 425 school, or any local governmental entity that licenses child
 426 care facilities; or

427 7. Is seeking authorization from a seaport listed in s.
 428 311.09 for employment within or access to one or more of such
 429 seaports pursuant to s. 311.12.

430 (b) Subject to the exceptions in paragraph (a), a person
 431 who has been granted an expunction under this section, former s.
 432 893.14, former s. 901.33, or former s. 943.058 may not be held
 433 under any provision of law of this state to commit perjury or to
 434 be otherwise liable for giving a false statement by reason of
 435 such person's failure to recite or acknowledge an expunged
 436 criminal history record, including a failure to recite or
 437 acknowledge on an employment application.

438 (c) Information relating to the existence of an expunged
 439 criminal history record which is provided in accordance with
 440 paragraph (a) is confidential and exempt from the provisions of
 441 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
 442 except that the department shall disclose the existence of a
 443 criminal history record ordered expunged to the entities set
 444 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their
 445 respective licensing, access authorization, and employment
 446 purposes, and to criminal justice agencies for their respective
 447 criminal justice purposes. It is unlawful for any employee of an
 448 entity set forth in subparagraph (a)1., subparagraph (a)4.,

449 | subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to
 450 | disclose information relating to the existence of an expunged
 451 | criminal history record of a person seeking employment, access
 452 | authorization, or licensure with such entity or contractor,
 453 | except to the person to whom the criminal history record relates
 454 | or to persons having direct responsibility for employment,
 455 | access authorization, or licensure decisions. Any person who
 456 | violates this paragraph commits a misdemeanor of the first
 457 | degree, punishable as provided in s. 775.082 or s. 775.083.

458 | (d) The department may disclose the contents of an
 459 | expunged record to the subject of the record upon the receipt of
 460 | a written, notarized request from the subject of the record.

461 | (5) INFORMATION.—Each website for the office of a clerk of
 462 | court must include information relating to procedures to seal or
 463 | expunge criminal history records. This information must include
 464 | the link to related information on the website of the
 465 | department.

466 | (6)~~(5)~~ STATUTORY REFERENCES.—Any reference to any other
 467 | chapter, section, or subdivision of the Florida Statutes in this
 468 | section constitutes a general reference under the doctrine of
 469 | incorporation by reference.

470 | Section 6. Section 943.059, Florida Statutes, is amended
 471 | to read:

472 | 943.059 Court-ordered sealing of criminal history
 473 | records.—The courts of this state shall continue to have
 474 | jurisdiction over their own procedures, including the
 475 | maintenance, sealing, and correction of judicial records
 476 | containing criminal history information to the extent such

477 | procedures are not inconsistent with the conditions,
 478 | responsibilities, and duties established by this section. Any
 479 | court of competent jurisdiction may order a criminal justice
 480 | agency to seal the criminal history record of a minor or an
 481 | adult who complies with the requirements of this section. The
 482 | court may ~~shall~~ not order a criminal justice agency to seal a
 483 | criminal history record until the person seeking to seal a
 484 | criminal history record has applied for and received a
 485 | certificate of eligibility for sealing pursuant to subsection
 486 | (2). A criminal history record that relates to a violation of s.
 487 | 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
 488 | 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
 489 | 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
 490 | 916.1075, a violation enumerated in s. 907.041, or any violation
 491 | specified as a predicate offense for registration as a sexual
 492 | predator pursuant to s. 775.21, without regard to whether that
 493 | offense alone is sufficient to require such registration, or for
 494 | registration as a sexual offender pursuant to s. 943.0435, may
 495 | not be sealed, without regard to whether adjudication was
 496 | withheld, if the defendant was found guilty of or pled guilty or
 497 | nolo contendere to the offense, or if the defendant, as a minor,
 498 | was found to have committed or pled guilty or nolo contendere to
 499 | committing the offense as a delinquent act. The court may only
 500 | order sealing of a criminal history record pertaining to one
 501 | arrest or one incident of alleged criminal activity, except as
 502 | provided in this section. The court may, at its sole discretion,
 503 | order the sealing of a criminal history record pertaining to
 504 | more than one arrest if the additional arrests directly relate

505 | to the original arrest. If the court intends to order the
 506 | sealing of records pertaining to such additional arrests, such
 507 | intent must be specified in the order. A criminal justice agency
 508 | may not seal any record pertaining to such additional arrests if
 509 | the order to seal does not articulate the intention of the court
 510 | to seal records pertaining to more than one arrest. This section
 511 | does not prevent the court from ordering the sealing of only a
 512 | portion of a criminal history record pertaining to one arrest or
 513 | one incident of alleged criminal activity. Notwithstanding any
 514 | law to the contrary, a criminal justice agency may comply with
 515 | laws, court orders, and official requests of other jurisdictions
 516 | relating to sealing, correction, or confidential handling of
 517 | criminal history records or information derived therefrom. This
 518 | section does not confer any right to the sealing of any criminal
 519 | history record, and any request for sealing a criminal history
 520 | record may be denied at the sole discretion of the court.

521 | (1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.—Each
 522 | petition to a court to seal a criminal history record is
 523 | complete only when accompanied by:

524 | (a) A valid certificate of eligibility for sealing issued
 525 | by the department pursuant to subsection (2).

526 | (b) The petitioner's sworn statement attesting that the
 527 | petitioner:

528 | 1. Has never, before ~~prior to~~ the date on which the
 529 | petition is filed, been adjudicated guilty of a criminal offense
 530 | or comparable ordinance violation, or been adjudicated
 531 | delinquent for committing any felony or a misdemeanor specified
 532 | in s. 943.051(3)(b).

533 2. Has not been adjudicated guilty of or adjudicated
 534 delinquent for committing any of the acts stemming from the
 535 arrest or alleged criminal activity to which the petition to
 536 seal pertains.

537 3. Has never secured a prior sealing, except as provided
 538 in subsection (6), or expunction of a criminal history record
 539 under this section, former s. 893.14, former s. 901.33, former
 540 s. 943.058, or from any jurisdiction outside the state.

541 4. Is eligible for such a sealing to the best of his or
 542 her knowledge or belief and does not have any other petition to
 543 seal or any petition to expunge pending before any court.

544

545 Any person who knowingly provides false information on such
 546 sworn statement to the court commits a felony of the third
 547 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 548 775.084.

549 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.—Before ~~Prior~~
 550 ~~to~~ petitioning the court to seal a criminal history record, a
 551 person seeking to seal a criminal history record shall apply to
 552 the department for a certificate of eligibility for sealing. The
 553 department shall, by rule adopted pursuant to chapter 120,
 554 establish procedures pertaining to the application for and
 555 issuance of certificates of eligibility for sealing. A
 556 certificate of eligibility for sealing is valid for 12 months
 557 after the date stamped on the certificate when issued by the
 558 department. After that time, the petitioner must reapply to the
 559 department for a new certificate of eligibility. Eligibility for
 560 a renewed certification of eligibility must be based on the

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561 status of the applicant and the law in effect at the time of the
 562 renewal application. The department shall issue a certificate of
 563 eligibility for sealing to a person who is the subject of a
 564 criminal history record provided that such person:

565 (a) Has submitted to the department a certified copy of
 566 the disposition of the charge to which the petition to seal
 567 pertains.

568 (b) Remits a \$75 processing fee to the department for
 569 placement in the Department of Law Enforcement Operating Trust
 570 Fund, unless such fee is waived by the executive director.

571 (c) Has never, before ~~prior to~~ the date on which the
 572 application for a certificate of eligibility is filed, been
 573 adjudicated guilty of a criminal offense or comparable ordinance
 574 violation, or been adjudicated delinquent for committing any
 575 felony or a misdemeanor specified in s. 943.051(3)(b).

576 (d) Has not been adjudicated guilty of or adjudicated
 577 delinquent for committing any of the acts stemming from the
 578 arrest or alleged criminal activity to which the petition to
 579 seal pertains.

580 (e) Has never secured a prior sealing, except as provided
 581 in subsection (6), or expunction of a criminal history record
 582 under this section, former s. 893.14, former s. 901.33, or
 583 former s. 943.058.

584 (f) Is no longer under court supervision applicable to the
 585 disposition of the arrest or alleged criminal activity to which
 586 the petition to seal pertains.

587 (3) PROCESSING OF A PETITION OR ORDER TO SEAL.—

588 (a) In judicial proceedings under this section, a copy of

589 the completed petition to seal shall be served upon the
 590 appropriate state attorney or the statewide prosecutor and upon
 591 the arresting agency; however, it is not necessary to make any
 592 agency other than the state a party. The appropriate state
 593 attorney or the statewide prosecutor and the arresting agency
 594 may respond to the court regarding the completed petition to
 595 seal.

596 (b) If relief is granted by the court, the clerk of the
 597 court shall certify copies of the order to the appropriate state
 598 attorney or the statewide prosecutor and to the arresting
 599 agency. The arresting agency is responsible for forwarding the
 600 order to any other agency to which the arresting agency
 601 disseminated the criminal history record information to which
 602 the order pertains. The department shall forward the order to
 603 seal to the Federal Bureau of Investigation. The clerk of the
 604 court shall certify a copy of the order to any other agency
 605 which the records of the court reflect has received the criminal
 606 history record from the court.

607 (c) For an order to seal entered by a court before ~~prior~~
 608 ~~to~~ July 1, 1992, the department shall notify the appropriate
 609 state attorney or statewide prosecutor of any order to seal
 610 which is contrary to law because the person who is the subject
 611 of the record has previously been convicted of a crime or
 612 comparable ordinance violation or has had a prior criminal
 613 history record sealed, except as provided in subsection (6), or
 614 expunged. Upon receipt of such notice, the appropriate state
 615 attorney or statewide prosecutor shall take action, within 60
 616 days, to correct the record and petition the court to void the

617 order to seal. The department shall seal the record until such
 618 time as the order is voided by the court.

619 (d) On or after July 1, 1992, the department or any other
 620 criminal justice agency is not required to act on an order to
 621 seal entered by a court if ~~when~~ such order does not comply with
 622 the requirements of this section. Upon receipt of such an order,
 623 the department must notify the issuing court, the appropriate
 624 state attorney or statewide prosecutor, the petitioner or the
 625 petitioner's attorney, and the arresting agency of the reason
 626 for noncompliance. The appropriate state attorney or statewide
 627 prosecutor shall take action within 60 days to correct the
 628 record and petition the court to void the order. A ~~No~~ cause of
 629 action, including contempt of court, does not ~~shall~~ arise
 630 against any criminal justice agency for failure to comply with
 631 an order to seal if ~~when~~ the petitioner for such order failed to
 632 obtain the certificate of eligibility as required by this
 633 section or if ~~when~~ such order does not comply with the
 634 requirements of this section.

635 (e) An order sealing a criminal history record pursuant to
 636 this section does not require that such record be surrendered to
 637 the court, and such record shall continue to be maintained by
 638 the department and other criminal justice agencies.

639 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
 640 history record of a minor or an adult which is ordered sealed by
 641 a court of competent jurisdiction pursuant to this section is
 642 confidential and exempt from the provisions of s. 119.07(1) and
 643 s. 24(a), Art. I of the State Constitution and is available only
 644 to the person who is the subject of the record, to the subject's

645 attorney, to criminal justice agencies for their respective
 646 criminal justice purposes, which include conducting a criminal
 647 history background check for approval of firearms purchases or
 648 transfers as authorized by state or federal law, to judges in
 649 the state courts system for the purpose of assisting them in
 650 their case-related decisionmaking responsibilities, as set forth
 651 in s. 943.053(5), or to those entities set forth in
 652 subparagraphs (a)1., 4., 5., 6., and 8. for their respective
 653 licensing, access authorization, and employment purposes.

654 (a) The subject of a criminal history record sealed under
 655 this section or under other provisions of law, including former
 656 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
 657 deny or fail to acknowledge the arrests and subsequent
 658 dispositions covered by the sealed record, except when the
 659 subject of the record:

- 660 1. Is a candidate for employment with a criminal justice
 661 agency;
- 662 2. Is a defendant in a criminal prosecution;
- 663 3. Concurrently or subsequently petitions for relief under
 664 this section or s. 943.0585;
- 665 4. Is a candidate for admission to The Florida Bar;
- 666 5. Is seeking to be employed or licensed by or to contract
 667 with the Department of Children and Family Services, the Agency
 668 for Health Care Administration, the Agency for Persons with
 669 Disabilities, or the Department of Juvenile Justice or to be
 670 employed or used by such contractor or licensee in a sensitive
 671 position having direct contact with children, the
 672 developmentally disabled, the aged, or the elderly as provided

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673 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
 674 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5), s.
 675 415.103, chapter 916, s. 985.644, chapter 400, or chapter 429;

676 6. Is seeking to be employed or licensed by the Department
 677 of Education, any district school board, any university
 678 laboratory school, any charter school, any private or parochial
 679 school, or any local governmental entity that licenses child
 680 care facilities;

681 7. Is attempting to purchase a firearm from a licensed
 682 importer, licensed manufacturer, or licensed dealer and is
 683 subject to a criminal history check under state or federal law;
 684 or

685 8. Is seeking authorization from a Florida seaport
 686 identified in s. 311.09 for employment within or access to one
 687 or more of such seaports pursuant to s. 311.12.

688 (b) Subject to the exceptions in paragraph (a), a person
 689 who has been granted a sealing under this section, former s.
 690 893.14, former s. 901.33, or former s. 943.058 may not be held
 691 under any provision of law of this state to commit perjury or to
 692 be otherwise liable for giving a false statement by reason of
 693 such person's failure to recite or acknowledge a sealed criminal
 694 history record, including failure to recite or acknowledge on an
 695 employment application.

696 (c) Information relating to the existence of a sealed
 697 criminal record provided in accordance with the provisions of
 698 paragraph (a) is confidential and exempt from the provisions of
 699 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
 700 except that the department shall disclose the sealed criminal

701 history record to the entities set forth in subparagraphs (a)1.,
702 4., 5., 6., and 8. for their respective licensing, access
703 authorization, and employment purposes. It is unlawful for any
704 employee of an entity set forth in subparagraph (a)1.,
705 subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or
706 subparagraph (a)8. to disclose information relating to the
707 existence of a sealed criminal history record of a person
708 seeking employment, access authorization, or licensure with such
709 entity or contractor, except to the person to whom the criminal
710 history record relates or to persons having direct
711 responsibility for employment, access authorization, or
712 licensure decisions. Any person who violates the provisions of
713 this paragraph commits a misdemeanor of the first degree,
714 punishable as provided in s. 775.082 or s. 775.083.

715 (5) STATUTORY REFERENCES.—Any reference to any other
716 chapter, section, or subdivision of the Florida Statutes in this
717 section constitutes a general reference under the doctrine of
718 incorporation by reference.

719 (6) SEALING OF CRIMINAL HISTORY RECORD AFTER PRIOR SEALING
720 OR EXPUNCTION.—A court may seal a person's criminal history
721 record after a prior criminal history record has been sealed or
722 expunged only if the person obtains a certificate from the
723 department to seal the criminal history record. The department
724 shall issue the certificate only if the person has not been
725 arrested during the 5-year period following the date of the
726 court order for the initial expunction or sealing of his or her
727 criminal history record. All other provisions and requirements
728 of this section apply to an application to seal a criminal

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729 | history record after a prior criminal history record has been
730 | sealed or expunged.

731 | Section 7. This act shall take effect July 1, 2011.

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#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 Taylor offered the following:
 4

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

7 Section 1. This act may be cited as the "Jim King Keep
 8 Florida Working Act."

9 Section 2. Restrictions on the employment of ex-offenders;
 10 legislative intent; state agency reporting requirements.-

11 (1) The Legislature declares that a goal of this state is
 12 to clearly identify the occupations from which ex-offenders are
 13 disqualified based on the nature of their offenses. The
 14 Legislature seeks to make employment opportunities available to
 15 ex-offenders in a manner that serves to preserve and protect the
 16 health, safety, and welfare of the general public, yet
 17 encourages them to become productive members of society. To this
 18 end, state agencies that exercise regulatory authority are in
 19 the best position to identify all restrictions on employment

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20 imposed by the agencies or by boards that regulate professions
21 and occupations and are obligated to protect the health, safety,
22 and welfare of the general public by clearly setting forth those
23 restrictions in keeping with standards and protections
24 determined by the agencies to be in the least restrictive
25 manner.

26 (2) Each state agency, including, but not limited to,
27 those state agencies responsible for professional and
28 occupational regulatory boards, shall ensure the appropriate
29 restrictions necessary to protect the overall health, safety,
30 and welfare of the general public are in place, and by December
31 31, 2011, and every 4 years thereafter, submit to the Governor,
32 the President of the Senate, and the Speaker of the House of
33 Representatives a report that includes:

34 (a) A list of all agency or board statutes or rules that
35 disqualify from employment or licensure persons who have been
36 convicted of a crime and have completed any incarceration and
37 restitution to which they have been sentenced for such crime.

38 (b) A determination of whether the disqualifying statutes
39 or rules are readily available to prospective employers and
40 licensees.

41 (c) The identification and evaluation of alternatives to
42 the disqualifying statutes or rules which protect the health,
43 safety, and welfare of the general public without impeding the
44 gainful employment of ex-offenders.

45 Section 3. Effective January 1, 2012, section 112.011,
46 Florida Statutes, is amended to read:

47 112.011 Disqualification from licensing and public

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 449 (2011)

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48 employment based on criminal conviction ~~Felons; removal of~~
49 ~~disqualifications for employment, exceptions.-~~

50 (1) (a) Except as provided in s. 775.16, a person may ~~shall~~
51 not be disqualified from employment by the state, any of its
52 agencies or political subdivisions, or any municipality solely
53 because of a prior conviction for a crime. However, a person may
54 be denied employment by the state, any of its agencies or
55 political subdivisions, or any municipality by reason of the
56 prior conviction for a crime if the crime was a felony or first
57 degree misdemeanor and directly related to the position of
58 employment sought.

59 (b) Except as provided in s. 775.16, a person ~~whose civil~~
60 ~~rights have been restored shall not be disqualified to practice,~~
61 ~~pursue, or engage in any occupation, trade, vocation,~~
62 ~~profession, or business for which a license, permit, or~~
63 ~~certificate is required to be issued by the state, any of its~~
64 ~~agencies or political subdivisions, or any municipality solely~~
65 ~~because of a prior conviction for a crime. However, a person~~
66 ~~whose civil rights have been restored may be denied a license,~~
67 ~~permit, or certification to pursue, practice, or engage in an~~
68 ~~occupation, trade, vocation, profession, or business by reason~~
69 ~~of the prior conviction for a crime if the crime was a felony or~~
70 first-degree first-degree misdemeanor that is and directly
71 related to the standards determined by the regulatory authority
72 to be necessary and reasonably related to the protection of the
73 public health, safety, and welfare for the specific occupation,
74 trade, vocation, profession, or business for which the license,
75 permit, or certificate is sought.

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76 (c) Notwithstanding any law to the contrary, a state
77 agency may not deny an application for a license, permit,
78 certificate, or employment based solely on the applicant's lack
79 of civil rights. However, this paragraph does not apply to
80 applications for a license to carry a concealed weapon or
81 firearm under chapter 790.

82 (2) (a) This section does ~~shall~~ not apply ~~be applicable~~ to
83 any law enforcement or correctional agency.

84 (b) This section does ~~shall~~ not apply ~~be applicable~~ to the
85 employment practices of any fire department relating to the
86 hiring of firefighters. An applicant for employment with any
87 fire department who has ~~with~~ a prior felony conviction shall be
88 excluded from employment for a period of 4 years after
89 expiration of sentence or final release by the Parole Commission
90 unless the applicant, before ~~prior to~~ the expiration of the 4-
91 year period, has received a full pardon or has had his or her
92 civil rights restored.

93 (c) This section does ~~shall~~ not apply ~~be applicable~~ to the
94 employment practices of any county or municipality relating to
95 the hiring of personnel for positions deemed to be critical to
96 security or public safety pursuant to ss. 125.5801 and 166.0442.

97 (3) Any complaint concerning the violation of this section
98 shall be adjudicated in accordance with the procedures set forth
99 in chapter 120 for administrative and judicial review.

100 Section 4. Except as otherwise expressly provided in this
101 act, this act shall take effect upon becoming a law.

102 -----
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Amendment No.

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

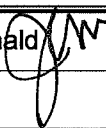
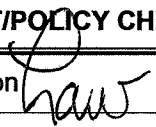
Remove the entire title and insert:

A bill to be entitled

An act relating to criminal justice; providing a short title; providing legislative intent; requiring state agencies to prepare reports that identify and evaluate restrictions on licensing and employment for ex-offenders; amending s. 112.011, F.S.; prohibiting state agencies from denying an application for a license, permit, certificate, or employment based solely on a person's lack of civil rights; providing an exception; providing effective dates.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 553 Violations of the Florida Election Code
SPONSOR(S): Eisnaugle
TIED BILLS: IDEN./SIM. **BILLS:** SB 330

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

SUMMARY ANALYSIS

The bill provides that it is a violation of the Florida Election Code for a candidate, in any election, to directly or indirectly falsely represent past or current service in the military. A civil penalty of up to \$5,000 may be assessed for each violation by the Florida Elections Commission or an administrative law judge for the Division of Administrative Hearings, as appropriate. Assessed civil penalties are deposited in the General Revenue Fund.

The bill also provides that anyone may file a complaint with the Florida Elections Commission alleging such violation.

The Florida Elections Commission and the Division of Administrative Hearings are required to provide expedited hearings in such cases coming before them.

The fiscal impact on state government is minimal.

The bill takes effect July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Law

Currently, the Florida Election Code does not govern false representations made by a candidate concerning the candidate's own background. It does, however, prohibit a candidate from knowingly making false or malicious statements or causing such statements to be made about an opposing candidate in an election.

An aggrieved candidate may file a complaint with the Florida Elections Commission pursuant to s. 106.25, F.S. The offense is punishable as an administrative fine of up to \$5,000 to be deposited in the General Revenue Fund.¹

Federal Law

The "Stolen Valor Act of 2005,"² signed into law on December 20, 2006, makes it a crime to falsely represent having been awarded a military honor, declaration, or medal, with penalties including fines, imprisonment, or both. The length of imprisonment ranges from 6 months up to 1 year depending upon the type of medal.³ There is currently disagreement among courts in different federal judicial circuits with regard to the constitutionality of the federal law.⁴

Effect of Proposed Changes⁵

The bill provides that it is a violation of the Florida Election Code for a candidate, in any election, to directly or indirectly falsely represent past or current service in the military.⁶ A civil penalty of up to \$5,000 may be assessed for each violation by the Florida Elections Commission or an administrative law judge for the Division of Administrative Hearings (DOAH), as appropriate. Assessed civil penalties are deposited in the General Revenue Fund.

The bill provides that any person may file a complaint with the Florida Elections Commission alleging that a candidate has falsely represented his or her military service. The Commission is required to adopt rules to provide for the expedited hearing of complaints before the Commission and requires the director of DOAH to assign an administrative law judge to provide an expedited hearing on cases before DOAH.

B. SECTION DIRECTORY:

Section 1. Creates s. 104.2715, F.S., providing that it is a violation of the Florida Election Code for a candidate to falsely represent his or her military service; permitting anyone to file a complaint with the Florida Elections Commission alleging a violation; requiring the adoption of rules to provide for an

¹ Section 104.271(2), F.S. This appears to be the only provision in the Florida Election Code that addresses false political speech.

² Public Law 109-437.

³ The longer imprisonment of up to 1 year is provided for false claims involving a Distinguished Service Cross, Navy Cross, Air Force Cross, Silver Star, Purple Heart, and Congressional Medal of Honor.

⁴ See *U.S. v. Alvarez*, 617 F.3d 1198 (9th Cir. 2010) (holding that the Stolen Valor Act violates First Amendment free speech rights); *but see*, *U.S. v. Robbins*, 2011 WL 7384 (W.D. Va. 2011) (false statements of fact implicated by the federal statute are not protected by the First Amendment). *U.S. v. Alvarez* is the only appellate decision interpreting the Stolen Valor Act. The U.S. Circuit Court of Appeals for the Ninth Circuit has a reputation in the legal community for adopting outlier positions rejected by other circuits. In *Robbins*, the federal district judge expressly refused to follow the 2-1 majority decision in *Alvarez* by adopting the dissent's position that *false speech* is not entitled to First Amendment protection.

⁵ The changes proposed to the Florida Election Code are similar to the federal Stolen Valor Act in that they refer to false statements of fact involving military service. The federal law, however, does not relate to having served or serving in the military but to honors, declarations, or medals received related to such service.

⁶ Military service in the bill refers to prior service, active duty, or reserve.

expedited hearing for complaints filed with the Commission; requiring the director of DOAH to assign an administrative law judge to provide an expedited hearing in certain cases; and requiring the assessment of a civil penalty.

Section 2. Provides a July 1, 2011, effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Violation penalties may provide additional, but minimal, revenues that will be deposited into the General Revenue Fund.

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:

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

2. Other:

The U.S. Circuit Court of Appeals for the Ninth Circuit in *U.S. v. Alvarez*⁷ held that the Stolen Valor Act violates First Amendment free speech rights. This is the only appellate decision on the Act. However, in *U.S. v. Robbins*,⁸ a federal district judge held that "false statements of fact implicated by the federal statute are not protected by the First Amendment." The U.S. Circuit Court of Appeals for the Ninth Circuit has a reputation in the legal community for adopting outlier positions rejected by other circuits. In *Robbins*, the federal district judge expressly refused to follow the 2-1 majority decision in *Alvarez* by adopting the dissent's position that false speech is not entitled to First Amendment protection.

⁷ 617 F.3d 1198 (2010).

⁸ 2011 WL 7384 (W.D. Va. 2011).

B. RULE-MAKING AUTHORITY:

The bill requires the Florida Elections Commission to adopt rules to provide an expedited hearing of complaints filed with the Commission that relate to false misrepresentation of military service.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill grants specific penalty power to the administrative law judge at DOAH in response to the recent First District Court of Appeals decision in *Davis v. Florida Elections Commission*.⁹

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

⁹ 44 So.3d 1211 (Fla. 1st DCA 2010) (The court found that the ALJ has no statutory authority to institute penalties for election violations originating with the Florida Elections Commission).

29 served or is currently serving in the military, whether active
 30 duty, reserve, or National Guard, commits a violation of the
 31 Florida Election Code.

32 (2) Any person may file a complaint with the Florida
 33 Elections Commission pursuant to s. 106.25 alleging a violation
 34 of subsection (1).



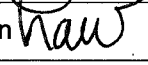
35 (3) The commission shall adopt rules to provide an
 36 expedited hearing of complaints filed under subsection (2), or,
 37 in cases referred to the Division of Administrative Hearings
 38 pursuant to s. 106.25(5), the director shall assign an
 39 administrative law judge to provide an expedited hearing.

40 (4) Notwithstanding any other law, the commission or
 41 administrative law judge shall assess a civil penalty of up to
 42 \$5,000 against any candidate who is found to have violated
 43 subsection (1), which shall be deposited into the General
 44 Revenue Fund.

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

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 867 Broward County
SPONSOR(S): Jenne
TIED BILLS: IDEN./SIM. **BILLS:**

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

SUMMARY ANALYSIS

Chapter 75-350, L.O.F., governs municipal elections in Broward County. Chapter 75-350, L.O.F., was last amended in 2005 by ch. 2005-318, L.O.F, to change provisions relating to elections dates and qualification periods.

This bill changes the November elections filing period previously amended in ch. 2005-318, L.O.F. The new filing period will conform to those established in s. 99.061(2), F.S. Based on Florida Statutes, the new filing period for November municipal elections in Broward County will be anytime after noon on the 71st day prior to the primary election date to no later than noon of the 67th day prior to the primary election date.

The bill does not make any changes to the elections filing period for municipal elections occurring in March.

The bill also makes scrivener changes to ch. 75-350, L.O.F.

The bill does not appear to have a fiscal impact on state government. The Economic Impact Statement indicates the bill will reduce local government expenses.

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Chapter 75-350, L.O.F., governs municipal elections in Broward County. Chapter 75-350, L.O.F., (chapter) was last amended in 2005 by ch. 2005-318, L.O.F, to change provisions relating to elections dates and qualification periods.

Currently, the chapter provides the following municipal elections provisions:

- For municipal elections held in March, the filing period is between noon on the 1st working day in January and noon on the 7th day after the 1st work day in January.
- For municipal elections held in November, the filing period is between noon on the 1st work day in September and noon on the 7th day following the 1st work day in September.

Broward municipal elections held in November are held the 1st Tuesday after the 1st Monday in November of any even-numbered calendar year, aligning the date for municipal elections with state and federal elections.

Section 99.061(2), F.S., requires the filing period for county elections to be any time after noon of the 71st day prior to the primary election, but not later than noon of the 67th day prior to the date of the primary election.

Absentee Ballots

Section 101.62(4)(a), F.S., requires county supervisors of elections to send absentee ballots to each absent uniformed services voter and overseas voter who have requested an absentee ballot no later than 45 days before each election. In addition, the 2009 federal Military and Overseas Voter Empowerment (MOVE) Act requires states to transmit validly-requested absentee ballots to service members, their families and other overseas citizens no later than 45 days before a federal election, except where the state has been granted an undue hardship waiver approved by the Department of Defense for that election.^{1,2}

For November elections, these requirements mean the absentee ballots must be sent between September 18th and September 24th, depending on the election date.

Under the current provisions of the chapter governing municipal elections in Broward County, the September filing period for municipal elections results in the Broward Supervisor of Elections having approximately 10 days to code, test, and prepare absentee ballots. This compressed time span leads to additional expenditures for labor and overtime to meet the state and federal requirements.

Effect of Proposed Changes

This bill changes the November elections filing period to conform to those established in s. 99.061(2), F.S. The new filing period for November municipal elections in Broward County will be anytime after noon on the 71st day prior to the primary election date to no later than noon of the 67th day prior to the primary election date. This change will result in an increased time span between the filing period and the 45 day requirement for mailing absentee ballots.

¹ P.L. 111-084. The MOVE Act amends the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). UOCAVA is 42 U.S.C. 1973ff et seq. and the MOVE act adds Part H to Title V.

² United States Department of Justice, *Fact Sheet: Move Act*. Available at: <http://www.justice.gov/opa/pr/2010/October/10-crt-1212.html> Site last visited March 18, 2011.

The bill does not make any changes to the elections filing period for municipal elections occurring in March.

The bill also makes scrivener changes to ss. 4 through 7 of ch. 75-350, L.O.F.

B. SECTION DIRECTORY:

Section 1: Amends ch. 75-350, L.O.F., last amended by ch. 2005-318, L.O.F., revising the dates on which municipal candidates must file qualification papers and pay fees with respect to November elections and making technical changes.

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

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 20, 2011.

WHERE? *The Sun-Sentinel*, a daily newspaper of general circulation published in Broward, Palm Beach and Miami-Dade Counties, Florida.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

The Economic Impact Statement indicates the bill will reduce local government expenses, as it increases the amount of time between the filing period and when the Supervisor of Elections has to distribute absentee ballots, in accordance with state and federal laws. As a result of the increased time span, the need for additional labor and overtime expenses will be reduced or eliminated.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The phrase, "as may be amended from time to time," in lines 30-31 is not needed, and could be removed from the bill in a technical amendment.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

HOUSE OF REPRESENTATIVES

2011 LOCAL BILL CERTIFICATION FORM

BILL #: 867

SPONSOR(S): _____

RELATING TO: Municipal Election Qualifying dates

[Indicate Area Affected (City, County, or Special District) and Subject]

NAME OF DELEGATION: Broward

CONTACT PERSON: Sandy Harris

PHONE NO.: (954)-260-8894 E-Mail: saharris@broward.org

I. House local bill policy requires that three things occur before a committee or subcommittee of the House considers a local bill: (1) The members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) the legislative delegation must hold a public hearing in the area affected for the purpose of considering the local bill issue(s); and (3) the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the rules of the delegation, at the public hearing or at a subsequent delegation meeting. Please submit this completed, original form to the Community and Military Affairs Subcommittee as soon as possible after a bill is filed.

(1) Does the delegation certify that the purpose of the bill cannot be accomplished by ordinance of a local governing body without the legal need for a referendum?
YES [] NO []

(2) Did the delegation conduct a public hearing on the subject of the bill?
YES [] NO []

Date hearing held: January 5, 2011

Location: Children's Services Council

(3) Was this bill formally approved by a majority of the delegation members?
YES [] NO []

II. Article III, Section 10 of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.

Has this constitutional notice requirement been met?

Notice published: YES [] NO [] DATE January 20, 2011

Where? Sun Sentinel County Broward

Referendum in lieu of publication: YES [] NO []

Date of Referendum _____

III. Article VII, Section 9(b) of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.

(1) Does the bill create a special district and authorize the district to impose an ad valorem tax?

YES [] NO [] NOT APPLICABLE []

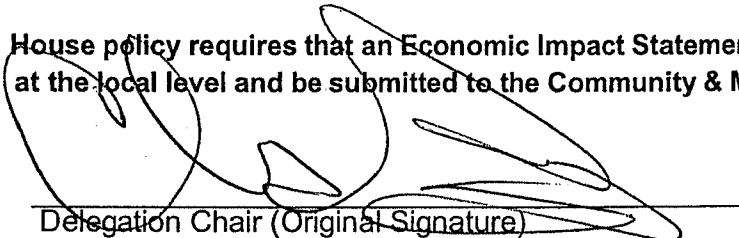
(2) Does this bill change the authorized ad valorem millage rate for an existing special district?

YES [] NO [] NOT APPLICABLE []

If the answer to question (1) or (2) is YES, does the bill require voter approval of the ad valorem tax provision(s)?

YES [] NO []

Note: House policy requires that an Economic Impact Statement for local bills be prepared at the local level and be submitted to the Community & Military Affairs Subcommittee.


Delegation Chair (Original Signature)

2/1/11
Date

Christopher Smith
Printed Name of Delegation Chair

**HOUSE OF REPRESENTATIVES
2011 ECONOMIC IMPACT STATEMENT FORM**

House local bill policy requires that economic impact statements for local bills be prepared at the LOCAL LEVEL. It is the policy of the House of Representatives that no bill will be considered by a council or a committee without an original Economic Impact Statement. This form must be completed whether or not there is an economic impact. Please submit this form to the Committee on Urban & Local Affairs as soon as possible after the bill is filed.

BILL #: 867
SPONSOR(S): Senator Jeremy Ring Rep Jenne
RELATING TO: Broward County – Municipal Qualifying Periods
[Indicate Area Affected (City, County or Special District) and Subject]

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

	<u>FY 11-12</u>	<u>FY12-13</u>
Expenditures:	-0-	-0-

II. ANTICIPATED SOURCE(S) OF FUNDING:

	<u>FY 11-12</u>	<u>FY12-13</u>
Federal:	-0-	-0-
State:		
Local:		

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

	<u>FY 11-12</u>	<u>FY12-13</u>
Revenues:	-0-	-0-

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Advantages:

Broward County municipal November candidates have a different qualifying period (September) than other office candidates (June). State law requires that the Supervisor of Elections must distribute absentee ballots to overseas residents/military personnel 45 days prior to election. The late municipal qualifying period leaves the Broward County Supervisor of Elections Office with approximately 10 days for ballot preparation and distribution. The short turn around necessitates additional expenditures for labor and overtime.

Disadvantages:

None

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

None

VI. DATA AND METHOD USED IN MAKING ESTIMATES [INCLUDE SOURCE(S) OF DATA]:

N/A

PREPARED BY:  12/13/10
[Must be signed by Preparer] Date

TITLE: Executive Director

REPRESENTING: Broward League of Cities

PHONE: 954-357-7370

E-Mail Address: bloc@bellsouth.net

SUN-SENTINEL
PUBLISHED DAILY
FORT LAUDERDALE, BROWARD COUNTY, FLORIDA
BOCA RATON, PALM BEACH COUNTY, FLORIDA
MIAMI, MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA
COUNTY OF BROWARD/PALM BEACH/MIAMI-DADE

BEFORE THE UNDERSIGNED AUTHORITY, PERSONALLY APPEARED LINDA HALL, WHO, ON OATH, SAYS THAT SHE IS A DULY AUTHORIZED REPRESENTATIVE OF THE CLASSIFIED DEPARTMENT OF THE SUN-SENTINEL, DAILY NEWSPAPER PUBLISHED IN BROWARD/PALM BEACH/MIAMI-DADE COUNTY, FLORIDA, THAT THE ATTACHED COPY OF ADVERTISEMENT, BEING A:

NOTICE OF LEGISLATION

THE MATTER OF:

BROWARD LEGISLATIVE
RE: AMENDING CHAPTER 75-305

IN THE CIRCUIT COURT, WAS PUBLISHED IN SAID NEWSPAPER IN THE ISSUES OF:

JANUARY 20, 2011

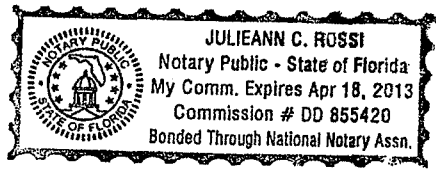
13958246

AFFIANT FURTHER SAYS THAT THE SAID SUN-SENTINEL IS A NEWSPAPER PUBLISHED IN SAID BROWARD/PALM BEACH/MIAMI-DADE COUNTY, FLORIDA, AND THAT THE SAID NEWSPAPER HAS HERETOFORE BEEN CONTINUOUSLY PUBLISHED IN SAID BROWARD/PALM BEACH/MIAMI-DADE COUNTY, FLORIDA, EACH DAY, AND HAS BEEN ENTERED AS SECOND CLASS MATTER AT THE POST OFFICE IN FORT LAUDERDALE, IN SAID BROWARD COUNTY, FLORIDA, FOR A PERIOD OF ONE YEAR NEXT PRECEDING THE FIRST PUBLICATION OF ATTACHED COPY OF ADVERTISEMENT: AND AFFIANT FURTHER SAYS THAT SHE HAS NEITHER PAID, NOR PROMISED, ANY PERSON, FIRM, OR CORPORATION, ANY DISCOUNT, REBATE, COMMISSION, OR REFUND, FOR THE PURPOSE OF SECURING THIS ADVERTISEMENT FOR PUBLICATION IN SAID NEWSPAPER.

(SIGNATURE OF LINDA HALL, AFFIANT)

SWORN TO AND SUBSCRIBED BEFORE ME
ON 20 JANUARY 2011, A.D.

(SIGNATURE OF NOTARY PUBLIC)



(NAME OF NOTARY, TYPED, PRINTED, OR STAMPED)

PERSONALLY KNOWN (X) OR PRODUCED IDENTIFICATION ()

NOTICE OF LEGISLATION
Notice is hereby given that the following bill will be presented to the 2011 Legislative Session of the Florida Legislature for consideration and enactment:
A bill to be entitled:
An act relating to Broward County; amending chapter 75-305, Laws of Florida, as amended by chapters 76-336, 77-507, 81-349, 2004-443 and 2005-318, Laws of Florida; revising provisions relating to the governing of municipal elections in Broward County; specifying the dates on which municipal candidates shall file qualification papers and pay certain fees with respect to certain elections; providing an effective date.
BROWARD COUNTY LEGISLATIVE DELEGATION
SENATOR CHRISTOPHER SMITH;
CHAIR
January 20, 2011

1 A bill to be entitled
 2 An act relating to Broward County; amending chapter 75-
 3 350, Laws of Florida, as amended; revising provisions
 4 relating to the governing of municipal elections in the
 5 county; revising the dates on which municipal candidates
 6 must file qualification papers and pay certain fees with
 7 respect to certain elections; providing an effective date.

8

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

10

11 Section 1. Chapter 75-350, Laws of Florida, as amended by
 12 chapters 76-336, 77-507, 81-349, 2004-443, and 2005-318, Laws of
 13 Florida, is amended to read:

14 Section 1. It is the intent of this act to provide for
 15 uniform filing and election dates for all municipal elections in
 16 Broward County. It is not the intent of this act to determine
 17 the length of terms of municipal offices.

18 Section 2. For any municipal elections held in Broward
 19 County in March of a calendar year, candidates for office in
 20 such elections shall file such papers and pay such fees as may
 21 be required by law with the applicable municipal clerk no
 22 earlier than noon on the first work day in January nor later
 23 than noon on the 7th day following the first work day in January
 24 of the calendar year in which the election is to be held. For
 25 any municipal elections held in Broward County in November of a
 26 calendar year, candidates for office in such elections shall
 27 file such papers and pay such fees as may be required by law
 28 with the applicable municipal clerk pursuant to the same

29 timeframes as candidates who qualify for county offices as
 30 provided in section 99.061(2), Florida Statutes, as may be
 31 amended from time to time ~~no earlier than noon on the first work~~
 32 ~~day in September nor later than noon on the 7th day following~~
 33 ~~the first work day in September of the calendar year in which~~
 34 ~~the election is to be held.~~

35 Section 3. Any primary election relating to a municipal
 36 office held in a municipality in Broward County shall be held on
 37 the second Tuesday in February of a calendar year, and all
 38 general elections relating to a municipal office held in a
 39 municipality in Broward County shall be held on the second
 40 Tuesday in March of a calendar year or the first Tuesday after
 41 the first Monday in November of any even-numbered calendar year.
 42 Municipalities that have general elections in November of even-
 43 numbered calendar years shall not have primaries for such
 44 elections.

45 Section 4. In any primary election held in any race for
 46 municipal offices in Broward County, the manner and method by
 47 which a slate of candidates is to be determined shall be as
 48 provided by the Charter or Code of Ordinances of the
 49 municipality conducting the primary election as provided herein.
 50 In any general election in races for municipal offices in
 51 Broward County, the candidate or candidates, depending upon the
 52 number to be elected, receiving the highest number of votes in
 53 the election shall be the winners ~~winner~~. Such duly elected
 54 municipal officers shall take office within 14 ~~fourteen (14)~~
 55 days after the general election, with the specific day to be
 56 decided by local ordinance.

57 | Section 5. In order to implement any change in the month
 58 | in which elections will be held, Broward County municipalities
 59 | may either extend or reduce terms of office of existing elected
 60 | officials for a period of up to 8 ~~eight (8)~~ months.

61 | Section 6. The governing body of each municipality in
 62 | Broward County may, at its discretion, amend its Charter to
 63 | change the date of its municipal elections in accordance with
 64 | this act by ordinance, subject to approval by referendum;
 65 | ~~provided, however, that~~ any change in election date will not be
 66 | effective until at least 18 ~~eighteen (18)~~ months after the
 67 | approval of the ordinance by the municipality's governing body.



68 | Section 7. All municipal elections shall be canvassed by
 69 | the county canvassing board with said board certifying the
 70 | results to each city clerk within 5 ~~five (5)~~ days after the
 71 | election.

72 | Section 8. The Broward Supervisor of Elections shall
 73 | provide to each Broward County municipality by the first work
 74 | day in April of the calendar year a schedule of fees and charges
 75 | for municipal election services for the following calendar year.

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

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 985 Hillsborough County
SPONSOR(S): Burgin
TIED BILLS: IDEN./SIM. **BILLS:**

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

SUMMARY ANALYSIS

Hillsborough County is authorized to waive payment and performance bond requirements on projects to encourage local small businesses to participate in county procurement programs. A small business that has been the successful bidder on five projects where the bond has been waived is ineligible to bid on additional projects where the bond has been waived and that cost not less than \$200,000 and not more than \$500,000.

The bill extends the expiration of the act from September 30, 2011, to September 30, 2016.

The bill does not appear to have a fiscal impact on state government. The county has indicated there have been no losses or defaults under this program.

The bill has an effective date of upon becoming law.

House Rule 5.5(b), states that a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. This bill appears to provide an exemption to s. 255.05, F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 255.05(1), F.S., requires any person entering into a contract with the state, or any local government, for the construction or repair of a public building or public work, to purchase a payment and performance bond. Such bond is to be conditioned upon the contractor's performance of the construction work in the time and manner prescribed in the contract, and the contractor's promptly making payments to all suppliers and subcontractors. A local government may waive the requirement of a payment and performance bond for contracts of \$200,000 or less.

Under current law, for those contracts for which a payment and performance bond has been waived, the county must pay all persons defined in s. 713.01, F.S., who furnish labor, services, or materials, to the same extent and upon the same conditions that a surety on the payment bond would have been obligated to pay.

Chapter 2004-414, Laws of Florida, exempts Hillsborough County from s. 255.05(1), F.S. It authorizes Hillsborough County to waive payment and performance bond requirements for construction or repair projects that cost \$500,000 or less and are awarded pursuant to an economic development program that encourages small businesses to participate in county procurement programs. A small business that has been the successful bidder on five projects where the bond has been waived is ineligible to bid on additional projects where the bond has been waived and that cost not less than \$200,000 and not more than \$500,000. Currently, the act expires September 30, 2011.

The county has indicated there have been no losses or defaults to date with this program.¹

Effect of Proposed Changes

The bill extends the expiration of the act from September 30, 2011, to September 30, 2016.

B. SECTION DIRECTORY:

Section 1: Extends expiration date of the act.

Section 2: Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 25, 2011.

WHERE? *The Tampa Tribune*, a daily newspaper of general circulation published in Hillsborough County, Florida.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

¹ Information from a white paper submitted to and on file with the Community & Military Affairs Subcommittee.

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

The county has indicated that the county has experienced no losses or defaults as a result of the projects in which bond requirements were waived.²

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

House Rule 5.5(b), states a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. This bill appears to provide an exemption to s. 255.05, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

² Ibid.

HOUSE OF REPRESENTATIVES

2011 LOCAL BILL CERTIFICATION FORM

BILL #: 985

SPONSOR(S): Representative Rachel Burgin

RELATING TO: Hillsborough County - Small Business Bond Education Program
(Indicate Area Affected (City, County, or Special District) and Subject)

NAME OF DELEGATION: Hillsborough County

CONTACT PERSON: Eugene Gray

PHONE NO.: (813) 272-7232 E-Mail: grayg@hillsboroughcounty.org

I. *House local bill policy requires that three things occur before a committee or subcommittee of the House considers a local bill: (1) The members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) the legislative delegation must hold a public hearing in the area affected for the purpose of considering the local bill issue(s); and (3) the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the rules of the delegation, at the public hearing or at a subsequent delegation meeting. Please submit this completed, original form to the Community and Military Affairs Subcommittee as soon as possible after a bill is filed.*

(1) Does the delegation certify that the purpose of the bill cannot be accomplished by ordinance of a local governing body without the legal need for a referendum?

YES [] NO []

(2) Did the delegation conduct a public hearing on the subject of the bill?

YES [] NO []

Date hearing held: December 14, 2010

Location: University of South Florida, Tampa, FL

(3) Was this bill formally approved by a majority of the delegation members?

YES [] NO []

II. *Article III, Section 10 of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this constitutional notice requirement been met?

Notice published: YES [] NO [] DATE 1/25/11

Where? Tampa Tribune County Hillsborough County

Referendum in lieu of publication: YES [] NO []

Date of Referendum _____

III. Article VII, Section 9(b) of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.

(1) Does the bill create a special district and authorize the district to impose an ad valorem tax?

YES [] NO [] NOT APPLICABLE []

(2) Does this bill change the authorized ad valorem millage rate for an existing special district?

YES [] NO [] NOT APPLICABLE []

If the answer to question (1) or (2) is YES, does the bill require voter approval of the ad valorem tax provision(s)?

YES [] NO []

Note: House policy requires that an Economic Impact Statement for local bills be prepared at the local level and be submitted to the Community & Military Affairs Subcommittee.



Delegation Chair (Original Signature)

1/20/11

Date

Representative Seth McKeel

Printed Name of Delegation Chair

House Committee on Community Affairs

2010 ECONOMIC IMPACT STATEMENT

House policy requires that economic impact statements for local bills be prepared at the LOCAL LEVEL. This form should be used for such purposes. It is the policy of the House of Representatives that no bill will be considered by a council or a committee without an original Economic Impact Statement. This form must be completed whether or not there is an economic impact. If possible this form must accompany the bill when filed with the Clerk for introduction. In the alternative, please submit it to the Local Government Council as soon as possible after the bill is files.

BILL#: 985
SPONSOR(S): Senator Arthenia Joyner and Representative Rachel Burgin
RELATING TO: Hillsborough County: Small Business Bond Education Program
[Indicate Area Affected (City, County, Special District) and Subject]

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

Expenditures: FY 10-11 FY11-12
The cost of enacting a local bill.

II. ANTICIPATED SOURCE(S) OF FUNDING:

Federal: FY 10-11 FY11-12
Not applicable
State:
Local:

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

Revenues: FY 10-11 FY11-12
Not applicable

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Advantages: Registered small businesses in Hillsborough County's Small Business Bond Education Program will continue to have an opportunity to develop business and construction management skills in a sheltered market in order to become more competitive, employ additional workers, and increase the County's tax base.

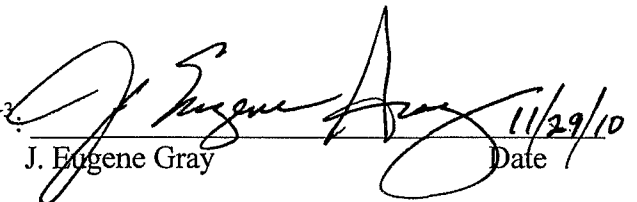
Disadvantages: Larger firms (those employing more than 25 persons and having better bonding capabilities) may be precluded from bidding on smaller projects.

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

There will be no impact on the market for employment as small and larger firms draw from the same labor pool.

VI. DATA AND METHOD USED IN MAKING ESTIMATES (INCLUDING SOURCE[S] OF DATA:

In-house documentation relating to expenditure of public funds for construction projects that were set aside for bidding solely by registered SBEs. The county has experienced no losses or defaults as a result of the projects in which bond requirements were waived.

PREPARED BY:  11/29/10
J. Eugene Gray Date

TITLE: Acting Utilities and Commerce Administrator
Director, Hillsborough County Economic
Development Office

REPRESENTING: Hillsborough County
PHONE: 813-272-6210
E-MAIL: grayg@hillsboroughcounty.org

³ Original signature required.

The Tampa Tribune

Published Daily

Tampa, Hillsborough County, Florida

NOTICE OF LEGISLATION

TO WHOM IT MAY CONCERN:

NOTICE IS HEREBY GIVEN that the undersigned intends to apply to the 2011 Legislature of the State of Florida at its regular session held in the year 2011, or at a subsequent special session, for passage of a bill to be entitled

An act relating to Hillsborough County; amending chapter 2004-414, Laws of Florida, as amended, which relates to projects for which payment and performance bonds may be waived for the construction of a public building, for the prosecution and completion of a public work, or for repairs on a public building or public work when the cost of the project is at or below a certain threshold and the contract for the construction, completion, or repair is awarded pursuant to an economic development program established to encourage local small businesses to participate in county procurement programs; deferring the future repeal of the law; providing an effective date.

State of Florida }
County of Hillsborough } SS.

Before the undersigned authority personally appeared C. Pugh, who on oath says that she is the Advertising Billing Analyst of The Tampa Tribune, a daily newspaper published at Tampa in Hillsborough County, Florida; that the attached copy of the

Legal Ads IN THE Tampa Tribune

DATED at Tampa, Florida, the 25th day of January, 2011.

Representative Rachel Burgin,
Senator Arthenia Joyner
11256 Winthrop Main Street, Unit A
Riverview, FL 33578-4267

2439 1/25/11

In the matter of Legal Notices

was published in said newspaper in the issues of

01/25/2011

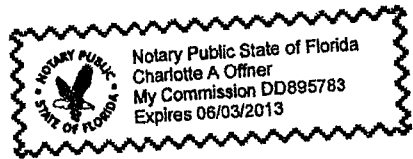
Affiant further says that the said The Tampa Tribune is a newspaper published at Tampa in said Hillsborough County, Florida, and that the said newspaper has heretofore been continuously published in said Hillsborough County, Florida, each day and has been entered as second class mail matter at the post office in Tampa, in said Hillsborough County, Florida for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she has neither paid nor promised any person, this advertisement for publication in the said newspaper.

[Signature]

Sworn to and subscribed by me, this 3 day of Feb, A.D. 2011

Personally Known or Produced Identification
Type of Identification Produced _____

Charlotte A. Offner



1 A bill to be entitled
 2 An act relating to Hillsborough County; amending chapter
 3 2004-414, Laws of Florida, as amended, which relates to
 4 projects for which payment and performance bonds may be
 5 waived for the construction of a public building, for the
 6 prosecution and completion of a public work, or for
 7 repairs on a public building or public work when the cost
 8 of the project is at or below a certain threshold and the
 9 contract for the construction, completion, or repair is
 10 awarded pursuant to an economic development program
 11 established to encourage local small businesses to
 12 participate in county procurement programs; deferring the
 13 future repeal of the law; providing an effective date.

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


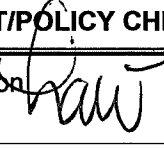
16
 17 Section 1. Section 7 of chapter 2004-414, Laws of Florida,
 18 as amended by chapter 2008-271, Laws of Florida, is amended to
 19 read:

20 Section 7. This act is ~~shall stand~~ repealed ~~on~~ September
 21 30, 2016 ~~2011~~.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1059 Request for Information by the Department of Lottery
SPONSOR(S): Government Operations Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Meadows 	Williamson 

SUMMARY ANALYSIS

In 1987, the Legislature established the Department of the Lottery (department) for the purpose of operating the state lottery so as to maximize revenues in a manner consonant with the dignity of the state and the welfare of its citizens. The Department of the Lottery (department) was established for the purpose of operating the state lottery "so as to maximize revenues in a manner consonant with the dignity of the state and the welfare of its citizens." The department is accountable to the people of the state through a system of audits and reports and through compliance with financial disclosure, open meetings, and public records laws.

Under current law, the department is prohibited from contracting with any person or entity for the total operation and administration for the state lottery. The department is authorized to contract for functions such as lottery game design, supply of goods and services, and advertising.

The bill requires the Department of the Lottery to issue a request for information to determine the feasibility of entering into a management agreement, which is a contractual agreement entered into between the department and a manager to provide management services to the department. Under such agreement the department would continue to manage and operate the lottery.

The bill requires the department to submit its findings from the request for information to the Governor, Senate President, and Speaker of the House of Representatives no later than September 30, 2011.

The bill could have an insignificant fiscal impact on the department.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In 1987, the Legislature enacted chapter 87-65, L.O.F., to implement a voter-approved constitutional amendment¹ allowing the State of Florida to operate a lottery. The Department of the Lottery (department) was established for the purpose of operating the state lottery "so as to maximize revenues in a manner consonant with the dignity of the state and the welfare of its citizens."²

The purpose of the state lottery is to maximize additional funding for education while enabling the people of the state to benefit from significant additional moneys for education, and enabling the people of the state to play the best lottery games available.³ It is the Legislature's intent that the net proceeds of the lottery games support improvements in public education.⁴ It is further the intent of the Legislature that the lottery games be operated by a self-supporting, revenue-producing department.⁵

The department is accountable to the people of the state through a system of audits and reports and through compliance with financial disclosure, open meetings, and public records laws.⁶

Under current law, the department is prohibited from contracting with any person or entity for the total operation and administration for the state lottery.⁷ The department is authorized to contract for functions such as lottery game design, supply of goods and services, and advertising.⁸

Effect of the Proposed Changes

The bill requires the Department of the Lottery (department) to issue a request for information to determine the feasibility of entering into a management agreement, which is a contractual agreement entered into between the department and a manager to provide management services to the department. Under such agreement the department would continue to manage and operate the lottery.

The bill defines a "request for information" to mean a written or electronically posted request made by an agency to vendors for information concerning commodities or contractual services. Responses to the request for information are not offers and may not be accepted by the department to form a binding contract.

At a minimum, the request for information must obtain the following information:

- How the vendor proposes to improve upon the operation of the department.
- How the vendor proposes to increase lottery revenues.
- The vendor's plan for implementing the proposed improvements.
- The cost savings and increased revenues generated by the vendor's proposals.
- The vendor's proposed method of payment if awarded the management agreement.

The department must report to the Governor, President of the Senate, and Speaker of the House of Representatives no later than September 30, 2011, on its findings. The report must provide a:

- Comparison of the management and operation of the department with the management and operation of other state lotteries;

¹ Florida Constitution, Article X, Section 15.

² Section 24.104, F.S.

³ Section 24.102(1), F.S.

⁴ Section 24.102(2)(a), F.S.

⁵ Section 24.102(2)(c), F.S.

⁶ Section 24.102(2)(d), F.S.

⁷ Section 24.111(1), F.S.

⁸ *Id.*

- Summary of the information gathered from the request for information; and
- Recommendation as to the feasibility of entering into a management agreement with a manager.

B. SECTION DIRECTORY:

Section 1 creates an unnumbered section of law that provides definitions; requires the Department of the Lottery to issue a request for information to determine the feasibility of entering into a management agreement with a manager to provide management services to the department; creates reporting requirements.

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:

The department could experience an insignificant fiscal impact as a result of issue and analyzing a request for information.

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 take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Article X, s. 15 of the Florida Constitution does not allow for the lottery or lottery games to be operated by a private entity. The lottery must be "operated by the state." There is a grey area between being 'operated' by the state versus being "managed" by a third party. Under a

management agreement, there is uncertainty whether the state could still be deemed to be operating the lottery.

B. RULE-MAKING AUTHORITY:

This bill does not authorize nor require any additional grants of rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not Applicable.

PCS for HB 1059

ORIGINAL

YEAR

1 A bill to be entitled
 2 An act relating to a request for information by the
 3 Department of the Lottery; providing definitions;
 4 requiring the Department of the Lottery to issue a request
 5 for information to determine the feasibility of entering
 6 into a management agreement with a manager to provide
 7 management services to the department; requiring a report
 8 to the Governor, President of the Senate, and Speaker of
 9 the House of Representatives; providing an effective date.

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

12
 13 Section 1. (1) For purposes of this act:
 14 (a) "Department" means the Department of the Lottery.
 15 (b) "Management agreement" means a contractual agreement
 16 entered into between the department and a manager to provide
 17 management services to the Department of the Lottery. Under such
 18 agreement, the department shall continue to manage and operate
 19 the lottery.
 20 (c) "Manager" means an entity that provides management
 21 services to the department on behalf of the department under a
 22 management agreement.
 23 (d) "Request for information" means a written or
 24 electronically posted request made by an agency to vendors for
 25 information concerning commodities or contractual services.
 26 Responses to these requests are not offers and may not be
 27 accepted by the agency to form a binding contract.

PCS for HB 1059

ORIGINAL

YEAR

28 (2) The department shall issue a request for information
 29 to determine the feasibility of entering into a management
 30 agreement with a manager. The request for information, at a
 31 minimum, must obtain the following information:

32 (a) How the vendor proposes to improve upon the operation
 33 of the department.

34 (b) How the vendor proposes to increase lottery revenues.

35 (c) The vendor's plan for implementing the proposed
 36 improvements.

37 (d) The cost savings and increased revenues generated by
 38 the vendor's proposals.

39 (e) The vendor's proposed method of payment if awarded the
 40 management agreement.

41 (3) The department shall report the following information
 42 to the Governor, President of the Senate, and Speaker of the
 43 House of Representatives, no later than September 30, 2011:

44 (a) A comparison of the management and operation of the
 45 department with the management and operation of other state
 46 lotteries.

47 (b) A summary of the information gathered from the request
 48 for information.

49 (c) A recommendation as to the feasibility of entering
 50 into a management agreement with a manager.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1473 Pub. Rec./Florida Health Choices Program

SPONSOR(S): Corcoran

TIED BILLS: IDEN./SIM. BILLS: SB 1456

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Williamson	Williamson
2) Health & Human Services Committee			

SUMMARY ANALYSIS

The Florida Health Choices Program (program) is a single, centralized market for the sale and purchase of health care products including, but not limited to, health insurance plans, health maintenance organization (HMO) plans, prepaid services, service contracts, and flexible spending accounts. Policies sold as part of the program are exempt from regulation under the Florida Insurance Code and laws governing HMOs. Current law specifies those entities eligible to purchase products through, and participate in, the program; those vendors eligible to participate in the program; and those individuals eligible to enroll in the program.

The bill creates a public record exemption for personal identifying information of an applicant, enrollee, or participant in the program. It provides for retroactive application of the public record exemption.

The bill provides exceptions to the exemption and provides criminal penalties for violation of the public record exemption.

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.¹

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

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

Florida Health Choices Program

In 2008, the Florida Legislature created the Florida Health Choices Program (program).³ The program includes a single, centralized market for the sale and purchase of health care products including, but not limited to, health insurance plans, health maintenance organization (HMO) plans, prepaid services, service contracts, and flexible spending accounts.⁴ Policies sold as part of the program are exempt from regulation under the Florida Insurance Code⁵ and laws governing HMOs.⁶

Current law also establishes the Florida Health Choices, Inc., (corporation) as a not-for-profit corporation under chapter 617, F.S.⁷ The corporation is responsible for administering the program and may function as a third-party administrator for employers participating in the program.⁸ In its capacity as a third-party administrator, the corporation is not subject to the licensing requirements for insurance administrators under part VII of chapter 626, F.S. The corporation is authorized to collect premiums and other payments from employers. In addition, the corporation is not required to maintain any level of bonding. The corporation is responsible for certifying vendors and ensuring the validity of their offerings. Lastly, the corporation is not subject to the provisions of the Unfair Insurance Trade Practices Act.⁹

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

² Section 119.15, F.S.

³ Section 4, chapter 2008-32, L.O.F. (2008); *see also* s. 408.910, F.S.

⁴ Section 408.910(5), F.S.

⁵ Chapter 624, F.S.

⁶ Part I of chapter 641, F.S.; *see also* s. 408.910(10)(a), F.S.

⁷ Section 408.910(11), F.S.

⁸ Section 408.910(10)(b), F.S.

⁹ Part IX, chapter 626, F.S.

The corporation is governed by a 15-member board of directors (board).¹⁰ The board members are protected from liability created by any member of the board or its employees or agents for any action taken by them in the performance of the powers and duties under this act.¹¹ No cause of action may rise against a board member in that circumstance.¹²

Current law specifies those entities eligible to purchase products through, and participate in, the program. Employees of the following employers are eligible to purchase coverage through the program if their employers participate in the program:

- Employers with one to 50 employees;
- Cities with a population less than 50,000 residents;
- Fiscally constrained counties; and
- School districts located in fiscally constrained counties.¹³

The following vendors are eligible to participate in the program:

- Insurers licensed under chapter 624, F.S.;
- HMOs licensed under part I of chapter 641, F.S.;
- Prepaid health clinic providers licensed under part II of chapter 641, F.S.;
- Health care providers;
- Provider organizations; and
- Corporate entities providing specific services via service contracts.¹⁴

The following individuals are eligible to enroll in the program:

- Individual employees of enrolled employers;
- State employees ineligible for the state group insurance plan;
- State retirees;
- Medicaid reform participants who opt out of the reform program; and
- Statutory rural hospitals.¹⁵

Employers are required to establish section 125 plans in order to participate in, and allow their employees to enroll in, the program.¹⁶ This allows both employers and employees to purchase insurance coverage through the program using pre-tax dollars.

¹⁰ The board is composed of five members appointed by the Governor, five members appointed by the President of the Senate, and five members appointed by the Speaker of the House of Representatives. Section 408.910(11)(a), F.S.

¹¹ Section 408.910(11)(e), F.S.

¹² *Id.*

¹³ Section 408.910(4)(a), F.S.

¹⁴ Section 408.910(4)(d), F.S.

¹⁵ Section 408.910(4)(b), F.S.

¹⁶ Section 125 of the Internal Revenue Code allows employers to offer a cafeteria plan to employees for payment of qualified benefits. A cafeteria plan is a separate written plan maintained by an employer for employees that meets the specific requirements of and regulations of section 125. It provides participants an opportunity to receive certain benefits on a pretax basis. Participants in a cafeteria plan must be permitted to choose among at least one taxable benefit (such as cash) and one qualified benefit. A qualified benefit is a benefit that does not defer compensation and is excludable from an employee's gross income under a specific provision of the Code, without being subject to the principles of constructive receipt. Qualified benefits include:

- Accident and health benefits (but not Archer medical savings accounts or long-term care insurance);
- Adoption assistance;
- Dependent care assistance;
- Group-term life insurance coverage;
- Health savings accounts, including distributions to pay long-term care services.

The written plan must specifically describe all benefits and establish rules for eligibility and elections. A section 125 plan is the only means by which an employer can offer employees a choice between taxable and nontaxable benefits without the choice causing the benefits to become taxable. A plan offering only a choice between taxable benefits is not a section 125 plan. *See* <http://www.irs.gov/govt/fslg/article/0,,id=112720,00.html>. (last viewed March 28, 2011).

Effect of Bill

The bill creates a public record exemption for the Florida Health Choices Program (program). Personal identifying information of an applicant, enrollee, or participant in the program is confidential and exempt¹⁷ from public records requirements. The bill provides for retroactive application of the public record exemption.¹⁸

Upon request, such information must be disclosed to:

- Another governmental entity in the performance of its official duties and responsibilities.
- Any person who has the written consent of the program applicant.
- The Florida Kidcare program for the purpose of administering the program.

The public record exemption does not prohibit an enrollee's legal guardian from obtaining confirmation of coverage, dates of coverage, the name of the enrollee's health plan, and the amount of premium being paid.

A person who knowingly and willfully violates the public record exemption commits a misdemeanor of the second degree.¹⁹

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.²⁰

B. SECTION DIRECTORY:

Section 1 amends s. 408.910, F.S., to create a public record exemption for the Florida Health Choices Program.

Section 2 provides a public necessity statement.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

¹⁷ 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).

¹⁸ 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).

¹⁹ A misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days and a fine not to exceed \$500. *See ss. 775.082(4)(b) and 775.083(1)(e)*, F.S.

²⁰ Section 24(c), Art. I of the State Constitution.

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 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:

According to discussions with the Chief Executive Officer for the Florida Health Choices Program, it appears the public record exemption for applicant and participant information pertains to businesses. It does not appear to be the intent to protect the name of a business offering services through the program, but rather the proprietary confidential business information submitted as part of the eligibility process. However, as drafted, the exemption only protects identifying information of the business participant.²¹

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

²¹ Meeting on March 21, 2011, with Rose Naff, Chief Executive Officer.
STORAGE NAME: h1473.GVOPS.DOCX
DATE: 3/28/2011

1 A bill to be entitled
 2 An act relating to public records; amending s. 408.910,
 3 F.S.; creating an exemption from public-records
 4 requirements for personal, identifying information of a
 5 registrant, applicant, participant, or enrollee in the
 6 Florida Health Choices Program; providing exceptions;
 7 authorizing an enrollee's legal guardian to obtain
 8 confirmation of certain information about the enrollee's
 9 health plan; providing for applicability; providing a
 10 penalty for unlawful disclosure of personal, identifying
 11 information; providing for future legislative review and
 12 repeal of the exemption under the Open Government Sunset
 13 Review Act; providing a statement of necessity; providing
 14 an effective date.

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

17
 18 Section 1. Subsection (14) is added to section 408.910,
 19 Florida Statutes, to read:

20 408.910 Florida Health Choices Program.—

21 (14) EXEMPTION FROM PUBLIC-RECORDS REQUIREMENTS.—

22 (a) Any personal, identifying information of an applicant,
 23 enrollee, or participant in the Florida Health Choices Program
 24 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.
 25 I of the State Constitution. Upon request, such information
 26 shall be disclosed to:

27 1. Another governmental entity in the performance of its
 28 official duties and responsibilities.

29 2. Any person who has the written consent of the program
 30 applicant.

31 3. The Florida Kidcare program for the purpose of
 32 administering the program authorized in ss. 409.810-409.821.

33 (b) This subsection does not prohibit an enrollee's legal
 34 guardian from obtaining confirmation of coverage, dates of
 35 coverage, the name of the enrollee's health plan, and the amount
 36 of premium being paid.

37 (c) This exemption applies to any information identifying
 38 an applicant, enrollee, or participant in the Florida Health
 39 Choices Program before, on, or after the effective date of this
 40 exemption.

41 (d) A person who knowingly and willfully violates
 42 paragraph (a) commits a misdemeanor of the second degree,
 43 punishable as provided in s. 775.082 or s. 775.083.

44 (e) This subsection is subject to the Open Government
 45 Sunset Review Act in accordance with s. 119.15, and shall stand
 46 repealed on October 2, 2016, unless reviewed and saved from
 47 repeal through reenactment by the Legislature.

48 Section 2. The Legislature finds that it is a public
 49 necessity that any information identifying an applicant,
 50 enrollee, or participant in the Florida Health Choices Program
 51 be held confidential and exempt from disclosure under the
 52 public-records law in order to protect sensitive personal,
 53 financial, and medical information. The harm caused by releasing
 54 such personal and sensitive information outweighs any public
 55 benefit derived from releasing such information. If such
 56 information is not kept confidential, the administration of the

57 program could be significantly impaired because the applicants,
 58 participants, and enrollees would be less inclined to
 59 participate in the program if personal medical and financial
 60 information were made available to the public. Moreover, the
 61 administration of the Florida Health Choices Program would be
 62 significantly impaired because applicants would be less inclined
 63 to apply to the program due to the fact that such identifying
 64 information would be made available to the public. Such
 65 disclosure would cause an unwarranted invasion into the life and
 66 privacy of program applicants thereby significantly decreasing
 67 the number of program enrollees. Therefore, it is a public
 68 necessity that any information identifying an applicant,
 69 participant, or enrollee in the Florida Health Choices Program
 70 be held confidential and exempt from public-records
 71 requirements.

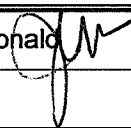
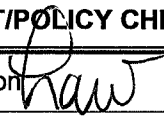
72 Section 3. This act shall take effect October 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4167 Florida Faith-based and Community-based Advisory Council

SPONSOR(S): Ford and others

TIED BILLS: IDEN./SIM. BILLS: SB 898

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

SUMMARY ANALYSIS

In November 2004, Governor Bush signed an Executive Order creating the Governor's Faith-Based and Community Advisory Board. The board's mission was to help state government coordinate efforts to utilize and expand opportunities for faith-based and community-based organizations to address social needs in Florida's communities. The 25-member, Governor-appointed board served as a policy advisor to the Governor on policies, priorities, and objectives for the state's comprehensive effort to enlist, equip, enable empower, and expand the work of faith-based, volunteer, and other community organizations to the full extent permitted by law.

In 2006, the Legislature codified in statute the advisory board as the Florida Faith-based and Community-based Advisory Council (council) and assigned it to, and administratively housed it in, the Executive Office of the Governor. The codification of the council included modification of membership appointment and of responsibilities. Additionally, it provided for the abolishment of the council on June 30, 2011, unless reviewed and saved from repeal by the Legislature.

The language repealing the Florida Faith-based and Community-based Advisory Council on June 30, 2011, is removed by the bill. The Council will remain authorized in law until future amendment by the Legislature.

The bill has no fiscal impact on state or local governments. It does have an indeterminate but potentially positive impact on the private sector. See "Fiscal Comments."

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In November 2004, Governor Bush signed an Executive Order¹ creating the Governor's Faith-Based and Community Advisory Board. The board's mission was to help state government coordinate efforts to utilize and expand opportunities for faith-based and community-based organizations to address social needs in Florida's communities. The 25-member, Governor-appointed board served as a policy advisor to the Governor on policies, priorities, and objectives for the state's comprehensive effort to enlist, equip, enable, empower, and expand the work of faith-based, volunteer, and other community organizations to the full extent permitted by law.

In 2006, the Legislature codified in statute the advisory board as the Florida Faith-based and Community-based Advisory Council (council) and assigned it to, and administratively housed it in, the Executive Office of the Governor. The codification of the council included modification of membership appointment and responsibilities. Additionally, it provided for the abolishment of the council on June 30, 2011, unless reviewed and saved from repeal by the Legislature.²

Present Situation

Provisions of Law Governing the Council

The purpose of the council is to advise the Governor and the Legislature on policies, priorities, and objectives for the state's effort "to enlist, equip, enable, empower, and expand the work of faith-based, volunteer, and other community organizations to the full extent permitted by law."³

The council consists of 25 members, with 17 appointed by the Governor, four appointed by the President of the Senate, and four appointed by the Speaker of the House of Representatives. Members are appointed for four year terms and serve without compensation, but may receive reimbursement for per diem and travel expenses. The council must meet at least quarterly.⁴

The activities of the council are specified and an annual report must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives that contains an accounting of the council's activities and recommended policies, priorities, and objectives for the state's efforts to facilitate the involvement of faith-based, volunteer, and other community-based organizations.⁵

The council is prohibited from recommending any public program that conflicts with the Establishment Clause of the First Amendment to the United States Constitution or Article 1, Section 3 of the State Constitution.⁶

Activities of the Council

Past activities of the council have included the following:

- Reviewing the state's process for notifying community organizations of funding resources which helped bring about the addition of a web portal in the Vendor Bid System of MyFloridaMarketplace specifically designed to house grant and contract opportunities for Florida non-profits.

¹ Executive Order No. 04-245, November 18, 2004. This Executive Order was amended by Executive Order No. 05-24, February 1, 2005, which incorporated by reference all of the first order, extended the time for a written report of the advisory board, and provided a January 1, 2007, expiration date for the order.

² Chapter 2006-9, L.O.F.; codified as s. 14.31, F.S.

³ Section 14.31(2), F.S.

⁴ Section 14.31(3) and (4)(a), F.S.

⁵ Section 14.31(5), F.S.

⁶ Section 14.31(6), F.S.

- Holding meetings with key local community leaders to gather information on effective programs and partnerships for service which led to the development of a resource guide or toolkit on positive collaboration in a variety of service areas affecting a community and the building of effective partnerships that is shared with all communities throughout the state.
- Building a strong network of faith-based organizations, community groups, foundations, and civic, grass roots, and local and state leaders.
- Providing outreach support to state agencies and their specific programs by notifying local groups and organizations of these programs and encouraging their participation. Programs such as juvenile mentoring programs, anti-drug coalitions, suicide prevention, strengthening family initiatives, adoption initiatives, and family and community outreach initiatives.
- Supporting the creation and maintenance of long-term recovery organizations working in communication and cooperation with both government and non-government response agencies to help communities recover more quickly from natural disasters.⁷

Activities outlined for 2011 include the following:

- Promoting Florida's efforts to strengthen systems to better recruit families to meet the needs of children and youth awaiting adoption by providing information to and assisting faith-based and community-based groups in their efforts to match families to children and youth awaiting adoption.
- Identifying and recognizing outstanding programs where faith-based and community-based organizations are working well and effectively with local government entities with the intent of identifying models for replication.
- Partnering with the state to encourage and enlist the assistance of faith-based and community-based organizations to volunteer to assist inmates in the correctional system by providing educational mentoring and opportunities.⁸

Effect of Proposed Changes

The language repealing the Florida Faith-based and Community-based Advisory Council on June 30, 2011, is removed by the bill. As such, the council will remain authorized in law until future amendment by the Legislature.

B. SECTION DIRECTORY:

Section 1. Repeals subsection (8) of section 14.31, F.S., abrogating the repeal of provisions creating and governing the Florida Faith-based and Community-based Advisory Council.

Section 2. Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

⁷ Florida Faith-Based and Community-Base Advisory Council, *2010 Annual Report & Recommendations*, submitted February 1, 2010.

⁸ Florida Faith-Based and Community-Base Advisory Council, *2011 Annual Report & Recommendations*, submitted February 1, 2011.

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. Depending upon the recommendations of the council and legislative and executive implementation of those recommendations, faith-based and community-based organizations may be able to obtain governmental contracts for the provision of services, or may benefit from the reduction of barriers to the provision of such services.

D. FISCAL COMMENTS:

The 25 members of the council serve without compensation but may be reimbursed for per diem and travel expenses pursuant to s. 112.061, F.S. According to the Florida Commission on Community Service, the council members often pay for their own travel, their respective organizations pay for their travel, or travel is paid from other sources, if available.

Currently, staffing and operation of the council is provided by the Governor's Commission on Volunteerism and Community Service which is administratively housed in the Executive Office of the Governor.

There are no specific funds provided for the activities of the council. According to the Florida Commission on Community Service, the council receives funds from different sources which vary depending upon the availability of funding.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

No applicable. This bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

The section of law creating the council expressly prohibits the council from making any recommendation that is in conflict with the Establishment Clause of the First Amendment to the United States Constitution or the public funding provision of s. 3, Art. I of the State Constitution.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

HB 4167

2011

1 A bill to be entitled
2 An act relating to the Florida Faith-based and Community-
3 based Advisory Council; repealing s. 14.31(8), F.S.;
4 abrogating the repeal of provisions governing the Florida
5 Faith-based and Community-based Advisory Council;
6 providing an effective date.

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

9
10 Section 1. Subsection (8) of section 14.31, Florida
11 Statutes, is repealed.

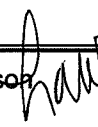
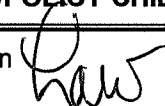
12 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 11-12 OGSR Competitive Solicitations

SPONSOR(S): Government Operations Subcommittee

TIED BILLS: IDEN./SIM. BILLS: SPB 7228

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.

Agency procurements of commodities or contractual services exceeding \$30,000 are governed by statute and rule and require one of the following three types of competitive solicitations to be used, unless otherwise authorized by law: invitation to bid (ITB), request for proposals (RFP), or invitation to negotiate (ITN).

Current law provides general public record and public meeting exemptions associated with competitive solicitations. Sealed bids, proposals, or replies in response to an ITB, RFP, or ITN, are exempt from public records requirements until a time certain. In addition, a meeting at which a negotiation with a vendor is conducted pursuant to an ITN is exempt from public meetings requirements. A complete recording must be made of the exempt meeting. The recording is exempt from public records requirements until a time certain.

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

The bill expands the public record exemption by extending the exemption for sealed bids and replies from 10 days to 30 days, and by extending the public record exemption for sealed responses from 20 days to 30 days. The change also makes the timeframes consistent.

The bill expands the public meeting exemption to include any portion of a meeting at which a vendor makes an oral presentation or a vendor answers questions as part of a competitive solicitation. It is further expanded to include any portion of a team meeting at which negotiation strategies are discussed.

The bill expands the public record exemption for recordings of exempt meetings to comport with the public record exemption for sealed bids, proposals, or replies. It extends the public record exemption from 20 days to 30 days. It also expands the public record exemption by including those records presented by a vendor at a closed meeting.

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

The bill may have an insignificant fiscal impact on state and local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

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

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

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.² If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created³ then a public necessity statement and a two-thirds vote for passage are not required.

Agency Procurement

Agency procurements of commodities or contractual services exceeding \$30,000 are governed by statute and rule and require use of one of the following three types of competitive solicitations,⁴ unless otherwise authorized by law:⁵

- Invitation to bid (ITB): An agency must use an ITB when the agency is capable of specifically defining the scope of work for which a contractual service is required or when the agency is capable of establishing precise specifications defining the actual commodity or group of commodities required.⁶
- Request for proposals (RFP): An agency must use an RFP when the purposes and uses for which the commodity, group of commodities, or contractual service being sought can be specifically defined and the agency is capable of identifying necessary deliverables.⁷
- Invitation to negotiate (ITN): An ITN is a solicitation used by an agency that is intended to determine the best method for achieving a specific goal or solving a particular problem and identifies one or more responsive vendors with which the agency may negotiate in order to receive the best value.⁸

¹ Section 119.15, F.S.

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

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

⁴ Section 287.012(6), F.S., defines "competitive solicitation" to mean the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

⁵ See s. 287.057, F.S.

⁶ Section 287.057(1)(a), F.S.

⁷ Section 287.057(1)(b), F.S.

⁸ Section 287.057(1)(c), F.S.

Staff Review of the Exemptions

As part of the Open Government Sunset Review process, staff held meetings with affected persons tasked with implementing the public record and public meeting exemptions, as well as vendors who participate in the competitive solicitation process. This bill is a result of those meetings.

Public Record Exemptions under Review

Background

Current law provides a general public record exemption for sealed bids or proposals received by an agency pursuant to an ITB or RFP. The sealed bids or proposals are exempt⁹ from public records requirements until the agency provides notice of a decision or intended decision or within 10 days after bid or proposal opening, whichever is earlier.¹⁰

In 2006, the Legislature expanded the public record exemption to provide that, if an agency rejects all bids or proposals submitted in response to an ITB or RFP, and concurrently provides notice of its intent to reissue the ITB or RFP, then the rejected bids or proposals remain exempt from public records requirements until the agency:

- Provides notice of a decision or intended decision concerning the reissued ITB or RFP; or
- Withdraws the reissued ITB or RFP.¹¹

The Legislature further expanded the public record exemption to provide that a competitive sealed reply in response to an ITN is exempt from public records requirements until the agency provides notice of a decision or intended decision or until 20 days after the final competitive sealed reply is opened, whichever occurs earlier.¹² The rejected sealed replies remain exempt from public records requirements if the agency:

- Rejects all competitive sealed replies;
- Concurrently provides notice of its intent to reissue the ITN; and
- Reissues the ITN within 90 days after the notice of intent to reissue.

The exemption expires when the agency provides notice of a decision or intended decision concerning the reissued ITN or, until the agency withdraws the reissued ITN. A competitive sealed reply is not exempt for longer than 12 months after the initial agency notice rejecting all replies.¹³

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2011, unless reenacted by the Legislature.¹⁴

Effect of Bill

The bill reenacts, expands, and reorganizes the public record exemption for competitive solicitations.

First, the bill removes reference to ITBs, RFPs, and ITNs, by creating a definition for competitive solicitation. It is defined to mean “the process of requesting and receiving sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.” By creating a definition of competitive solicitation and

⁹ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

¹⁰ Section 119.071(1)(b)1.a., F.S.

¹¹ Chapter 2006-284, L.O.F.; codified as s. 119.071(1)(b)1.b., F.S.

¹² Chapter 2006-284, L.O.F.; codified as s. 119.071(1)(b)2.a., F.S.

¹³ Section 119.071(1)(b)2.b., F.S.

¹⁴ Sections 119.071(1)(b)1.b. and 2.c., F.S.

removing references to chapter 287, F.S., local governments are able to use the public record exemption associated with ITNs.

Current law protects sealed bids or proposals until a decision or intended decision is made or within 10 days after bid or proposal opening. In addition, sealed replies are protected until a decision or intended decision is made or until 20 days after the final competitive sealed reply is opened. Based upon discussions with impacted parties, the bill creates consistency by providing that all sealed bids, proposals, or replies are exempt until notice of an intended decision or until 30 days after opening the bids, proposals, or replies. Also, the bill provides that all bids, proposals, or replies may not remain exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies. Current law only applies to responses to an ITN.

Because the bill expands the current public record exemptions, it extends the repeal date for the exemptions from October 2, 2011, to October 2, 2016. It also provides a public necessity statement as required by the State Constitution.¹⁵

Public Meeting Exemption under Review

Background

Current law also provides a general public meeting exemption for those meetings at which a negotiation with a vendor is conducted pursuant to an ITN.¹⁶ A complete recording must be made of the exempt meeting. In addition, the recording is exempt from public records requirements until the agency provides notice of a decision or intended decision or until 20 days after the final competitive sealed reply is opened, whichever occurs earlier. If the agency rejects all sealed replies, the recording remains exempt until the agency provides notice of a decision or intended decision concerning the reissued ITN or until the agency withdraws the reissued ITN. A recording is not exempt from public records requirements for longer than 12 months after the initial agency notice rejecting all replies.¹⁷

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2011, unless reenacted by the Legislature.¹⁸

Effect of Bill

The bill reenacts, expands, and reorganizes the public meeting exemption for competitive solicitations.

The bill creates a definition for "competitive solicitation" identical to the one provided for the public record exemption. Creating a definition of competitive solicitation and removing references to chapter 287, F.S., allows local governments to use the public meeting exemption associated with ITNs.

The public meeting exemption is expanded to include any portion of a meeting at which a vendor makes an oral presentation or a vendor answers questions as part of a competitive solicitation. It is further expanded to include any portion of a team¹⁹ meeting at which negotiation strategies are discussed.

The bill expands the public record exemption for recordings of exempt meetings to comport with the public record exemption for sealed bids, proposals, or replies. It extends the public record exemption from 20 days to 30 days. It also expands the public record exemption by including those records presented by a vendor at a closed meeting.

¹⁵ Section 24(c), Art. I of the State Constitution.

¹⁶ Chapter 2006-284, L.O.F.; codified as s. 286.0113(2)(a), F.S.

¹⁷ Section 286.0113(2)(b), F.S.

¹⁸ Sections 286.0113(2)(c), F.S.

¹⁹ The bill defines "team" to mean a group of members established by a governmental entity for the purpose of conducting negotiations as part of a competitive solicitation.

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

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to reenact and expand the public record exemption for competitive solicitations.

Section 2 amends s. 286.0113, F.S., to reenact and expand the public meeting exemption for competitive solicitations.

Section 3 provides a public necessity statement.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments section.

2. Expenditures:

See Fiscal Comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments section.

2. Expenditures:

See Fiscal Comments section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The exemptions could improve the ability of state and local governments to obtain the best pricing, which could increase state and local government revenues. The bill likely could create an insignificant fiscal impact on state and local governments due to costs associated with the requirement to make a complete recording of an exempt meeting.

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

²⁰ Section 24(c), Art. I of the State Constitution.

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 exemptions under review; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

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

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

An amendment might be necessary to clarify that the public record exemption for recordings of closed meetings also applies to those records submitted by the vendor during such meetings. In addition, interested persons have expressed concern with use of the term "agency" as part of the public meeting exemption. Those persons have raised concerns that use of the term "agency" would exclude local governments from using the public meeting exemption. However, s. 286.011, F.S., which provides public meetings requirements, uses the term agency as follows:

... any state agency or authority or ... any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution ...

As such, it appears that use of the term "agency" as part of the public meeting exemption would indicate application to state and local entities.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

BILL

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1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 119.071, F.S., which
 4 provides an exemption from public records requirements for
 5 bids, proposals, or replies submitted to an agency in
 6 response to a competitive solicitation; expanding the
 7 public record exemption by extending the duration of the
 8 public record exemption; providing a definition;
 9 reorganizing the exemption; providing for future repeal
 10 and legislative review of the public record exemption
 11 under the Open Government Sunset Review Act; amending s.
 12 286.0113, F.S., which provides an exemption from public
 13 meetings requirements for meetings at which a negotiation
 14 with a vendor is conducted and which provides an exemption
 15 from public records requirements for recordings of exempt
 16 meetings; expanding the public meeting exemption to
 17 include meetings at which a negotiation with a vendor is
 18 conducted pursuant to a competitive solicitation, at which
 19 a vendor makes an oral presentation as part of a
 20 competitive solicitation, at which a vendor answers
 21 questions as part of a competitive solicitation, and at
 22 which team members discuss negotiation strategies;
 23 expanding the public record exemption to include any
 24 records presented at an exempt meeting; providing
 25 definitions; reorganizing the exemption; providing for
 26 future repeal and legislative review of the public meeting
 27 and public record exemptions under the Open Government

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28 Sunset Review Act; providing a statement of public
 29 necessity; providing an effective date.

30

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

32

33 Section 1. Paragraph (b) of subsection (1) of section
 34 119.071, Florida Statutes, is amended to read:

35 119.071 General exemptions from inspection or copying of
 36 public records.—

37 (1) AGENCY ADMINISTRATION.—

38 (b)1. For purposes of this paragraph "competitive
 39 solicitation" means the process of requesting and receiving
 40 sealed bids, proposals, or replies submitted by responsive
 41 vendors in accordance with the terms of a competitive process,
 42 regardless of the method of procurement.

43 2.a. Sealed bids, ~~or~~ proposals, or replies received by an
 44 agency pursuant to a competitive solicitation ~~invitations to bid~~
 45 ~~or requests for proposals~~ are exempt from s. 119.07(1) and s.
 46 24(a), Art. I of the State Constitution until such time as the
 47 agency provides notice of an a decision ~~or~~ intended decision to
 48 make a contract award pursuant to s. 120.57(3)(a) or until 30
 49 within 10 days after opening the bids, proposals, or replies bid
 50 ~~or proposal opening~~, whichever is earlier.

51 3.b. If an agency rejects all bids, ~~or~~ proposals, or
 52 replies submitted in response to a competitive solicitation ~~an~~
 53 ~~invitation to bid or request for proposals~~ and the agency
 54 concurrently provides notice of its intent to reissue the
 55 competitive solicitation invitation to bid or request for

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56 ~~proposals, the rejected bids, or proposals, or replies~~ remain
 57 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 58 Constitution until such time as the agency provides notice of an
 59 ~~a decision or intended decision~~ to make a contract award
 60 ~~pursuant to s. 120.57(3)(a) concerning the reissued competitive~~
 61 solicitation invitation to bid or request for proposals or until
 62 the agency withdraws the reissued competitive solicitation
 63 ~~invitation to bid or request for proposals. A bid, proposal, or~~
 64 reply is not exempt for longer than 12 months after the initial
 65 agency notice rejecting all bids, proposals, or replies. This
 66 ~~sub-subparagraph is subject to the Open Government Sunset Review~~
 67 ~~Act in accordance with s. 119.15 and shall stand repealed on~~
 68 ~~October 2, 2011, unless reviewed and saved from repeal through~~
 69 ~~reenactment by the Legislature.~~

70 2.a. ~~A competitive sealed reply in response to an~~
 71 ~~invitation to negotiate, as defined in s. 287.012, is exempt~~
 72 ~~from s. 119.07(1) and s. 24(a), Art. I of the State Constitution~~
 73 ~~until such time as the agency provides notice of a decision or~~
 74 ~~intended decision pursuant to s. 120.57(3)(a) or until 20 days~~
 75 ~~after the final competitive sealed replies are all opened,~~
 76 ~~whichever occurs earlier.~~

77 b. ~~If an agency rejects all competitive sealed replies in~~
 78 ~~response to an invitation to negotiate and concurrently provides~~
 79 ~~notice of its intent to reissue the invitation to negotiate and~~
 80 ~~reissues the invitation to negotiate within 90 days after the~~
 81 ~~notice of intent to reissue the invitation to negotiate, the~~
 82 ~~rejected replies remain exempt from s. 119.07(1) and s. 24(a),~~
 83 ~~Art. I of the State Constitution until such time as the agency~~

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84 ~~provides notice of a decision or intended decision pursuant to~~
 85 ~~s. 120.57(3)(a) concerning the reissued invitation to negotiate~~
 86 ~~or until the agency withdraws the reissued invitation to~~
 87 ~~negotiate. A competitive sealed reply is not exempt for longer~~
 88 ~~than 12 months after the initial agency notice rejecting all~~
 89 ~~replies.~~

90 ~~4.e.~~ This paragraph ~~subparagraph~~ is subject to the Open
 91 Government Sunset Review Act in accordance with s. 119.15 and
 92 shall stand repealed on October 2, 2016 ~~2011~~, unless reviewed
 93 and saved from repeal through reenactment by the Legislature.

94 Section 2. Subsection (2) of section 286.0113, Florida
 95 Statutes, is amended to read:

96 286.0113 General exemptions from public meetings.—

97 (2) (a) For purposes of this subsection:

98 1. "Competitive solicitation" means the process of
 99 requesting and receiving sealed bids, proposals, or replies
 100 submitted by responsive vendors in accordance with the terms of
 101 a competitive process, regardless of the method of procurement.

102 2. "Team" means a group of members established by a
 103 governmental entity for the purpose of conducting negotiations
 104 as part of a competitive solicitation.

105 (b)1. Any portion of a meeting at which a negotiation with
 106 a vendor is conducted pursuant to a competitive solicitation, at
 107 which a vendor makes an oral presentation as part of a
 108 competitive solicitation, or at which a vendor answers questions
 109 as part of a competitive solicitation ~~s. 287.057(1)~~ is exempt
 110 from s. 286.011 and s. 24(b), Art. I of the State Constitution.

111 2. Any portion of a team meeting at which negotiation

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112 strategies are discussed is exempt from s. 286.011 and s. 24(b),
 113 Art. I of the State Constitution.

114 (c)1.(b)1. A complete recording shall be made of any
 115 portion of an exempt meeting made exempt in paragraph (a). No
 116 portion of the exempt meeting may be held off the record.

117 2.2. The recording required under subparagraph 1. is
 118 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 119 Constitution until such time as the agency provides notice of an
 120 a decision or intended decision to make a contract award
 121 pursuant to s. 120.57(3)(a) or until 30 20 days after opening
 122 the bids, proposals, or replies the final competitive sealed
 123 replies are all opened, whichever occurs earlier.

124 3.3. If the agency rejects all bids, proposals, or sealed
 125 replies and concurrently provides notice of its intent to
 126 reissue a competitive solicitation, the recording and any
 127 records presented at the exempt meeting remain remains exempt
 128 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution
 129 until such time as the agency provides notice of an a decision
 130 or intended decision to make a contract award pursuant to s.
 131 120.57(3)(a) concerning the reissued competitive solicitation
 132 invitation to negotiate or until the agency withdraws the
 133 reissued competitive solicitation invitation to negotiate. A
 134 recording and any records presented at an exempt meeting are is
 135 not exempt for longer than 12 months after the initial agency
 136 notice rejecting all bids, proposals, or replies.

137 (d)(e) This subsection is subject to the Open Government
 138 Sunset Review Act in accordance with s. 119.15 and shall stand
 139 repealed on October 2, 2016 2011, unless reviewed and saved from

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140 repeal through reenactment by the Legislature.

141 Section 3. (1) The Legislature finds that it is a public
 142 necessity that bids, proposals, or replies submitted in response
 143 to a competitive solicitation be made temporarily exempt from
 144 public records requirements. Such records shall be made
 145 available when the agency provides notice of an intended
 146 decision to make a contract award on the competitive
 147 solicitation, or when the agency rejects all bids, proposals, or
 148 replies and ultimately withdraws a reissued competitive
 149 solicitation. Temporarily protecting such information ensures
 150 that the process of responding to a competitive solicitation
 151 remains fair and economical for vendors, while still preserving
 152 oversight after a competitive solicitation decision is made or
 153 withdrawn.

154 (2) The Legislature also finds that it is a public
 155 necessity that a meeting at which a negotiation with a vendor is
 156 conducted pursuant to a competitive solicitation, at which a
 157 vendor makes an oral presentation as part of a competitive
 158 solicitation, or at which a vendor answers questions as part of
 159 a competitive solicitation, be made exempt from public meetings
 160 requirements. In addition, it is a public necessity that any
 161 records presented at such meetings be made temporarily exempt
 162 from public records requirements. The recording of the meeting
 163 and any such records shall be made available when the agency
 164 provides notice of an intended decision to make a contract award
 165 on the competitive solicitation, or when the agency rejects all
 166 bids, proposals, or replies and ultimately withdraws a reissued
 167 competitive solicitation. Protecting such meetings and

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168 | temporarily protecting the recording and any records presented
 169 | by a vendor at such meetings, ensures that the process of
 170 | responding to a competitive solicitation remains fair and
 171 | economical for vendors, while still preserving oversight after a
 172 | competitive solicitation decision is made or withdrawn. It is
 173 | unfair and inequitable to compel vendors to disclose to
 174 | competitors the nature and details of their proposals during
 175 | such meetings or through the minutes or records presented at
 176 | such meetings. Such disclosure impedes full and frank discussion
 177 | of the strengths, weaknesses, and value of a bid, proposal, or
 178 | response; thereby, limiting the ability of the agency to obtain
 179 | the best value for the public. The public and private harm
 180 | stemming from these practices outweighs the temporary delay in
 181 | access to records related to the competitive solicitation.

182 | (3) The Legislature further finds that it is a public
 183 | necessity that any portion of a team meeting at which
 184 | negotiation strategies are discussed be made exempt from public
 185 | meetings requirements. In addition, it is a public necessity
 186 | that the recording of such meeting be made temporarily exempt
 187 | from public records requirements. The recording of the meeting
 188 | shall be made available when the agency provides notice of an
 189 | intended decision to make a contract award on the competitive
 190 | solicitation, or when the agency rejects all bids, proposals, or
 191 | replies and ultimately withdraws a reissued competitive
 192 | solicitation. Team members often meet to strategize about
 193 | competitive solicitations and the approach to take as part of
 194 | the evaluation process. Without the public meeting exemption and
 195 | the limited public record exemption, the effective and efficient

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196 | administration of the competitive solicitation process would be
197 | hindered.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 11-16 Procurement
SPONSOR(S): Government Operations Subcommittee
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		McDonald	Williamson

SUMMARY ANALYSIS

The Department of Management Services (DMS) is responsible for overseeing state purchasing activity including professional and construction services as well as commodities needed to support agency activities. The Division of State Purchasing in DMS establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power. Agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These include, but are not limited to, single source contracts, invitations to bid, requests for proposals, and invitations to negotiate. Purchasing categories with threshold amounts have been established in law to guide procedures for the procurement method to be used, type of review and evaluation required and method of contract award. Finally, many services state agencies procure are exempted from competitive solicitation requirements.

In 2010, the Legislature enacted substantial changes to Florida's procurement law. These revisions clarified the state's competitive solicitation processes; updated the purchasing category threshold amounts to bring them more in line with today's contracting; provided for greater coordination of contracted services, improved contract management and oversight; updated and expanded the conflict of interest provisions to avoid, neutralize or mitigate potential conflicts of interest before award of a contract; and increased contractual requirements relating to protection of state interests.

The bill amends procurement provisions enacted last year to do the following:

- Delete duplicative provisions and make clarifying changes;
- Amend terms used in different types of procurements to make them internally consistent;
- Require bid evaluations in an invitation to bid to provide preference in the award being given to the lowest responsive bid determined to meet the bid requirements and criteria;
- Require the agency in an invitation to negotiate to include an indication if renewals are anticipated and require the reply to provide a cost for each renewal year;
- Clarify mitigation of conflict provisions to state if an agency thinks there is a conflict, it may request the vendor to propose a mitigation plan with its competitive solicitation response and to clarify when an unfair competitive advantage exists; and
- Provide that a person who develops a program for implementation is not eligible to contract with the agency for contracts pertaining to the subject matter, nor can any firm that the person has an interest, unless a mitigation plan is developed.

The bill also repeals obsolete provisions of law.

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

The bill takes effect July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Department of Management Services – Procurement

The Department of Management Services is responsible for overseeing state purchasing activity including professional and construction services as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology. The Division of State Purchasing in the department establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.¹

Agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These include the following:

- "Single source contracts," which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- "Invitations to bid," which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- "Requests for proposal," which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- "Invitations to negotiate," which are used when negotiations are determined to be necessary to obtain the best value and involve a request for high complexity, customized, mission-critical services, by an agency dealing with a limited number of vendors.²

Prior to using one of these methods, an agency might use a "request for information." This is used when an agency wants to solicit information from vendors for information concerning commodities or contractual services.

In 2010, substantial revisions were made to provisions to chapter 287, F.S., to revise statutory provisions related to competitive solicitation processes, coordination of contracted services, contract management and oversight; to increase contractual requirements relating to protection of state interests; and to update and expand the conflict of interest provisions.^{3,4}

Obsolete Statutory References and Provisions

Department of Labor and Employment Security

The Department of Labor and Employment Security (DLES) was created in 1978 when it was removed from the Florida Department of Commerce.⁵ It consisted of one administrative support division, six program divisions, and administratively housed several independent entities.⁶ The process for the abolishment of DLES began in the 1999 Legislative Session, and subdivisions and programs of the

¹ Chapter 287, F.S., provides requirements for the procurement of personal property and services. Part I of that chapter pertains to commodities, insurance, and contractual services, and part II pertains to motor vehicles.

² See ss. 287.012 and 287.057, F.S.

³ Chapter 2010-151, F.S.

⁴ During the interim, committee staff met with representatives of the Department of Management Services and others to discuss the need for clarification and revision to the recent changes that had been made to chapter 287, F.S. Many suggestions in this proposal are a result of those discussions.

⁵ Chapter 78-201, L.O.F.

⁶ See Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 230, dated April 19, 1999.

department were transferred or repealed through several legislative bills until the department was formally abolished by the Legislature in 2002.⁷ Throughout the Florida Statutes there are still 35 references to the former Department of Labor and Employment Security, or one of its former programs.⁸ Three of those 35 sections are found in chapter 287, F.S., relating to procurement.⁹

Chief Financial Officer

The Chief Financial Officer is required to submit to the Auditor General an annual report on those contractual service contracts disallowed by the Chief Financial Officer. The report is required to include the name of the user agency, the name of the firm or individual from which the contractual service was to be acquired, a description of the contractual service, the financial terms of the contract, and the reason for rejection.¹⁰ According to the office of the Chief Financial Officer, this provision of law has not aligned with their processes for many years. The office disallows individual payments,¹¹ but does not disallow specific contracts. The annual audit report has not been prepared and submitted to the Auditor General in over three years.¹²

According to the Office of the Auditor General, it has not seen nor requested these reports. The Office felt the information, if needed, could be gotten from other sources.¹³

Products with Recycled Content

In 1988, requirements were placed in law for the Department of Management Services, in cooperation with the Department of Environmental Protection, to review and revise existing procurement procedures and specifications for the purchase of products and materials to eliminate procedures and specifications that explicitly discriminated against products and materials with recycled content unless they were needed to protect public health, safety, and welfare.¹⁴ The law created a price preference for a vendor who used recycled materials. When enacted, five positions were provided and annual funding of approximately \$600,000 was provided to conduct necessary research and bid specification review. The funding for the program was stopped approximately nine years ago and as a result the Department of Management Services stopped most activities associated with the provision in law. The testing lab that was established to handle the required testing is no longer in place at the Department of Agriculture and Consumer Services. The State Negotiated Agreement Price Schedule (SNAPS) program was implemented to achieve greater efficiencies in the recycled content program and to help meet the need for review. The SNAPS program assisted in the approval of approximately 600 agreements. According to the Department of Management Services, the majority of the agreements were never used. The SNAPS program was phased out in 2004.¹⁵

Although the provision in chapter 287, F.S., was repealed, a section of law still exists that refers to the repealed section and bases decisions on the provisions of the repealed law. The section requires agencies to purchase recycled content. The decision not to procure is based upon findings by the Department of Management Services among which are a "determination that the procurement fails to meet the performance standards set forth in the applicable specifications, or fails to meet the performance standards of the agency."¹⁶ The section also states agencies are subject to the procurement requirements of the repealed provision in chapter 287, F.S.¹⁷

⁷ Chapter 99-240, L.O.F.

⁸ See Senate Bill Analysis and Fiscal Impact Statement for SPB 7052, dated February 21, 2011.

⁹ Sections 287.09431, 287.09451, and 287.0947, F.S.

¹⁰ Section 287.115, F.S.

¹¹ Under the Chief Financial Officer's authority in chapter 17, F.S.

¹² Information obtained from Mr. Chris Tanner, Deputy Director of Legislative Affairs, Office of the Chief Financial Officer, March 16, 2011.

¹³ Information obtained from staff of the Office of the Auditor General, March 17, 2011.

¹⁴ Section 287.045, F.S., relating to recycled content, was repealed by s. 17, chapter 2010-151, L.O.F.

¹⁵ Information obtained from a Department of Management Analysis of HB 59 in 2009, dated February 27, 2009.

¹⁶ Section 403.7065, F.S.

¹⁷ *Id.*

Proposed Changes

Department of Management Services -- Procurement

The bill amends procurement provisions enacted last year to do the following:

- Delete duplicative provisions and make clarifying changes;
- Amend terms used in different types of procurements to make them internally consistent;
- Require that, in an invitation to bid, bid evaluations provide preference in the award being given to the lowest responsive bid determined to meet the requirements and criteria in the invitation to bid;
- Require that, in an invitation to negotiate, the agency include an indication if renewals are anticipated and require the reply to provide a cost for each renewal year;
- Clarify the mitigation of conflict provisions to state if an agency thinks there is a conflict, it may request the vendor to propose a mitigation plan with its competitive solicitation response and to clarify when an unfair competitive advantage exists; and
- Prohibit a person who develops a program for implementation, and any firm the person has an interest, from contracting with the agency for contracts dealing with the subject matter, unless a mitigation plan is developed.

Obsolete Statutory References and Provisions

The bill revises references to the Department of Labor and Employment Security contained in chapter 287, F.S., to the Department of Management Services, to the Secretary of Management Services, or deletes the reference, where appropriate.

The requirement for the Chief Financial Officer to provide the Auditor General with an annual report on disallowed contractual service contracts is repealed.

The provision relating to products with recycled content is repealed.

B. SECTION DIRECTORY:

Section 1. Amends s. 287.056, F.S., deleting duplicative language.

Section 2. Amends s. 287.067, F.S., correcting terminology; giving preference in award of an invitation to bid to the lowest responsive bidder meeting requirements and criteria; requiring that an invitation to negotiate must include contemplation of contract renewal and require cost per year for renewal in the reply; revising requirements for mitigation of conflicts of interest, the development of a mitigation plan, and prohibitions that cannot be mitigated.

Section 3. Amends s. 287.058, F.S., making editorial changes.

Section 4. Amends s. 287.09431, F.S., removing references to the Department of Labor and Employment Security; replacing such references with the Department of Management Services, where appropriate.

Section 5. Amends s. 287.09451, F.S., removing references to the Department of Labor and Employment Security.

Section 6. Amends s. 287.0947, F.S., removing reference to the Secretary of the Department of Labor and Employment Security and replacing with the Secretary of Management Services; removing obsolete provisions; correcting a cross-reference.

Section 7. Repeals s. 287.115, F.S., requiring the Chief Financial Officer to provide to the Auditor General an annual report on disallowed contractual service contracts.

Section 8. Repeals s. 403.7065, F.S., relating to procurement of products or materials with recycled content.

Section 9. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

BILL

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1 A bill to be entitled
 2 An act relating to procurement; amending s. 287.056, F.S.;
 3 deleting duplicative language relating to agency option to
 4 purchase from a state contract; amending s. 287.057, F.S.;
 5 revising provisions relating to procurement of commodities
 6 or contractual services to make clarifying changes;
 7 providing that preference in award be given to lowest
 8 responsive bid; requiring certain information be included
 9 in an invitation to negotiate; revising requirements for
 10 avoidance, neutralization, or mitigation of potential
 11 organizational conflicts of interest; amending s. 287.058,
 12 F.S.; removing duplicative language; making editorial
 13 changes; amending s. 287.09431, F.S.; updating references
 14 to the Department of Labor and Employment Security;
 15 amending s. 287.09451, F.S.; removing references to the
 16 Department of Labor and Employment Security; amending s.
 17 287.0947, F.S.; removing a reference to the Department of
 18 Labor and Employment Security; correcting a cross-
 19 reference; repealing s. 287.115, F.S., relating to the
 20 Chief Financial Officer providing an annual report;
 21 repealing s. 403.7065, F.S., relating to procurement of
 22 products or materials with recycled content; providing an
 23 effective date.

24
 25 Be It Enacted by the Legislature of the State of Florida:

26
 27 Section 1. Section 287.056, Florida Statutes, is amended
 28 to read:

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29 287.056 Purchases from purchasing agreements and state
 30 term contracts.—

31 (1) Agencies shall, and eligible users may, purchase
 32 commodities and contractual services from purchasing agreements
 33 established and state term contracts procured, pursuant to s.
 34 287.057, by the department. Each agency agreement made under
 35 this subsection shall include:

36 (a) A provision specifying a scope of work that clearly
 37 establishes all tasks that the contractor is required to
 38 perform.

39 (b) A provision dividing the contract into quantifiable,
 40 measurable, and verifiable units of deliverables that must be
 41 received and accepted in writing by the contract manager before
 42 payment. Each deliverable must be directly related to the scope
 43 of work and specify the required minimum level of service to be
 44 performed and the criteria for evaluating the successful
 45 completion of each deliverable.

46 ~~(2) Agencies may have the option to purchase commodities~~
 47 ~~or contractual services from state term contracts procured,~~
 48 ~~pursuant to s. 287.057, by the department.~~

49 (2)~~(3)~~ Agencies and eligible users may use a request for
 50 quote to obtain written pricing or services information from a
 51 state term contract vendor for commodities or contractual
 52 services available on state term contract from that vendor. The
 53 purpose of a request for quote is to determine whether a price,
 54 term, or condition more favorable to the agency or eligible user
 55 than that provided in the state term contract is available. Use
 56 of a request for quote does not constitute a decision or

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57 intended decision that is subject to protest under s. 120.57(3).

58 Section 2. Subsections (1) and (17) of section 287.057,
59 Florida Statutes, are amended to read:

60 287.057 Procurement of commodities or contractual
61 services.—

62 (1) The competitive solicitation processes authorized in
63 this section shall be used for procurement of commodities or
64 contractual services in excess of the threshold amount provided
65 for CATEGORY TWO in s. 287.017. Any competitive solicitation
66 shall be made available simultaneously to all vendors, must
67 include the time and date for the receipt of bids, proposals, or
68 replies and of the public opening, and must include all
69 contractual terms and conditions applicable to the procurement,
70 including the criteria to be used in determining acceptability
71 and relative merit of the bid or proposal, and the criteria to
72 be used in determining the responsiveness of the ~~or~~ reply.

73 (a) Invitation to bid.—The invitation to bid shall be used
74 when the agency is capable of specifically defining the scope of
75 work for which a contractual service is required or when the
76 agency is capable of establishing precise specifications
77 defining the actual commodity or group of commodities required.

78 1. All invitations to bid must include:

79 a. A detailed description of the commodities or
80 contractual services sought; and

81 b. If the agency contemplates renewal of the contract, a
82 statement to that effect.

83 2. Bids submitted in response to an invitation to bid in
84 which the agency contemplates renewal of the contract must

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85 | include the price for each year for which the contract may be
 86 | renewed.

87 | 3. Evaluation of bids shall include consideration of the
 88 | total cost for each year of the contract, including renewal
 89 | years, as submitted by the vendor, with preference in award
 90 | being given to the lowest responsive bid determined to meet the
 91 | requirements and criteria set forth in the invitation to bid.

92 | (b) Request for proposals.—An agency shall use a request
 93 | for proposals when the purposes and uses for which the
 94 | commodity, group of commodities, or contractual service being
 95 | sought can be specifically defined and the agency is capable of
 96 | identifying necessary deliverables. Various combinations or
 97 | versions of commodities or contractual services may be proposed
 98 | by a responsive vendor to meet the specifications of the
 99 | solicitation document.

100 | 1. Before issuing a request for proposals, the agency must
 101 | determine and specify in writing the reasons that procurement by
 102 | invitation to bid is not practicable.

103 | 2. All requests for proposals must include:

104 | a. A statement describing the commodities or contractual
 105 | services sought;

106 | b. The relative importance of price and other evaluation
 107 | criteria; and

108 | c. If the agency contemplates renewal of the contract, a
 109 | statement to that effect.

110 | 3. Criteria that will be used for evaluation of proposals
 111 | shall include, but are not limited to:

112 | a. Price, which must be specified in the proposal;

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113 b. If the agency contemplates renewal of the contract, the
114 price for each year for which the contract may be renewed; and

115 c. Consideration of the total cost for each year of the
116 contract, including renewal years, as submitted by the vendor.

117 4. The contract shall be awarded by written notice to the
118 responsible and responsive vendor whose proposal is determined
119 in writing to be the most advantageous to the state, taking into
120 consideration the price and other criteria set forth in the
121 request for proposals. The contract file shall contain
122 documentation supporting the basis on which the award is made.

123 (c) Invitation to negotiate.—The invitation to negotiate
124 is a solicitation used by an agency which is intended to
125 determine the best method for achieving a specific goal or
126 solving a particular problem and identifies one or more
127 responsive vendors with which the agency may negotiate in order
128 to receive the best value.

129 1. Before issuing an invitation to negotiate, the head of
130 an agency must determine and specify in writing the reasons that
131 procurement by an invitation to bid or a request for proposal is
132 not practicable.

133 2. The invitation to negotiate must describe the questions
134 being explored, the facts being sought, and the specific goals
135 or problems that are the subject of the solicitation.

136 3. The criteria that will be used for determining the
137 responsiveness ~~acceptability~~ of the reply and guiding the
138 selection of the vendors with which the agency will negotiate
139 must be specified. If the agency contemplates renewal of the
140 contract, that fact must be stated in the invitation to

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141 | negotiate as well as a requirement that the reply must include
 142 | the price for each year for which the contract may be renewed.

143 | 4. The agency shall evaluate replies against all
 144 | evaluation criteria set forth in the invitation to negotiate in
 145 | order to establish a competitive range of replies reasonably
 146 | susceptible of award. The agency may select one or more vendors
 147 | within the competitive range with which to commence
 148 | negotiations. After negotiations are conducted, the agency shall
 149 | award the contract to the responsible and responsive vendor that
 150 | the agency determines will provide the best value to the state,
 151 | based on the selection criteria.

152 | 5. The contract file for a vendor selected through an
 153 | invitation to negotiate must contain a short plain statement
 154 | that explains the basis for the selection of the vendor and that
 155 | sets forth the vendor's deliverables and price, pursuant to the
 156 | contract, along with an explanation of how these deliverables
 157 | and price provide the best value to the state.

158 | (17)(a)1. Each agency must avoid, neutralize, or mitigate
 159 | significant potential organizational conflicts of interest
 160 | before a contract is awarded. If an agency identifies such
 161 | conflict, the agency may request the vendor to propose a
 162 | mitigation plan with its response to a competitive solicitation.

163 | If the agency elects to mitigate the significant potential
 164 | organizational conflict or conflicts of interest, a ~~an adequate~~
 165 | mitigation plan shall be developed. The plan shall include,
 166 | ~~including~~ organizational, physical, and electronic barriers,
 167 | ~~shall be developed.~~

168 | 2. If a conflict cannot be avoided or mitigated, an agency

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169 may proceed with the contract award if the agency head certifies
 170 that the award is in the best interests of the state. The agency
 171 head must specify in writing the basis for the certification.

172 (b)1. An agency head may not proceed with a contract award
 173 under subparagraph (a)2. if a conflict of interest is based upon
 174 the vendor gaining an unfair competitive advantage.

175 2. An unfair competitive advantage exists when the vendor
 176 competing for the award of a contract obtained access to
 177 information that is not available to the public or source
 178 selection information that is relevant to the contract but is
 179 not available to all competitors and such information would
 180 assist the vendor in obtaining the contract;

181 ~~a. Access to information that is not available to the~~
 182 ~~public and would assist the vendor in obtaining the contract; or~~

183 ~~b. Source selection information that is relevant to the~~
 184 ~~contract but is not available to all competitors and that would~~
 185 ~~assist the vendor in obtaining the contract.~~

186 (c) Unless a mitigation plan is developed as provided in
 187 paragraph (a), a person who receives a contract that has not
 188 been procured pursuant to subsections (1)-(3) to perform a
 189 feasibility study of the potential implementation of a
 190 subsequent contract or develops a program for implementation, is
 191 not eligible to contract with the agency for any other contracts
 192 dealing with that specific subject matter, and any firm in which
 193 such person has any interest is not eligible to receive such
 194 contract.

195 (d) A person who participates in the drafting of a
 196 solicitation ~~or who develops a program for future~~

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197 | ~~implementation,~~ is not eligible to contract with the agency for
 198 | any other contracts dealing with that specific subject matter,
 199 | and any firm in which such person has any interest is not
 200 | eligible to receive such contract.

201 | (e) The prohibitions provided in this subsection do
 202 | ~~However, this prohibition does~~ not prevent a vendor who responds
 203 | to a request for information from being eligible to contract
 204 | with an agency.

205 | Section 3. Subsection (1) of section 287.058, Florida
 206 | Statutes, is amended to read:

207 | 287.058 Contract document.—

208 | (1) (a) Every procurement of contractual services in excess
 209 | of the threshold amount provided in s. 287.017 for CATEGORY TWO,
 210 | except for the providing of health and mental health services or
 211 | drugs in the examination, diagnosis, or treatment of sick or
 212 | injured state employees or the providing of other benefits as
 213 | required by the provisions of chapter 440, shall be evidenced by
 214 | a written agreement embodying all provisions and conditions of
 215 | the procurement of such services, which shall, where applicable,
 216 | include, but not be limited to, a provision:

217 | 1. (a) That bills for fees or other compensation for
 218 | services or expenses be submitted in detail sufficient for a
 219 | proper preaudit and postaudit thereof.

220 | 2. (b) That bills for any travel expenses be submitted in
 221 | accordance with s. 112.061. A state agency may establish rates
 222 | lower than the maximum provided in s. 112.061.

223 | 3. (c) Allowing unilateral cancellation by the agency for
 224 | refusal by the contractor to allow public access to all

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225 documents, papers, letters, or other material made or received
 226 by the contractor in conjunction with the contract, unless the
 227 records are exempt from s. 24(a) of Art. I of the State
 228 Constitution and s. 119.07(1).

229 4.~~(d)~~ Specifying a scope of work that clearly establishes
 230 all tasks the contractor is required to perform.

231 5.~~(e)~~ Dividing the contract into quantifiable,
 232 measurable, and verifiable units of deliverables that must be
 233 received and accepted in writing by the contract manager before
 234 payment. Each deliverable must be directly related to the scope
 235 of work and specify the required minimum level of service to be
 236 performed and criteria for evaluating the successful completion
 237 of each deliverable.

238 6.~~(f)~~ Specifying the criteria and the final date by which
 239 such criteria must be met for completion of the contract.

240 7.~~(g)~~ Specifying that the contract may be renewed for a
 241 period that may not exceed 3 years or the term of the original
 242 contract, whichever period is longer, specifying the renewal
 243 price for the contractual service as set forth in the bid,
 244 proposal, or reply, specifying that costs for the renewal may
 245 not be charged, and specifying that renewals shall be contingent
 246 upon satisfactory performance evaluations by the agency and
 247 subject to the availability of funds. Exceptional purchase
 248 contracts pursuant to s. 287.057(3)(a) and (c) may not be
 249 renewed.

250 8. ~~(h)~~ Specifying the financial consequences that the
 251 agency must apply if the contractor fails to perform in
 252 accordance with the contract.

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253 | 9. ~~(i)~~ Addressing the property rights of any intellectual
 254 | property related to the contract and the specific rights of the
 255 | state regarding the intellectual property if the contractor
 256 | fails to provide the services or is no longer providing
 257 | services.

258 | **(b)** In lieu of a written agreement, the department may
 259 | authorize the use of a purchase order for classes of contractual
 260 | services, if the provisions of subparagraphs 1.-9. ~~paragraphs~~
 261 | ~~(a)-(i)~~ are included in the purchase order or solicitation. The
 262 | purchase order must include, but need not be limited to, an
 263 | adequate description of the services, the contract period, and
 264 | the method of payment. ~~In lieu of printing the provisions of~~
 265 | ~~paragraphs (a)-(i) in the contract document or purchase order,~~
 266 | ~~agencies may incorporate the requirements of paragraphs (a)-(i)~~
 267 | ~~by reference.~~

268 | Section 4. Section 287.09431, Florida Statutes, is amended
 269 | to read:

270 | 287.09431 Statewide and interlocal agreement on
 271 | certification of business concerns for the status of minority
 272 | business enterprise.—The statewide and interlocal agreement on
 273 | certification of business concerns for the status of minority
 274 | business enterprise is hereby enacted and entered into with all
 275 | jurisdictions or organizations legally joining therein. If,
 276 | within 2 years from the date that the certification core
 277 | criteria are approved by the Department of Management Services
 278 | ~~Department of Labor and Employment Security,~~ the agreement
 279 | included herein is not executed by a majority of county and
 280 | municipal governing bodies that administer a minority business

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281 assistance program on the effective date of this act, then the
 282 Legislature shall review this agreement. It is the intent of the
 283 Legislature that if the agreement is not executed by a majority
 284 of the requisite governing bodies, then a statewide uniform
 285 certification process should be adopted, and that said agreement
 286 should be repealed and replaced by a mandatory state government
 287 certification process.

288 ARTICLE I

289 PURPOSE, FINDINGS, AND POLICY.—

290 (1) The parties to this agreement, desiring by common
 291 action to establish a uniform certification process in order to
 292 reduce the multiplicity of applications by business concerns to
 293 state and local governmental programs for minority business
 294 assistance, declare that it is the policy of each of them, on
 295 the basis of cooperation with one another, to remedy social and
 296 economic disadvantage suffered by certain groups, resulting in
 297 their being historically underutilized in ownership and control
 298 of commercial enterprises. Thus, the parties seek to address
 299 this history by increasing the participation of the identified
 300 groups in opportunities afforded by government procurement.

301 (2) The parties find that the State of Florida presently
 302 certifies firms for participation in the minority business
 303 assistance programs of the state. The parties find further that
 304 some counties, municipalities, school boards, special districts,
 305 and other divisions of local government require a separate, yet
 306 similar, and in most cases redundant certification in order for
 307 businesses to participate in the programs sponsored by each

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308 government entity.

309 (3) The parties find further that this redundant
 310 certification has proven to be unduly burdensome to the
 311 minority-owned firms intended to benefit from the underlying
 312 purchasing incentives.

313 (4) The parties agree that:

314 (a) They will facilitate integrity, stability, and
 315 cooperation in the statewide and interlocal certification
 316 process, and in other elements of programs established to assist
 317 minority-owned businesses.

318 (b) They shall cooperate with agencies, organizations, and
 319 associations interested in certification and other elements of
 320 minority business assistance.

321 (c) It is the purpose of this agreement to provide for a
 322 uniform process whereby the status of a business concern may be
 323 determined in a singular review of the business information for
 324 these purposes, in order to eliminate any undue expense, delay,
 325 or confusion to the minority-owned businesses in seeking to
 326 participate in the minority business assistance programs of
 327 state and local jurisdictions.

328 ARTICLE II

329 DEFINITIONS.—As used in this agreement and contracts made
 330 pursuant to it, unless the context clearly requires otherwise:

331 (1) "Awarding organization" means any political
 332 subdivision or organization authorized by law, ordinance, or
 333 agreement to enter into contracts and for which the governing
 334 body has entered into this agreement.

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335 (2) "Department" means the Department of Management
 336 Services ~~Department of Labor and Employment Security.~~

337 (3) "Minority" means a person who is a lawful, permanent
 338 resident of the state, having origins in one of the minority
 339 groups as described and adopted by the Department of Management
 340 Services ~~Department of Labor and Employment Security,~~ hereby
 341 incorporated by reference.

342 (4) "Minority business enterprise" means any small
 343 business concern as defined in subsection (6) that meets all of
 344 the criteria described and adopted by the Department of
 345 Management Services ~~Department of Labor and Employment Security,~~
 346 hereby incorporated by reference.

347 (5) "Participating state or local organization" means any
 348 political subdivision of the state or organization designated by
 349 such that elects to participate in the certification process
 350 pursuant to this agreement, which has been approved according to
 351 s. 287.0943(3) and has legally entered into this agreement.

352 (6) "Small business concern" means an independently owned
 353 and operated business concern which is of a size and type as
 354 described and adopted by vote related to this agreement of the
 355 commission, hereby incorporated by reference.

356 ARTICLE III

357 STATEWIDE AND INTERLOCAL CERTIFICATIONS.—

358 (1) All awarding organizations shall accept a
 359 certification granted by any participating organization which
 360 has been approved according to s. 287.0943(3) and has entered
 361 into this agreement, as valid status of minority business

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362 enterprise.

363 (2) A participating organization shall certify a business
 364 concern that meets the definition of minority business
 365 enterprise in this agreement, in accordance with the duly
 366 adopted eligibility criteria.

367 (3) All participating organizations shall issue notice of
 368 certification decisions granting or denying certification to all
 369 other participating organizations within 14 days of the
 370 decision. Such notice may be made through electronic media.

371 (4) No certification will be granted without an onsite
 372 visit to verify ownership and control of the prospective
 373 minority business enterprise, unless verification can be
 374 accomplished by other methods of adequate verification or
 375 assessment of ownership and control.

376 (5) The certification of a minority business enterprise
 377 pursuant to the terms of this agreement shall not be suspended,
 378 revoked, or otherwise impaired except on any grounds which would
 379 be sufficient for revocation or suspension of a certification in
 380 the jurisdiction of the participating organization.

381 (6) The certification determination of a party may be
 382 challenged by any other participating organization by the
 383 issuance of a timely written notice by the challenging
 384 organization to the certifying organization's determination
 385 within 10 days of receiving notice of the certification
 386 decision, stating the grounds therefor.

387 (7) The sole accepted grounds for challenge shall be the
 388 failure of the certifying organization to adhere to the adopted
 389 criteria or the certifying organization's rules or procedures,

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390 or the perpetuation of a misrepresentation or fraud by the firm.

391 (8) The certifying organization shall reexamine its
 392 certification determination and submit written notice to the
 393 applicant and the challenging organization of its findings
 394 within 30 days after the receipt of the notice of challenge.

395 (9) If the certification determination is affirmed, the
 396 challenging agency may subsequently submit timely written notice
 397 to the firm of its intent to revoke certification of the firm.

398 ARTICLE IV

399 APPROVED AND ACCEPTED PROGRAMS.—Nothing in this agreement
 400 shall be construed to repeal or otherwise modify any ordinance,
 401 law, or regulation of a party relating to the existing minority
 402 business assistance provisions and procedures by which minority
 403 business enterprises participate therein.

404 ARTICLE V

405 TERM.—The term of the agreement shall be 5 years, after
 406 which it may be reexecuted by the parties.

407 ARTICLE VI

408 AGREEMENT EVALUATION.—The designated state and local
 409 officials may meet from time to time as a group to evaluate
 410 progress under the agreement, to formulate recommendations for
 411 changes, or to propose a new agreement.

412 ARTICLE VII

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413 OTHER ARRANGEMENTS.—Nothing in this agreement shall be
 414 construed to prevent or inhibit other arrangements or practices
 415 of any party in order to comply with federal law.

416 ARTICLE VIII

417 EFFECT AND WITHDRAWAL.—

418 (1) This agreement shall become effective when properly
 419 executed by a legal representative of the participating
 420 organization, when enacted into the law of the state and after
 421 an ordinance or other legislation is enacted into law by the
 422 governing body of each participating organization. Thereafter it
 423 shall become effective as to any participating organization upon
 424 the enactment of this agreement by the governing body of that
 425 organization.

426 (2) Any party may withdraw from this agreement by enacting
 427 legislation repealing the same, but no such withdrawal shall
 428 take effect until one year after the governing body of the
 429 withdrawing party has given notice in writing of the withdrawal
 430 to the other parties.

431 (3) No withdrawal shall relieve the withdrawing party of
 432 any obligations imposed upon it by law.

433 ARTICLE IX

434 FINANCIAL RESPONSIBILITY.—

435 (1) A participating organization shall not be financially
 436 responsible or liable for the obligations of any other
 437 participating organization related to this agreement.

438 (2) The provisions of this agreement shall constitute

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439 neither a waiver of any governmental immunity under Florida law
 440 nor a waiver of any defenses of the parties under Florida law.
 441 The provisions of this agreement are solely for the benefit of
 442 its executors and not intended to create or grant any rights,
 443 contractual or otherwise, to any person or entity.

444 ARTICLE X

445 VENUE AND GOVERNING LAW.—The obligations of the parties to
 446 this agreement are performable only within the county where the
 447 participating organization is located, and statewide for the
 448 Office of Supplier Diversity, and venue for any legal action in
 449 connection with this agreement shall lie, for any participating
 450 organization except the Office of Supplier Diversity,
 451 exclusively in the county where the participating organization
 452 is located. This agreement shall be governed by and construed in
 453 accordance with the laws and court decisions of the state.

454 ARTICLE XI

455 CONSTRUCTION AND SEVERABILITY.—This agreement shall be
 456 liberally construed so as to effectuate the purposes thereof.
 457 The provisions of this agreement shall be severable and if any
 458 phrase, clause, sentence, or provision of this agreement is
 459 declared to be contrary to the State Constitution or the United
 460 States Constitution, or the application thereof to any
 461 government, agency, person, or circumstance is held invalid, the
 462 validity of the remainder of this agreement and the
 463 applicability thereof to any government, agency, person, or
 464 circumstance shall not be affected thereby. If this agreement

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465 shall be held contrary to the State Constitution, the agreement
 466 shall remain in full force and effect as to all severable
 467 matters.

468 Section 5. Paragraphs (h) and (o) of subsection (4) of
 469 section 287.09451, Florida Statutes, are amended to read:

470 287.09451 Office of Supplier Diversity; powers, duties,
 471 and functions.—

472 (4) The Office of Supplier Diversity shall have the
 473 following powers, duties, and functions:

474 (h) To develop procedures to investigate complaints
 475 against minority business enterprises or contractors alleged to
 476 violate any provision related to this section or s. 287.0943,
 477 that may include visits to worksites or business premises, and
 478 to refer all information on businesses suspected of
 479 misrepresenting minority status to the Department of Management
 480 Services for investigation. When an investigation is completed
 481 and there is reason to believe that a violation has occurred,
 482 ~~the Department of Labor and Employment Security shall refer the~~
 483 matter shall be referred to the office of the Attorney General,
 484 Department of Legal Affairs, for prosecution.

485 (o)1. To establish a system to record and measure the use
 486 of certified minority business enterprises in state contracting.
 487 This system shall maintain information and statistics on
 488 certified minority business enterprise participation, awards,
 489 dollar volume of expenditures and agency goals, and other
 490 appropriate types of information to analyze progress in the
 491 access of certified minority business enterprises to state
 492 contracts and to monitor agency compliance with this section.

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493 Such reporting must include, but is not limited to, the
 494 identification of all subcontracts in state contracting by
 495 dollar amount and by number of subcontracts and the
 496 identification of the utilization of certified minority business
 497 enterprises as prime contractors and subcontractors by dollar
 498 amounts of contracts and subcontracts, number of contracts and
 499 subcontracts, minority status, industry, and any conditions or
 500 circumstances that significantly affected the performance of
 501 subcontractors. Agencies shall report their compliance with the
 502 requirements of this reporting system at least annually and at
 503 the request of the office. All agencies shall cooperate with the
 504 office in establishing this reporting system. Except in
 505 construction contracting, all agencies shall review contracts
 506 costing in excess of CATEGORY FOUR as defined in s. 287.017 to
 507 determine if such contracts could be divided into smaller
 508 contracts to be separately solicited and awarded, and shall,
 509 when economical, offer such smaller contracts to encourage
 510 minority participation.

511 2. To report agency compliance with the provisions of
 512 subparagraph 1. for the preceding fiscal year to the Governor
 513 and Cabinet, the President of the Senate, and the Speaker of the
 514 House of Representatives, ~~and the secretary of the Department of~~
 515 ~~Labor and Employment Security~~ on or before February 1 of each
 516 year. The report must contain, at a minimum, the following:

- 517 a. Total expenditures of each agency by industry.
- 518 b. The dollar amount and percentage of contracts awarded
 519 to certified minority business enterprises by each state agency.
- 520 c. The dollar amount and percentage of contracts awarded

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521 indirectly to certified minority business enterprises as
 522 subcontractors by each state agency.

523 d. The total dollar amount and percentage of contracts
 524 awarded to certified minority business enterprises, whether
 525 directly or indirectly, as subcontractors.

526 e. A statement and assessment of good faith efforts taken
 527 by each state agency.

528 f. A status report of agency compliance with subsection
 529 (6), as determined by the Minority Business Enterprise Office.

530 Section 6. Subsections (1), (3), (4), (5), and (6) of
 531 section 287.0947, Florida Statutes, are amended to read:

532 287.0947 Florida Advisory Council on Small and Minority
 533 Business Development; creation; membership; duties.—

534 (1) ~~On or after October 1, 1996,~~ The Secretary of
 535 Management Services ~~the Department of Labor and Employment~~
 536 ~~Security~~ may create the Florida Advisory Council on Small and
 537 Minority Business Development with the purpose of advising and
 538 assisting the secretary in carrying out the secretary's duties
 539 with respect to minority businesses and economic and business
 540 development. It is the intent of the Legislature that the
 541 membership of such council include practitioners, laypersons,
 542 financiers, and others with business development experience who
 543 can provide invaluable insight and expertise for this state in
 544 the diversification of its markets and networking of business
 545 opportunities. The council shall initially consist of 19
 546 persons, each of whom is or has been actively engaged in small
 547 and minority business development, either in private industry,
 548 in governmental service, or as a scholar of recognized

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549 achievement in the study of such matters. Initially, the council
 550 shall consist of members representing all regions of the state
 551 and shall include at least one member from each group identified
 552 within the definition of "minority person" in s. 288.703(3),
 553 considering also gender and nationality subgroups, and shall
 554 consist of the following:

555 (a) Four members consisting of representatives of local
 556 and federal small and minority business assistance programs or
 557 community development programs.

558 (b) Eight members composed of representatives of the
 559 minority private business sector, including certified minority
 560 business enterprises and minority supplier development councils,
 561 among whom at least two shall be women and at least four shall
 562 be minority persons.

563 (c) Two representatives of local government, one of whom
 564 shall be a representative of a large local government, and one
 565 of whom shall be a representative of a small local government.

566 (d) Two representatives from the banking and insurance
 567 industry.

568 (e) Two members from the private business sector,
 569 representing the construction and commodities industries.

570 (f) The chairperson of the Florida Black Business
 571 Investment Board or the chairperson's designee.

572
 573 A candidate for appointment may be considered if eligible to be
 574 certified as an owner of a minority business enterprise, or if
 575 otherwise qualified under the criteria above. Vacancies may be
 576 filled by appointment of the secretary, in the manner of the

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577 original appointment.

578 ~~(3) Within 30 days after its initial meeting, the council~~
 579 ~~shall elect from among its members a chair and a vice chair.~~

580 (3)~~(4)~~ The council shall meet at the call of its chair, at
 581 the request of a majority of its membership, at the request of
 582 the commission or its executive administrator, or at such times
 583 as may be prescribed by rule, but not less than once a year, to
 584 offer its views on issues related to small and minority business
 585 development of concern to this state. A majority of the members
 586 of the council shall constitute a quorum.

587 (4)~~(5)~~ The powers and duties of the council include, but
 588 are not limited to: researching and reviewing the role of small
 589 and minority businesses in the state's economy; reviewing issues
 590 and emerging topics relating to small and minority business
 591 economic development; studying the ability of financial markets
 592 and institutions to meet small business credit needs and
 593 determining the impact of government demands on credit for small
 594 businesses; assessing the implementation of s. 187.201(21)
 595 ~~187.201(22)~~, requiring a state economic development
 596 comprehensive plan, as it relates to small and minority
 597 businesses; assessing the reasonableness and effectiveness of
 598 efforts by any state agency or by all state agencies
 599 collectively to assist minority business enterprises; and
 600 advising the Governor, the secretary, and the Legislature on
 601 matters relating to small and minority business development
 602 which are of importance to the international strategic planning
 603 and activities of this state.

604 (5)~~(6)~~ On or before January 1 of each year, the council

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605 shall present an annual report to the secretary that sets forth
 606 in appropriate detail the business transacted by the council
 607 during the year and any recommendations to the secretary,
 608 including those to improve business opportunities for small and
 609 minority business enterprises.

610 Section 7. Section 287.115, Florida Statutes, is repealed.

611 Section 8. Section 403.7065, Florida Statutes, is
 612 repealed.

613 Section 9. This act shall take effect July 1, 2011.