

Government Operations Subcommittee

**Tuesday, March 8, 2011
8:00 AM
306 HOB**

Meeting Packet

**Dean Cannon
Speaker**

**Jimmy Patronis
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Government Operations Subcommittee

Start Date and Time: Tuesday, March 08, 2011 08:00 am

End Date and Time: Tuesday, March 08, 2011 10:00 am

Location: 306 HOB

Duration: 2.00 hrs

Consideration of the following bill(s):

HB 19 Compensation of County Officials by Mayfield
HB 65 Municipal Governing Body Meetings by Wood
CS/HB 277 Statutes of Limitations by Civil Justice Subcommittee, Goodson

Consideration of the following proposed committee bill(s):

PCB GVOPS 11-01 -- Open Government Sunset Review Act
PCB GVOPS 11-02 -- OGSR DJJ Employees and Family Members
PCB GVOPS 11-03 -- OGSR Biometric Identification Information
PCB GVOPS 11-04 -- OGSR Florida Center for Brain Tumor Research
PCB GVOPS 11-05 -- OGSR Court Monitors in Guardianship Proceedings
PCB GVOPS 11-06 -- OGSR Statewide Guardianship Office
PCB GVOPS 11-07 -- OGSR Interference with Custody
PCB GVOPS 11-08 -- Governor's Private Secretary
PCB GVOPS 11-09 -- Minority Business Certification Task Force

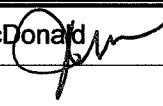
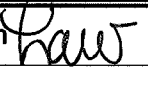
NOTICE FINALIZED on 03/04/2011 15:21 by Godwin.Chandra

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 19 Compensation of County Officials

SPONSOR(S): Mayfield and others

TIED BILLS: IDEN./SIM. BILLS: SB 870

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

SUMMARY ANALYSIS

Determining the compensation of Florida's county constitutional officers by state law was sanctioned by the State Constitution of 1885 and has been maintained in the State Constitution since the 1968 constitutional revision. The Legislature, however, did not authorize a salary compensation formula until 1973. Prior to that time, the authorization for changes in compensation for county constitutional officers required frequent legislative action.

The Legislature enacted chapter 145, F.S., to govern compensation of county officials. The intent for the legislative action was expressed as the need for a uniform salary law to replace the previous local law method of paying elected county officials, which was "haphazard, preferential, inequitable, and probably unconstitutional."

Current law does not permit a county commissioner, clerk of the circuit court, county comptroller, property appraiser, tax collector, sheriff, or supervisor of elections to reduce his or her salary or salary rate. In 2009, the law was amended to allow local school board members to reduce their salary rate on a voluntary basis.

The bill amends chapter 145, F.S., to authorize each member of a board of county commissioners, clerk of the circuit court, county comptroller, sheriff, supervisor of elections, property appraiser, and tax collector to voluntarily reduce his or her salary rate.

The fiscal impact is indeterminate. See "Fiscal Comments."

The bill takes effect July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Determining the compensation of Florida's county constitutional officers by state law was sanctioned by the State Constitution of 1885 and has been maintained in the State Constitution since the 1968 constitutional revision.¹ The Legislature, however, did not authorize a salary compensation formula until 1973. Prior to that time, the authorization for changes in compensation for county constitutional officers required frequent legislative action.

Persons Covered by Compensation Requirements

The Legislature enacted chapter 145, F.S., to govern compensation of county officials.² The intent for the legislative action was expressed as the need for a uniform salary law to replace the previous local law method of paying elected county officials, which was "haphazard, preferential, inequitable, and probably unconstitutional."³ Additionally, the Legislature specifically prohibited local special laws or general laws of local application pertaining to the compensation of members of boards of county commissioners, clerks of the circuit court, sheriffs, superintendents of schools, supervisors of elections, property appraisers, tax collectors, and district school board members.⁴

The law assumed that like offices would have similar duties and responsibilities and, therefore, based salary schedules, in large part, on differences in the population size of the respective county being served.⁵ The current salary compensation formula specifies that the latest official population estimates for each county serve as a major component of the salary computation. In addition to the population estimates, the salary compensation formula contains five other components:

- Base salary and group rate components for the separate officers specified in various parts of the statute.⁶
- Initial factor component is currently set in law as a constant numerical value.⁷
- Annual factor and cumulative annual factor, used in the salary formula calculations, which are certified by the Department of Management Services.⁸

Exceptions to Compensation Requirements

The compensation requirements apply to all designated officers in all counties of the state, except those officials:

- Whose salaries are not subject to being set by the Legislature because of the provisions of a county home rule charter; or
- In a county with a consolidated form of government as provided in chapter 67-1320, L.O.F.

No member of a governing body of a chartered county or a county with a consolidated form of government is to be considered the equivalent of a county commissioner for determining the compensation of the member under his or her respective county charter.^{9,10}

¹ Art. II, s. 5, Fla. Const.

² Officials specifically governed by chapter 145, F.S., are boards of county commissioners, clerks of the circuit court, county comptrollers, sheriffs, supervisors of elections, property appraisers, and tax collectors.

³ Section 145.011(2), F.S.

⁴ Section 145.16(2), F.S.

⁵ Section 145.011(4), F.S.

⁶ Sections 145.031, 145.051, 145.071, 145.09, 145.10, 145.11, 1001.395, and 1001.47, F.S.

⁷ Section 145.19(1)(c), F.S.

⁸ Section 145.19(2), F.S. Certification from the Department of Management Services is received by September of each year.

⁹ Sections 145.012 and 145.031(2), F.S.

¹⁰ According to the Florida Association of Counties, there are 20 counties falling under this exception: Alachua, Brevard, Broward, Charlotte, Clay, Columbia, Duval Hillsborough, Lee, Leon, Miami-Dade, Orange, Osceola, Palm Beach, Pinellas, Polk, Sarasota,

The law, however, provides that, regardless of charter county status, the property appraiser, clerk of the circuit court, superintendent of schools, sheriff, supervisor of elections, and tax collector who, if qualified, must receive a special qualification salary in addition to their salaries, are covered by chapter 145, F.S.¹¹ The requirement for special qualification salary would appear to exclude a comptroller since there is no provision for such in chapter 145, F.S.¹²

Ability to Reduce Salary Rate

Current law does not permit a county commissioner, clerk of the circuit court, county comptroller, property appraiser, tax collector, sheriff, or supervisor of elections covered under chapter 145, F.S., to reduce his or her salary or salary rate.

In 2008, the general counsel for the St. Lucie County Sheriff's Department, on behalf of the sheriff, sought an Attorney General's opinion to determine if the sheriff could voluntarily reduce his salary below that established in chapter 145, F.S. The Attorney General ruling stated:

The Legislature has prescribed the salary for the sheriff as a county officer and the sheriff does not have the authority to alter such compensation. Nothing, however, precludes a sheriff from donating his or her salary, or a portion thereof, to the county once the sheriff has received the statutorily prescribed salary pursuant to section 145.071, Florida Statutes.

Accordingly, I am of the opinion that a sheriff may not voluntarily reduce his salary below that established by Chapter 145, Florida Statutes.¹³

2009 and 2010 Amendments Affecting School Board Member Compensation

In 2009, s. 1001.395, F.S.,¹⁴ was amended to provide that, notwithstanding that section and s. 145.19, F.S., school board members may reduce their salary rate on a voluntary basis. For the 2010-2011 fiscal year, the section was further amended to provide that, notwithstanding that section and s. 145.19, F.S., the salary of each school board member shall be the amount calculated according to s. 1001.395(1), F.S., or the district's beginning salary for teachers who hold baccalaureate degrees, whichever is less.

Proposed Changes

Effective July 1, 2011, the bill authorizes each member of a board of county commissioners, clerk of the circuit county, county comptroller, sheriff, supervisor of elections, property appraiser, and tax collector covered by chapter 145, F.S., to voluntarily reduce his or her salary rate.

B. SECTION DIRECTORY:

Section 1. Amends s. 145.031, F.S., to authorize each member of a board of county commissioners to voluntarily reduce his or her salary rate.

Section 2. Amends s. 145.051, F.S., to authorize each clerk of the circuit court and each county comptroller to voluntarily reduce his or her salary rate.

Section 3. Amends s. 145.071, F.S., to authorize each sheriff to voluntarily reduce his or her salary rate.

Seminole, Volusia, and Wakulla. See www.fl-counties.com/Pages/About-Floridas-Counties/Charter-County-Information.aspx. Last visited February 26, 2011.

¹¹ Section 145.012, F.S.

¹² Sections 145.012 and 145.051, F.S.

¹³ Florida Attorney General Opinion 2008-28.

¹⁴ Section 1001.395, F.S., relates to district school board members and compensation.

Section 4. Amends s. 145.09, F.S., to authorize each supervisor of elections to voluntarily reduce his or her salary rate.

Section 5. Amends s. 145.10, F.S., to authorize each property appraiser to voluntarily reduce his or her salary rate.

Section 6. Amends s. 145.11, F.S., to authorize each tax collector to voluntarily reduce his or her salary rate.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. See "Fiscal Comments."

2. Expenditures:

Indeterminate. See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The number of persons who will voluntarily participate in a salary rate reduction, the amount of the rate reduction, and the dollar associated with the reduction is difficult to estimate. The Office of Economic and Demographic Research (EDR) provided a range of salaries of elected county constitutional officers for fiscal year 2010-2011.

According to EDR, the salary figures for consolidated and charter counties might not be accurate due to the salary methodologies used by those counties. The salary figures do not include any special qualification salary available for certification persons available under chapter 145, F.S, and EDR urges counties to review the figures. The range of salaries for informational purposes is as follows:

- Clerk of the Court \$89,618 to \$173,405
- Property Appraiser \$89,618 to \$173,405
- Tax Collector \$89,618 to \$173,405
- Sheriff \$98,214 to \$182,001
- Supervisor of Elections \$73,029 to \$153,975¹⁵

¹⁵ The Florida Legislature's Office of Economic and Demographic Research, *Salaries of Elected County Constitutional Officers and School District Officials for Fiscal Year 2010-2011 (September 2010)*, at 11-13.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

A bill to be entitled
 An act relating to compensation of county officials;
 amending ss. 145.031, 145.051, 145.071, 145.09, 145.10,
 and 145.11, F.S.; authorizing each member of a board of
 county commissioners, each clerk of the circuit court,
 county comptroller, each sheriff, each supervisor of
 elections, each property appraiser, and each tax collector
 to reduce his or her salary on a voluntary basis;
 providing an effective date.

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

Section 1. Section 145.031, Florida Statutes, is amended
 to read:

145.031 Board of county commissioners.—

(1) Each member of the board of county commissioners shall
 receive as salary the amount indicated, based on the population
 of his or her county. In addition, compensation shall be made
 for population increments over the minimum for each population
 group, which shall be determined by multiplying the population
 in excess of the minimum for the grouping times the group rate.

Pop.		Base	Group Rate
Group	County Pop. Range	Salary	
	Minimum	Maximum	

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

HB 19

2011

25	I	-0-	9,999	\$4,500	\$0.150
26	II	10,000	49,999	6,000	0.075
27	III	50,000	99,999	9,000	0.060
28	IV	100,000	199,999	12,000	0.045
29	V	200,000	399,999	16,500	0.015
30	VI	400,000	999,999	19,500	0.005
31	VII	1,000,000		22,500	0.000

32 (2) No member of a governing body of a chartered county or
 33 a county with a consolidated form of government shall be deemed
 34 to be the equivalent of a county commissioner for the purposes
 35 of determining the compensation of such member under his or her
 36 respective charter.

37 (3) Notwithstanding the provisions of this section or s.
 38 145.19, each member of the board of county commissioners may
 39 reduce his or her salary rate on a voluntary basis.

40 Section 2. Section 145.051, Florida Statutes, is amended
 41 to read:

42 145.051 Clerk of circuit court; county comptroller.—

43 (1) Each clerk of the circuit court and each county
 44 comptroller shall receive as salary the amount indicated, based
 45 on the population of his or her county. In addition, a

HB 19

2011

46 compensation shall be made for population increments over the
 47 minimum for each population group, which shall be determined by
 48 multiplying the population in excess of the minimum for the
 49 group times the group rate.

50

Pop. Group	County Pop. Range		Base Salary	Group Rate
---------------	-------------------	--	----------------	------------

51

Minimum	Maximum
---------	---------

52

I	-0-	49,999	\$21,250	\$0.07875
---	-----	--------	----------	-----------

53

II	50,000	99,999	24,400	0.06300
----	--------	--------	--------	---------

54

III	100,000	199,999	27,550	0.02625
-----	---------	---------	--------	---------

55

IV	200,000	399,999	30,175	0.01575
----	---------	---------	--------	---------

56

V	400,000	999,999	33,325	0.00525
---	---------	---------	--------	---------

57

VI	1,000,000		36,475	0.00400
----	-----------	--	--------	---------

58

59 (2) (a) There shall be an additional \$2,000 per year
 60 special qualification salary for each clerk of the circuit court
 61 who has met the certification requirements established by the
 62 Supreme Court. Any clerk of the circuit court who is certified
 63 during a calendar year shall receive in that year a pro rata
 64 share of the special qualification salary based on the remaining

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

HB 19

2011

90	I	-0-	49,999	\$23,350	\$0.07875
91	II	50,000	99,999	26,500	0.06300
92	III	100,000	199,999	29,650	0.02625
93	IV	200,000	399,999	32,275	0.01575
94	V	400,000	999,999	35,425	0.00525
95	VI	1,000,000		38,575	0.00400

96 (2) (a) There shall be an additional \$2,000 per year
 97 special qualification salary for each sheriff who has met the
 98 qualification requirements established by the Department of Law
 99 Enforcement. Any sheriff who so qualifies during a calendar year
 100 shall receive in that year a pro rata share of the special
 101 qualification salary based on the remaining period of the year.

102 (b) In order to qualify for the special qualification
 103 salary described in paragraph (a), the sheriff must complete the
 104 requirements specified in that paragraph within 6 years after
 105 first taking office.

106 (c) After a sheriff meets the requirements of paragraph
 107 (a), in order to remain qualified the sheriff shall thereafter
 108 be required to complete each year a course of continuing
 109 education as prescribed by the Department of Law Enforcement.

110 (3) Notwithstanding the provisions of this section or s.
 111 145.19, each sheriff may reduce his or her salary rate on a

112 voluntary basis.

113 Section 4. Section 145.09, Florida Statutes, is amended to
 114 read:

115 145.09 Supervisor of elections.—

116 (1) Each supervisor of elections shall receive as salary
 117 the amount indicated, based on the population of his or her
 118 county. In addition, a compensation shall be made for population
 119 increments over the minimum for each population group, which
 120 shall be determined by multiplying the population in excess of
 121 the minimum for the group times the group rate.

122

Pop. Group	County Pop. Range		Base Salary	Group Rate
	Minimum	Maximum		
I	-0-	49,999	\$17,228	\$0.075
II	50,000	99,999	20,228	0.060
III	100,000	199,999	23,228	0.025
IV	200,000	399,999	25,728	0.015
V	400,000	999,999	28,728	0.005
VI	1,000,000		31,728	0.004

130

131 (2) The above salaries are based upon a 5-day workweek. If
 132 a supervisor does not keep his or her office open 5 days per
 133 week, then the salary will be prorated accordingly.

134 (3) (a) There shall be an additional \$2,000 per year
 135 special qualification salary for each supervisor of elections
 136 who has met the certification requirements established by the
 137 Division of Elections of the Department of State. The Department
 138 of State shall adopt rules to establish the certification
 139 requirements. Any supervisor who is certified during a calendar
 140 year shall receive in that year a pro rata share of the special
 141 qualification salary based on the remaining period of the year.

142 (b) In order to qualify for the special qualification
 143 salary described in paragraph (a), the supervisor must complete
 144 the requirements established by the Division of Elections within
 145 6 years after first taking office.

146 (c) After a supervisor meets the requirements of paragraph
 147 (a), in order to remain certified the supervisor shall
 148 thereafter be required to complete each year a course of
 149 continuing education as prescribed by the division.

150 (4) Notwithstanding the provisions of this section or s.
 151 145.19, each supervisor of elections may reduce his or her
 152 salary rate on a voluntary basis.

153 Section 5. Section 145.10, Florida Statutes, is amended to
 154 read:

155 145.10 Property appraiser.—

156 (1) Each property appraiser shall receive as salary the
 157 amount indicated, based on the population of his or her county.

158 In addition, a compensation shall be made for population

159 increments over the minimum for each population group, which
 160 shall be determined by multiplying the population in excess of
 161 the minimum for the group times the group rate.

162

Pop. Group	County Pop. Minimum	Range Maximum	Base Salary	Group Rate
I	-0-	49,999	\$21,250	\$0.07875
II	50,000	99,999	24,400	0.06300
III	100,000	199,999	27,550	0.02625
IV	200,000	399,999	30,175	0.01575
V	400,000	999,999	33,325	0.00525
VI	1,000,000		36,475	0.00400

163

164

165

166

167

168

169

170

171 (2) (a) There shall be an additional \$2,000 per year
 172 special qualification salary for each property appraiser who has
 173 met the requirements of the Department of Revenue and has been
 174 designated a certified Florida property appraiser. Any property
 175 appraiser who is certified during a calendar year shall receive
 176 in that year a pro rata share of the special qualification
 177 salary based on the remaining period of the year. The department

178 shall establish and maintain a certified Florida property
 179 appraiser program.

180 (b) In order to qualify for the special qualification
 181 salary described in paragraph (a), the property appraiser must
 182 complete the requirements established by the Department of
 183 Revenue within 4 years after first taking office.

184 (c) After a property appraiser meets the requirements of
 185 paragraph (a), in order to remain certified the property
 186 appraiser shall thereafter be required to complete each year a
 187 course of continuing education as prescribed by the department.
 188 The executive director of the Department of Revenue may, at his
 189 or her discretion, waive the requirements of this paragraph for
 190 any property appraiser who has reached 60 years of age and who
 191 has been a property appraiser for 20 years.

192 (3) Notwithstanding the provisions of this section or s.
 193 145.19, each property appraiser may reduce his or her salary
 194 rate on a voluntary basis.

195 Section 6. Section 145.11, Florida Statutes, is amended to
 196 read:

197 145.11 Tax collector.—

198 (1) Each tax collector shall receive as salary the amount
 199 indicated, based on the population of his or her county. In
 200 addition, a compensation shall be made for population increments
 201 over the minimum for each population group, which shall be
 202 determined by multiplying the population in excess of the
 203 minimum for the group times the group rate.

204

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

HB 19

2011

Pop. Group	County Pop.	Range	Base Salary	Group Rate
	Minimum	Maximum		
I	-0-	49,999	\$21,250	\$0.07875
II	50,000	99,999	24,400	0.06300
III	100,000	199,999	27,550	0.02625
IV	200,000	399,999	30,175	0.01575
V	400,000	999,999	33,325	0.00525
VI	1,000,000		36,475	0.00400

213 (2) (a) There shall be an additional \$2,000 per year
 214 special qualification salary for each tax collector who has met
 215 the requirements of the Department of Revenue and has been
 216 designated a certified Florida tax collector. Any tax collector
 217 who is certified during a calendar year shall receive in that
 218 year a pro rata share of the special qualification salary based
 219 on the remaining period of the year. The department shall
 220 establish and maintain a certified Florida tax collector
 221 program.

222 (b) In order to qualify for the special qualification
 223 salary described in paragraph (a), the tax collector must

224 complete the requirements established by the Department of
 225 Revenue within 4 years after first taking office.

226 (c) After a tax collector meets the requirements of
 227 paragraph (a), in order to remain certified the tax collector
 228 shall thereafter be required to complete each year a course of
 229 continuing education as prescribed by the department.

230 (3) Notwithstanding the provisions of this section or s.
 231 145.19, each tax collector may reduce his or her salary rate on
 232 a voluntary basis.


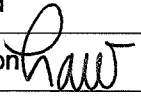
233 Section 7. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 65 Municipal Governing Body Meetings

SPONSOR(S): Wood

TIED BILLS: IDEN./SIM. BILLS: SB 298

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	11 Y, 1 N	Nelson	Hoagland
2) Government Operations Subcommittee		Thompson 	Williamson 
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The Florida Constitution and Statutes require that the exercise of extra-territorial powers by a municipality be provided by general or special law. These provisions have been interpreted to prohibit a municipality's governing body from holding meetings outside its boundaries absent enactment of a law to authorize such action.

HB 65 authorizes the governing body of a municipality with a population of 500 or less to hold its meetings within five miles of its jurisdictional boundary at a time and place as may be prescribed by ordinance or resolution.

The bill has no fiscal impact, and an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 2(c) of Art. VIII of the State Constitution requires that the exercise of extra-territorial powers by a municipality shall be as provided by general or special law. Section 166.021(3)(a), F.S., authorizes a municipal legislative body to adopt legislation concerning any subject matter upon which the Legislature may act, except for: “[t]he subjects of annexation, merger, and *exercise of extraterritorial power*, which require general or special law pursuant to s. 2(c), Art. VIII of the State Constitution.” [Emphasis added.]

Previously, the Florida Attorney General has opined that a municipality’s governing body may not hold meetings outside its jurisdictional boundaries unless authorized by general or special law, recognizing the Legislature’s role in authorizing extraterritorial powers. See, OAG 2003-03, advising that municipal councils may not hold meetings outside municipal limits, and that all acts and proceedings at such meetings are void in the absence of statutory authorization.

In 2008, the Legislature passed a local bill (ch. 2008-286, L.O.F.) authorizing the City of Belleair Beach’s governing board to hold meetings outside the municipality’s boundaries at such time and place as prescribed by ordinance, resolution or interlocal agreement. Language in the bill provided that the city council was encouraged to hold its meetings in close proximity to the people it serves.

Effect of Proposed Changes

HB 65 authorizes the governing body of a municipality with a population of 500 or less to hold its meetings within five miles of its jurisdictional boundary at such time and place as may be prescribed by ordinance or resolution.

Of the 412 municipalities in Florida, approximately 43 cities would be encompassed by this bill.¹ An extremely small community may not contain public buildings, access to other suitable structures, or a sufficient tax base to allow for the construction of a town hall. This bill would allow such municipalities to schedule official meetings in out-of-town locations.

Unlike the provision that requires the meetings of a board of county commissioners to be “held at any appropriate public place in the county....,”² there is no statutorily-prescribed location for municipal council meetings. Nonetheless, Florida’s Government in the Sunshine Law requires that the public be provided a reasonable opportunity to attend such meetings.³ The proposed distance of five miles does not appear to place an undue burden on citizens, particularly when viewed in the context of a large metropolitan area where one may need to travel a much greater distance in order to participate in a similar public meeting.

B. SECTION DIRECTORY:

Section 1: Creates s. 166.0213, F.S., relating to municipal governing body meetings.

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

¹ Estimates of Population by County and City in Florida: April 1, 2009. Bureau of Economic and Business Research, Warrington College of Business Administration, University of Florida.

² Section 125.001, F.S.

³ Article I, section 24(b) of the Florida Constitution, and section 286.011, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

This bill will allow the governing bodies of small municipalities in Florida to hold their meetings outside the city boundaries. This will alleviate the necessity of building and maintaining a town hall in cities where a meeting place cannot otherwise be secured.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Florida's Government in the Sunshine Law requires that the public be provided a reasonable opportunity to attend open (board or commission) meetings.⁴ At least one public meeting 100 miles from the relevant jurisdiction has been held to be a violation of the Sunshine Laws because it was decided that affected citizens were not given reasonable opportunity to attend.⁵ However, the proposed distance of five miles does not appear to place an undue burden on citizens, and is therefore likely consistent with the constitutional and statutory requirements for public meetings.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

⁴ Article I, section 24(b) of the Florida Constitution, and section 286.011, F.S.

⁵ *Rhea v. School Bd. of Alachua County*, 636 So.2d 1383 (Fla. 1st DCA 1994).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

HB 65

2011

1 A bill to be entitled
 2 An act relating to municipal governing body meetings;
 3 creating s. 166.0213, F.S.; authorizing the governing
 4 bodies of certain municipalities to hold meetings within
 5 specified boundaries; providing an effective date.

6
 7 Be It Enacted by the Legislature of the State of Florida:

8
 9 Section 1. Section 166.0213, Florida Statutes, is created
 10 to read:

11 166.0213 Governing body meetings.—The governing body of a
 12 municipality having a population of 500 or fewer residents may
 13 hold meetings within 5 miles of the exterior jurisdictional
 14 boundary of the municipality at such time and place as may be
 15 prescribed by ordinance or resolution.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 277 Statutes of Limitations
SPONSOR(S): Civil Justice Subcommittee; Goodson
TIED BILLS: None **IDEN./SIM. BILLS:** SB 594

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Billmeier	Bond
2) Government Operations Subcommittee		Thompson	Williamson <i>Raw</i>
3) Judiciary Committee			

SUMMARY ANALYSIS

A statute of limitations is a time period after which no legal case can be brought relating to an injury or wrong. Current law provides that the statute of limitations for a wrongful death action against the state or one of its political subdivisions is four years; but, the statute of limitations for a wrongful death action brought against a person is two years.

This bill changes the statute of limitations in a wrongful death action brought against the state or one of its agencies or subdivisions from four years to two years.

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

The bill is effective July 1, 2011, applying to causes of action accruing on or after that date.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Wrongful Death Actions

Sections 768.16-768.26, F.S., comprise the "Florida Wrongful Death Act" ("Wrongful Death Act"). The Wrongful Death Act provides that when a death is caused by negligence, wrongful act, default, or breach of contract, the person responsible is liable for damages.¹ The action may be brought by the decedent's personal representative and recovery is for the benefit of the decedent's estate and survivors.² Damages recoverable under the Wrongful Death Act include:

- The person who paid medical and funeral expenses may recover those expenses;
- Each survivor may recover the value of lost support and services;
- Each survivor may recover the value of future support and services;
- A spouse may recover for lost companionship and protection and for mental pain and suffering;
- Minor children, and all children if there is no surviving spouse, may recover for lost companionship, instruction, and guidance and for mental pain and suffering;
- Each parent of a deceased minor child may recover for mental pain and suffering;
- Each parent of a deceased adult child may recover for mental pain and suffering if there are no other survivors; and
- The decedent's estate may recover lost earnings.³

Statutes of Limitations

A statute of limitations is a time period after which no legal case can be brought relating to an injury or wrong. Section 95.11, F.S., sets forth time limitations for commencing civil actions in Florida. The time limitations range from 30 days to 20 years. Section 95.11(4)(d), F.S., provides that actions for wrongful death must be commenced within two years of the death from when the cause of action accrues.⁴ This is usually the date of the decedent's death.

Section 768.28, F.S., provides for tort actions against the state and its subdivisions. Section 768.28(14), F.S., creates special limitations periods for actions against the state and its subdivisions. It provides:

Every claim against the state or one of its agencies or subdivisions for damages for a negligent or wrongful act or omission pursuant to this section shall be forever barred unless the civil action is commenced by filing a complaint in the court of appropriate jurisdiction within 4 years after such claim accrues; except that an action for contribution must be commenced within the limitations provided in s. 768.31(4), and an action for damages arising from medical malpractice must be commenced within the limitations for such an action in s. 95.11(4).

In *Beard v. Hambrick*, 396 So. 2d 708 (Fla. 1981), the Florida Supreme Court ruled that the four year statute of limitations contained in s. 768.28, F.S., is applicable to actions against political subdivisions of the state rather than the two year statute of limitations relating to wrongful death actions in s. 95.11, F.S.

¹ See s. 768.19, F.S.

² See s. 768.20, F.S.

³ See s. 768.21, F.S.

⁴ Section 95.031, F.S., provides that the statute of limitations begins to run from the time that the cause of action accrues and provides that the cause of action accrues once the last element constituting the cause of action occurs.

Effect of Proposed Changes

This bill provides that the two year statute of limitations at s. 95.11(4), F.S., applies to wrongful death actions brought against the state or one of its agencies or political subdivisions instead of the four year statute of limitations provision contained in s. 768.28, F.S.

This bill takes effect on July 1, 2011, and applies to causes of action accruing on or after that date.

B. SECTION DIRECTORY:

Section 1: Amends s. 768.28, F.S., reducing the time period applicable to actions brought against the state or its agencies or subdivisions for wrongful death, from four to two years.

Section 2: Provides that the bill takes effect July 1, 2011, and shall apply to causes of action accruing on or after that date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 9, 2011, the Civil Justice Subcommittee adopted an amendment relating to the effective date. The bill was reported favorably as a committee substitute.

1 A bill to be entitled
 2 An act relating to statutes of limitations; amending s.
 3 768.28, F.S.; providing that actions for wrongful death
 4 against the state or one of its agencies or subdivisions
 5 must be brought within the period applicable to actions
 6 brought against other defendants; providing applicability;
 7 providing an effective date.

8

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

10

11 Section 1. Subsection (14) of section 768.28, Florida
 12 Statutes, is amended to read:

13 768.28 Waiver of sovereign immunity in tort actions;
 14 recovery limits; limitation on attorney fees; statute of
 15 limitations; exclusions; indemnification; risk management
 16 programs.—

17 (14) Every claim against the state or one of its agencies
 18 or subdivisions for damages for a negligent or wrongful act or
 19 omission pursuant to this section shall be forever barred unless
 20 the civil action is commenced by filing a complaint in the court
 21 of appropriate jurisdiction within 4 years after such claim
 22 accrues; except that an action for contribution must be
 23 commenced within the limitations provided in s. 768.31(4), and
 24 an action for damages arising from medical malpractice or
 25 wrongful death must be commenced within the limitations for such
 26 actions ~~an action~~ in s. 95.11(4).

27 Section 2. This act shall take effect July 1, 2011, and
 28 shall apply to causes of action accruing on or after that date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 11-01 Open Government Sunset Review Act

SPONSOR(S): Government Operations Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Williamson <i>Raw</i>	Williamson <i>Raw</i>

SUMMARY ANALYSIS

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

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

This bill corrects those outdated cross-references.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

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

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

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

History of the Act

The Act originally was created in 1984 and codified at s. 119.14, F.S.² At that time it set forth a legislative review process every 10 years after the creation of an exemption.³ In 1995, the original Open Government Sunset Review Act was repealed⁴ and replaced with the Open Government Sunset Review Act of 1995.⁵ The 1995 Act abolished the 10 year legislative review process and replaced it with a onetime review process the fifth year after creation or substantial amendment of an exemption.⁶ In 2005, the 1995 Act was amended to change the name back to the Open Government Sunset Review Act. In addition, redundant language was removed from the 1995 Act.⁷

Effect of Bill

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

B. SECTION DIRECTORY:

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

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

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

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

¹ Section 119.15, F.S.

² Section 8 of chapter 84-298, L.O.F.

³ Section 119.14(3)(a), F.S.

⁴ Section 1 of chapter 95-217, L.O.F.

⁵ Section 2 of chapter 95-217, L.O.F.

⁶ Section 119.15(3)(a), F.S.

⁷ Section 37 of chapter 2005-251, L.O.F.

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

1 A bill to be entitled
 2 An act relating to the Open Government Sunset Review Act;
 3 amending ss. 27.151, 378.406, 400.0077, 403.111, and
 4 655.0321, F.S.; correcting cross-references to a repealed
 5 section of Florida Statutes; providing an effective date.

6
 7 Be It Enacted by the Legislature of the State of Florida:

8
 9 Section 1. Section 27.151, Florida Statutes, is amended to
 10 read:

11 27.151 Confidentiality of specified executive orders;
 12 criteria.—

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

19 (2) The Governor shall base his or her decision to make an
 20 executive order confidential on the criteria set forth in s.
 21 119.15(6)(b) ~~119.14~~.

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

BILL ORIGINAL YEAR

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

34 Section 2. Paragraph (a) of subsection (1) of section
 35 378.406, Florida Statutes, is amended to read:

36 378.406 Confidentiality of records; availability of
 37 information.—

38 (1)(a) Any information relating to prospecting, rock
 39 grades, or secret processes or methods of operation which may be
 40 required, ascertained, or discovered by inspection or
 41 investigation shall be exempt from the provisions of s.

42 119.07(1), shall not be disclosed in public hearings, and shall
 43 be kept confidential by any member, officer, or employee of the
 44 department, if the applicant requests the department to keep
 45 such information confidential and informs the department of the
 46 basis for such confidentiality. Should the secretary determine
 47 that such information requested to be kept confidential shall
 48 not be kept confidential, the secretary shall provide the
 49 operator with not less than 30 days' notice of his or her intent
 50 to release the information. When making his or her
 51 determination, the secretary shall consider the public purposes
 52 specified in s. 119.15(6)(b) ~~119.14(4)(b)~~.

53 Section 3. Paragraph (c) of subsection (1) of section
 54 400.0077, Florida Statutes, is amended to read:

55 400.0077 Confidentiality.—

56 (1) The following are confidential and exempt from the

BILL

ORIGINAL

YEAR

57 provisions of s. 119.07(1):

58 (c) Any other information about a complaint, including any
 59 problem identified by an ombudsman council as a result of an
 60 investigation, unless an ombudsman council determines that the
 61 information does not meet any of the criteria specified in s.
 62 119.15(6)(b) ~~119.14(4)(b)~~; or unless the information is to
 63 collect data for submission to those entities specified in s.
 64 712(c) of the federal Older Americans Act for the purpose of
 65 identifying and resolving significant problems.

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

68 403.111 Confidential records.—

69 (1) Any information, other than effluent data and those
 70 records described in 42 U.S.C. s. 7661a(b)(8), relating to
 71 secret processes or secret methods of manufacture or production,
 72 or relating to costs of production, profits, or other financial
 73 information which is otherwise not public record, which may be
 74 required, ascertained, or discovered by inspection or
 75 investigation shall be exempt from the provisions of s.
 76 119.07(1), shall not be disclosed in public hearings, and shall
 77 be kept confidential by any member, officer, or employee of the
 78 department, upon a showing satisfactory to the department that
 79 the information should be kept confidential. The person from
 80 whom the information is obtained must request that the
 81 department keep such information confidential and must inform
 82 the department of the basis for the claim of confidentiality.
 83 The department shall, subject to notice and opportunity for
 84 hearing, determine whether the information requested to be kept

BILL

ORIGINAL

YEAR

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

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

91 655.0321 Restricted access to certain hearings,
 92 proceedings, and related documents.—The office shall consider
 93 the public purposes specified in s. 119.15(6)(b) ~~119.14(4)(b)~~ in
 94 determining whether the hearings and proceedings conducted
 95 pursuant to s. 655.033 for the issuance of cease and desist
 96 orders and s. 655.037 for the issuance of suspension or removal
 97 orders shall be closed and exempt from the provisions of s.
 98 286.011, and whether related documents shall be confidential and
 99 exempt from the provisions of s. 119.07(1).

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 11-02 OGSR DJJ Employees and Family Members

SPONSOR(S): Government Operations Subcommittee

TIED BILLS: IDEN./SIM. BILLS: SB 600

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

SUMMARY ANALYSIS

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

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

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

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

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

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

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

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

Public Record Exemptions for Identification and Location Information

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

Public Record Exemption under Review

In 2006, the Legislature added certain personnel of the Department of Juvenile Justice (DJJ or department) to the public record exemption.⁵ The following information is exempt⁶ from public records requirements:

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

¹ Section 119.15, F.S.

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

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

⁴ See s. 119.071(4)(d), F.S.

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

⁶ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

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

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

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

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

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

Effect of Bill

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

B. SECTION DIRECTORY:

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

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

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 119.071, F.S., which
 4 provides an exemption from public records requirements for
 5 identification and location information of certain current
 6 and former employees of the Department of Juvenile Justice
 7 and their family members; revising the job classifications
 8 to reflect those classifications used by the department;
 9 saving the exemption from repeal under the Open Government
 10 Sunset Review Act; removing the scheduled repeal of the
 11 exemption; providing an effective date.

12

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

14

15 Section 1. Paragraph (d) of subsection (4) of section
 16 119.071, Florida Statutes, is amended to read:

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

19 (4) AGENCY PERSONNEL INFORMATION.—

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

BILL

ORIGINAL

YEAR

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

36 | b. The home addresses, telephone numbers, and photographs
 37 | of firefighters certified in compliance with s. 633.35; the home
 38 | addresses, telephone numbers, photographs, and places of
 39 | employment of the spouses and children of such firefighters; and
 40 | the names and locations of schools and day care facilities
 41 | attended by the children of such firefighters are exempt from s.
 42 | 119.07(1).

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

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

BILL

ORIGINAL

YEAR

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

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

BILL

ORIGINAL

YEAR

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

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

102 | g. The home addresses, telephone numbers, and photographs
 103 | of current or former code enforcement officers; the names, home
 104 | addresses, telephone numbers, and places of employment of the
 105 | spouses and children of such personnel; and the names and
 106 | locations of schools and day care facilities attended by the
 107 | children of such personnel are exempt from s. 119.07(1) and s.
 108 | 24(a), Art. I of the State Constitution.

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

BILL

ORIGINAL

YEAR

113 children of such persons; and the names and locations of schools
 114 and day care facilities attended by the children of such persons
 115 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 116 Constitution, if the guardian ad litem provides a written
 117 statement that the guardian ad litem has made reasonable efforts
 118 to protect such information from being accessible through other
 119 means available to the public. This sub-subparagraph is subject
 120 to the Open Government Sunset Review Act in accordance with s.
 121 119.15 and shall stand repealed on October 2, 2015, unless
 122 reviewed and saved from repeal through reenactment by the
 123 Legislature.

124 i. The home addresses, telephone numbers, and photographs
 125 of current or former juvenile probation officers, juvenile
 126 probation supervisors, detention superintendents, assistant
 127 detention superintendents, ~~senior~~ juvenile justice detention
 128 officers I and II, juvenile justice detention officer
 129 supervisors, juvenile justice residential officers, juvenile
 130 justice residential officer supervisors I and II, juvenile
 131 justice counselors, juvenile justice counselor supervisors,
 132 human services counselor administrators, senior human services
 133 counselor administrators ~~juvenile detention officers, house~~
 134 ~~parents I and II, house parent supervisors, group treatment~~
 135 ~~leaders, group treatment leader supervisors, rehabilitation~~
 136 therapists, and social services counselors of the Department of
 137 Juvenile Justice; the names, home addresses, telephone numbers,
 138 and places of employment of spouses and children of such
 139 personnel; and the names and locations of schools and day care
 140 facilities attended by the children of such personnel are exempt

BILL

ORIGINAL

YEAR

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

146 | j. The home addresses, telephone numbers, and photographs
 147 | of current or former public defenders, assistant public
 148 | defenders, criminal conflict and civil regional counsel, and
 149 | assistant criminal conflict and civil regional counsel; the home
 150 | addresses, telephone numbers, and places of employment of the
 151 | spouses and children of such defenders or counsel; and the names
 152 | and locations of schools and day care facilities attended by the
 153 | children of such defenders or counsel are exempt from s.

154 | 119.07(1) and s. 24(a), Art. I of the State Constitution. This
 155 | sub-subparagraph is subject to the Open Government Sunset Review
 156 | Act in accordance with s. 119.15 and shall stand repealed on
 157 | October 2, 2015, unless reviewed and saved from repeal through
 158 | reenactment by the Legislature.

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 11-03 OGSR Biometric Identification Information

SPONSOR(S): Government Operations Subcommittee

TIED BILLS: IDEN./SIM. **BILLS:** SB 602

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Williamson <i>haw</i>	Williamson <i>haw</i>

SUMMARY ANALYSIS

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

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

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

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

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

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

Public Record Exemption under Review

In 2006, the Legislature created a general public record exemption for biometric identification information held by an agency⁴ before, on, or after July 1, 2006.⁵ The information is made exempt⁶ from public records requirements and the exemption applies retroactively. Biometric identification information means any record of friction ridge detail, fingerprints,⁷ palm prints, and footprints.

¹ Section 119.15, F.S.

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

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

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

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

⁶ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

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

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

Effect of Bill

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

B. SECTION DIRECTORY:

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 119.071, F.S., which
 4 provides an exemption from public records requirements for
 5 biometric identification information held by an agency;
 6 reorganizing the exemption; saving the exemption from
 7 repeal under the Open Government Sunset Review Act;
 8 removing the scheduled repeal of the exemption; providing
 9 an effective date.

10

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

12

13 Section 1. Paragraph (g) of subsection (5) of section
 14 119.071, Florida Statutes, is amended to read:

15 119.071 General exemptions from inspection or copying of
 16 public records.—

17 (5) OTHER PERSONAL INFORMATION.—

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

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

24 2.b. Fingerprints;

25 3.c. Palm prints; and

26 4.d. Footprints.

27 ~~2. This paragraph is subject to the Open Government Sunset~~
 28 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~

BILL

ORIGINAL

YEAR

29 ~~on October 2, 2011, unless reviewed and saved from repeal~~
30 ~~through reenactment by the Legislature.~~

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Williamson <i>Raw</i>	Williamson <i>Raw</i>

SUMMARY ANALYSIS

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

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

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

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

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

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

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

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

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

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

Florida Center for Brain Tumor Research

The Florida Center for Brain Tumor Research (center) is established within the Evelyn F. and William L. McKnight Brain Institute of the University of Florida.⁴ The goal of the center is to find cures for brain tumors⁵ and its purpose is to:

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

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

¹ Section 119.15, F.S.

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

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

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

⁵ Section 381.853(4)(b), F.S.

⁶ Section 381.853(4)(a), F.S.

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

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

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

Public Record Exemption under Review

In 2006, the Legislature created a public record exemption for certain information held by the Florida Center for Brain Tumor Research (center).¹² The following information is confidential and exempt¹³ from public records requirements:

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

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

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

The center has requested that the exemption be revised to:

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

Effect of Bill

The bill reenacts and expands the public record exemption for the center. It expands the public record exemption by providing that personal identifying information of a donor to the central repository for brain tumor biopsies or the brain tumor registry¹⁸ is confidential and exempt. This change is considered an expansion of the current exemption because it includes personal identifying information of a donor in

⁹ Section 381.853(5), F.S.

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

¹¹ *Id.* at question 2.a.

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

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

¹⁴ Section 381.8531(1)(a), F.S.

¹⁵ Section 381.8531(1)(b), F.S.

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

¹⁷ *Id.* at questions 4.c. and 7.a.

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

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

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

- Submit to the center a research plan that has been approved by an institutional review board¹⁹ and that specifies the exact nature of the information requested, intended use of the information, and reason that the research could not practicably be conducted without the information;
- Sign a confidentiality agreement with the center;
- Maintain the confidentiality of the personal identifying information or the information that is otherwise confidential or exempt pursuant to the laws of another state or nation or the Federal Government; and
- Destroy the confidential information to the extent permitted by law and after the research has concluded.

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

B. SECTION DIRECTORY:

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

Section 2 provides a public necessity statement.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

¹⁹ An institutional review board is an appropriately constituted group that has been formally designated to review and monitor biomedical research involving human subjects.

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

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

Public Necessity Statement

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

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 381.8531, F.S.; providing
 4 that personal identifying information of a donor to the
 5 central repository for brain tumor biopsies or the brain
 6 tumor registry of the Florida Center for Brain Tumor
 7 Research is confidential and exempt from public records
 8 requirements; providing for retroactive application of the
 9 public record exemption; providing an exception to the
 10 exemption for a person engaged in bona fide research
 11 provided certain conditions are met; providing for future
 12 legislative review and repeal of the exemption under the
 13 Open Government Sunset Review Act; providing a statement
 14 of public necessity; providing an effective date.

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

17
 18 Section 1. Section 381.8531, Florida Statutes, is amended
 19 to read:

20 381.8531 Florida Center for Brain Tumor Research; public
 21 records exemption.—

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

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

BILL

ORIGINAL

YEAR

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

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

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

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

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

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

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

51 Section 2. The Legislature finds that it is a public
 52 necessity that personal identifying information pertaining to a
 53 donor to the central repository for brain tumor biopsies or the
 54 brain tumor registry of the Florida Center for Brain Tumor
 55 Research pursuant to s. 381.853, Florida Statutes, be made
 56 confidential and exempt from public records requirements. Brain

BILL

ORIGINAL

YEAR

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 11-05 OGSR Court Monitors in Guardianship Proceedings

SPONSOR(S): Government Operations Subcommittee

TIED BILLS: IDEN./SIM. BILLS: SB 568

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Williamson <i>haw</i>	Williamson <i>haw</i>

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.

A court monitor or an emergency court monitor may be appointed by a court upon inquiry by an interested person or upon its own motion. A monitor has the authority to investigate, seek information, examine documents, and interview the ward. The monitor must report his or her findings to the court. A monitor may receive a reasonable fee as determined by the court and paid from the property of the ward.

Current law provides public record exemptions for certain judicial records relating to court monitors in guardianship proceedings. The order of any court appointing a court monitor is confidential and exempt from public records requirements and an order appointing a court monitor on an emergency basis is exempt only. Reports of a court monitor or an emergency court monitor relating to the medical condition, financial affairs, or mental health of the ward are confidential and exempt from public records requirements. Such reports may be available for inspection as determined by a court or upon a showing of good cause. The public record exemptions expire if a court makes a finding of probable cause; however, information otherwise made confidential or exempt retains its status. Court determinations relating to a finding of no probable cause and court orders finding no probable cause in the nonemergency and emergency court monitor contexts also are confidential and exempt from public records requirements. However, the court may allow access upon a showing of good cause.

The bill reenacts and reorganizes the public record exemptions, which will repeal on October 2, 2011, if this bill does not become law. The bill removes the confidential status of court orders appointing nonemergency court monitors for consistency while retaining the exempt status of such orders. It also removes reference to "court determination relating to a finding of no probable cause" with regards to determinations and orders finding no probable cause. This reference is removed because, in practice, the probable cause determination is contained in a written order included in the guardianship file. In essence, it simplifies the exemption by clearly stating any order finding no probable cause is confidential and exempt from public records requirements.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review 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.

Court Records

Florida courts have consistently held that the judiciary is not an "agency" for purposes of the Public Records Act.^{4,5} The Florida Supreme Court, however, has found that "both civil and criminal proceedings in Florida are public events" and that it will "adhere to the well established common law right of access to court proceedings and records."⁶ Furthermore, there is a constitutional guarantee of access to judicial records established in the Florida Constitution.⁷ The constitutional provision provides for public access to judicial records, except for those records expressly exempted by the State Constitution, Florida law in effect on July 1, 1993, court rules in effect on November 3, 1992, or by future acts of the Legislature in accordance with the Constitution.⁸

Guardianship

The intent of the Florida Guardianship Law⁹ is to provide the least restrictive form of guardianship necessary to provide assistance to a person who is not fully capable of taking care of his or her own needs.¹⁰

¹ Section 119.15, F.S.

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

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

⁴ Chapter 119, F.S.

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

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

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

⁸ Section 24(c) and (d), Art. I of the State Constitution.

⁹ Chapter 744, F.S.

¹⁰ Section 744.1012, F.S.

Any person may file, under oath, a petition for determination of incapacity alleging that a person is incapacitated.¹¹ Within five days after a petition for determination of incapacity has been filed, a court must appoint an examining committee comprised of three health care professionals to examine and report the condition of the alleged incapacitated person.¹² If a majority of the examining committee members determine the alleged incapacitated person is not incapacitated, the court must dismiss the petition for determination of incapacity.¹³ If a majority of the members determine the alleged incapacitated person is incapacitated, the court must hold a hearing on the petition. If, after a hearing, the court determines a person is incapacitated, the court also must find that alternatives to guardianship were considered and that no alternatives to guardianship sufficiently address the problems of the incapacitated person and appoint a guardian.¹⁴

Authority of a Guardian

An order appointing a guardian must state the nature of the guardianship as either plenary¹⁵ or limited.¹⁶ If the nature is limited, the order must state that the guardian may exercise only those delegable rights that have been removed from the incapacitated person and specifically delegated to the guardian. Finally, the order must state the specific powers and duties of the guardian.¹⁷

The order must preserve an incapacitated person's right to make decisions to the extent that he or she is able to do so.¹⁸ A guardian is empowered with the authority to protect the assets of the ward and to use the ward's property to provide for his or her care. Some of the powers of the guardian may be exercised only with court approval.¹⁹

Court Monitoring in Guardianship Cases

Nonemergency Court Monitors

A court monitor may be appointed by a court upon inquiry by an interested person or upon its own motion. A family member or any person with a personal interest in the proceedings may not serve as a court monitor. The order appointing the monitor must be served upon the guardian, the ward, and any other person determined by the court.²⁰

A court monitor has the authority to investigate, seek information, examine documents, and interview the ward. The court monitor must report his or her findings to the court.²¹ If it appears from the monitor's report that further action by the court is necessary to protect the ward's interests, the court must hold a hearing with notice and enter any order necessary to protect the ward.²² A monitor may receive a reasonable fee as determined by the court and paid from the property of the ward. If the court determines that a motion to appoint a court monitor was made in bad faith, the court may assess the costs of the proceeding, including attorney's fees, against the movant.²³

¹¹ Section 744.331(1), F.S.

¹² Section 744.331(3), F.S.

¹³ Section 744.331(4), F.S.

¹⁴ See s. 744.331(6)(b) and (f), F.S.

¹⁵ Section 744.102(9)(b), F.S., defines "plenary guardian" to mean "a person who has been appointed by the court to exercise all delegable legal rights and powers of the ward after the court has found that the ward lacks the capacity to perform all of the tasks necessary to care for his or her person or property."

¹⁶ Section 744.102(9)(a), F.S., defines "limited guardian" to mean "a guardian who has been appointed by the court to exercise the legal rights and powers specifically designated by court order entered after the court has found that the ward lacks the capacity to do some, but not all, of the tasks necessary to care for his or her person or property, or after the person has voluntarily petitioned for appointment of a limited guardian."

¹⁷ Section 744.344(1), F.S.

¹⁸ Section 744.344(2), F.S.

¹⁹ Section 744.441, F.S.

²⁰ Section 744.107(1), F.S.

²¹ Section 744.107(2), F.S.

²² Section 744.107(3), F.S.

²³ Section 744.107(4), F.S.

Emergency Court Monitors

Upon inquiry of an interested person or upon its own motion, the court may appoint a court monitor on an emergency basis without providing notice to the guardian, the ward, or other interested parties. The court must specifically find that:

- There appears to be imminent danger that the physical or mental health or safety of the ward will be seriously impaired; or
- The ward's property is in danger of being wasted, misappropriated, or lost unless immediate action is taken.²⁴

The authority of a court monitor appointed on an emergency basis expires 60 days after the date of appointment or upon a finding of no probable cause, whichever occurs first. However, the authority of such monitor may be extended for an additional 30 days upon a showing that the emergency conditions still exist.²⁵

Within 15 days after the entry of the order appointing a court monitor on an emergency basis, such monitor must file his or her report²⁶ of findings and recommendations to the court.²⁷ The court reviews the report and determines whether there is probable cause to take further action to protect the ward or property of the ward.²⁸ If the court finds probable cause, it must issue an order to show cause to the guardian or other respondent including the specific facts constituting the conduct charged and requiring the respondent to appear before the court to address the allegations.²⁹ Following the hearing on the order to show cause, the court may impose sanctions on the respondent and take any other action necessary to protect the ward.³⁰

An emergency court monitor may receive a reasonable fee as determined by the court and paid from the property of the ward.³¹ If the court determines that a motion to appoint an emergency court monitor was made in bad faith, the court may assess the costs of the proceeding, including attorney's fees, against the movant.³²

Public Record Exemption under Review

Current law provides public record exemptions for certain judicial records related to court monitors in guardianship proceedings.³³

The order of any court appointing a court monitor is confidential and exempt³⁴ from public records requirements³⁵ while an order appointing a court monitor on an emergency basis is exempt only.³⁶ Reports of a court monitor or an emergency court monitor relating to the medical condition, financial affairs, or mental health of the ward are confidential and exempt from public records requirements.³⁷ Such reports may be available for inspection as determined by a court or upon a showing of good

²⁴ Section 744.1075(1)(a), F.S.

²⁵ Section 744.1075(1)(b), F.S.

²⁶ The report must be verified and may be supported by documents or other evidence.

²⁷ Section 744.1075(2), F.S.

²⁸ Section 744.1075(3), F.S.

²⁹ Section 744.1075(4)(a), F.S.

³⁰ Section 744.1075(4)(c), F.S.

³¹ No full-time state, county, or municipal employee or officer may be paid a fee for services as an emergency court monitor.

³² Section 744.1075(5), F.S.

³³ Chapter 2006-129, L.O.F.; codified as s. 744.1076, F.S.

³⁴ 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).

³⁵ Section 744.1076(1)(a), F.S.

³⁶ Section 744.1076(2)(a), F.S.

³⁷ Section 744.1076(1)(b) and (2)(b), F.S.

cause.³⁸ The public record exemptions expire if a court makes a finding of probable cause; however, information otherwise made confidential or exempt retains its status.³⁹

Court determinations relating to a finding of no probable cause and court orders finding no probable cause in the nonemergency and emergency court monitor contexts also are confidential and exempt from public records requirements. However, the court may allow access upon a showing of good cause.⁴⁰

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2011, unless reenacted by the Legislature.⁴¹

Effect of Bill

The bill removes the repeal date, thereby reenacting the public record exemptions. It reorganizes the section to group like provisions.

The bill removes the confidential status of court orders appointing nonemergency court monitors for consistency while retaining the exempt status of such orders. The change also allows nonemergency court monitors to share the order with others, as necessary, to aid in the monitor's investigation.

The bill removes reference to "court determination relating to a finding of no probable cause" with regards to determinations and orders finding no probable cause. This reference is removed because, in practice, the probable cause determination is contained in a written order included in the guardianship file. In essence, the bill simplifies the exemption by clearly stating any order finding no probable cause is confidential and exempt from public records requirements.

B. SECTION DIRECTORY:

Section 1 amends s. 744.1076, F.S., to reenact the public record exemptions for court records relating to court monitors in guardianship proceedings.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

³⁸ *Id.*

³⁹ Section 744.1076(1)(c) and (2)(c), F.S.

⁴⁰ Section 744.1076(3), F.S.

⁴¹ Section 744.1076(4), F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

A bill to be entitled
 An act relating to a review under the Open Government
 Sunset Review Act; amending s. 744.1076, F.S., relating to
 public record exemptions for court records relating to
 court monitors in guardianship proceedings; consolidating
 provisions; providing that orders appointing nonemergency
 court monitors are exempt rather than confidential and
 exempt; providing that only court orders finding no
 probable cause are confidential and exempt; saving the
 exemptions from repeal under the Open Government Sunset
 Review Act; removing the scheduled repeal of the
 exemption; providing an effective date.

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

Section 1. Section 744.1076, Florida Statutes, is amended
 to read:

744.1076 Court orders appointing court monitors and
 emergency court monitors; reports of court monitors; orders
finding findings of no probable cause; public records
 exemptions.—

(1) (a) The order of any court appointing a court monitor
 pursuant to s. 744.107 or an emergency court monitor pursuant to
s. 744.1075 is ~~confidential and~~ exempt from ~~s. 119.07(1) and s.~~
 24(a), Art. I of the State Constitution.

(b) The reports of an appointed court monitor or emergency
court monitor relating to the medical condition, financial
 affairs, or mental health of the ward ~~that are required pursuant~~

BILL

ORIGINAL

YEAR

29 | ~~to s. 744.107~~ are confidential and exempt from ~~s. 119.07(1)~~ and
 30 | s. 24(a), Art. I of the State Constitution. Such reports may be
 31 | subject to inspection as determined by the court or upon a
 32 | showing of good cause.

33 | (c) The public records exemptions provided in this
 34 | subsection expire if a court makes a finding of probable cause,
 35 | except that information otherwise made confidential or exempt
 36 | shall retain its confidential or exempt status.

37 | ~~(2)(a) The order of any court appointing a court monitor~~
 38 | ~~on an emergency basis pursuant to s. 744.1075 is exempt from s.~~
 39 | ~~119.07(1) and s. 24(a), Art. I of the State Constitution.~~

40 | ~~(b) The reports of a court monitor appointed on an~~
 41 | ~~emergency basis relating to the medical condition, financial~~
 42 | ~~affairs, or mental health of the ward that are required pursuant~~
 43 | ~~to s. 744.1075 are confidential and exempt from s. 119.07(1) and~~
 44 | ~~s. 24(a), Art. I of the State Constitution. Such reports may be~~
 45 | ~~subject to inspection as determined by the court or upon a~~
 46 | ~~showing of good cause.~~

47 | ~~(c) The public records exemptions provided in this~~
 48 | ~~subsection expire if a court makes a finding of probable cause,~~
 49 | ~~except that information otherwise made confidential or exempt~~
 50 | ~~shall retain its confidential or exempt status.~~

51 | ~~(2)(3) Court determinations relating to a finding of no~~
 52 | ~~probable cause and Court orders finding no probable cause~~
 53 | ~~pursuant to s. 744.107 or s. 744.1075 are confidential and~~
 54 | ~~exempt from s. 119.07(1) and s. 24(a), Art. I of the State~~
 55 | ~~Constitution; however, such orders ~~determinations and findings~~~~
 56 | ~~may be subject to inspection as determined by the court or upon~~

BILL

ORIGINAL

YEAR

57 | a showing of good cause.

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 11-06 OGSR Statewide Guardianship Office

SPONSOR(S): Government Operations Subcommittee

TIED BILLS: IDEN./SIM. BILLS: SB 572

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Williamson <i>haw</i>	Williamson <i>haw</i>

SUMMARY ANALYSIS

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

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

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

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review 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.

Statewide Public Guardianship Office

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

The executive director, after consultation with certain persons, may establish local public guardian offices⁷ to provide guardianship services when a person does not have adequate income or assets to afford a private guardian and when there is no willing relative or friend to serve.⁸ The office registers annually professional guardians⁹ and reviews and approves courses for instruction and education for such guardians.¹⁰

¹ Section 119.15, F.S.

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

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

⁴ Section 744.7021, F.S.

⁵ Section 744.7021(1), F.S.

⁶ Section 744.7021(2), F.S.

⁷ Section 744.703(1), F.S.

⁸ Open Government Sunset Review of s. 744.7082(6), F.S., relating to the public record exemption for the DSO, joint questionnaire by Senate and House staff, July 14, 2010, at question 1. (on file with the Government Operations Subcommittee).

⁹ Section 744.1083(1) and (2), F.S.

¹⁰ Section 744.1085(3), F.S.

Direct-Support Organization

Current law authorizes the office to enter into a written contract¹¹ with a direct-support organization (DSO)¹² for the sole purpose of supporting the office. The DSO is operated by a board of directors appointed by the secretary of the department.¹³ The Foundation for Indigent Guardianship serves as the DSO for the office and was incorporated in December 2005.¹⁴

Public Record Exemption under Review

Current law provides a public record exemption for the DSO.¹⁵ The following information is confidential and exempt¹⁶ from public records requirements:

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

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

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

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

Effect of Bill

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

B. SECTION DIRECTORY:

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

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

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

¹¹ See s. 744.7082(2), F.S.

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

¹³ Section 744.7082(3), F.S.

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

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

¹⁶ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See Attorney General Opinion 85-62*, August 1, 1985).

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

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

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

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

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 11-07 OGSR Interference with Custody

SPONSOR(S): Government Operations Subcommittee

TIED BILLS: IDEN./SIM. **BILLS:** SB 570

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

SUMMARY ANALYSIS

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

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

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review 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.

Interference with Custody

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

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

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

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

¹ Section 119.15, F.S.

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

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

⁴ Section 787.03(1), F.S.

⁵ Section 787.03(2), F.S.

⁶ See s. 787.03(4), F.S.

⁷ Section 787.03(6)(a), F.S.

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

- Within a reasonable time of the taking, commence a custody proceeding consistent with the federal Parental Kidnapping Prevention Act⁹ or the Uniform Child Custody Jurisdiction and Enforcement Act.^{10,11}
- Inform the sheriff or state attorney of any address or telephone number changes for the person and the minor or incompetent person.¹²

Public Record Exemption under Review

Current law provides that the address and telephone number of the person taking the minor or incompetent person, and of the minor or incompetent person, contained in the report made to a sheriff or state attorney, are confidential and exempt¹³ from public records requirements.¹⁴ A sheriff or state attorney may allow an agency¹⁵ to inspect and copy records containing the confidential and exempt information in the furtherance of that agency's duties and responsibilities.¹⁶

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

Effect of Bill

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

B. SECTION DIRECTORY:

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

⁸ Section 787.03(6)(b)1., F.S.

⁹ 28 U.S.C. s. 1738A.

¹⁰ Sections 61.501 – 61.542, F.S.

¹¹ Section 787.03(6)(b)2., F.S.

¹² Section 787.03(6)(b)3., F.S.

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

¹⁴ Section 787.03(6)(c)1., F.S.

¹⁵ Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

¹⁶ Section 787.03(6)(c)2., F.S.

¹⁷ Section 787.03(6)(c)3., F.S.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

A bill to be entitled
 An act relating to a review under the Open Government
 Sunset Review Act; amending s. 787.03, F.S., relating to a
 public record exemption for information submitted to a
 sheriff or state attorney for the purpose of obtaining
 immunity from prosecution for the offense of interference
 with custody; saving the exemption from repeal under the
 Open Government Sunset Review Act; deleting a provision
 providing for the repeal of the exemption; providing an
 effective date.

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

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

787.03 Interference with custody.—

(6)

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

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

~~3. This paragraph is subject to the Open Government Sunset
 Review Act in accordance with s. 119.15 and is repealed on~~

BILL

ORIGINAL

YEAR

29 | ~~October 2, 2011, unless reviewed and saved from repeal through~~
30 | ~~reenactment by the Legislature.~~

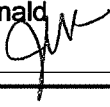
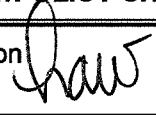
31 | Section 2. This act shall take effect October 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 11-08 Governor's Private Secretary

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

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

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

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

The bill has no fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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

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

Present Situation

The staff of the Executive Office of the Governor are under the state personnel system with state-approved titles. The Executive Office of the Governor is under what is known as Pay Plans 07, 08, 09, and 15.² Employees of the Office of the Governor are exempt from the career service system and serve at the pleasure of the Governor. According to the Executive Office of the Governor, currently one staff person who is in a senior management position provides services as private secretary to the Governor. The use of two staff had been the practice for the past three Governors, one staff in a select exempt service position and the other in a senior management service position.³

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

Effect of Proposed Changes

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

B. SECTION DIRECTORY:

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

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

¹ See s. 35, Chapter 95-147, L.O.F.

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

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

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

1
2
3
4
5
6
7
8
9
10

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

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

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

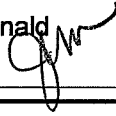
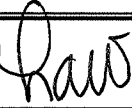
Section 2. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 11-09 Minority Business Certification Task Force

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

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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

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

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

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

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

¹ Sections 11.901 - 11.920, F.S.

² See s. 11.905, F.S.

³ See s. 11.906, F.S.

⁴ The Office of Supplier Diversity's function is to improve business and economic opportunities for Florida's minority, women, and service-disabled veteran business enterprises. To accomplish this goal the office's primary functions include certification of business enterprises, advocacy and outreach, and matchmaking activities. See the DMS website for information on the responsibilities of the office.

⁵ See chapter 94-322, L.O.F.

⁶ Pursuant to s. 20.03(8), F.S., a task force created by specific statutory enactment is, by definition, "limited to no more than 3 years, appointed to study a specific problem and recommend a solution or policy alternative with respect to the problem, and terminates upon the completion of its assignment."

⁷ The Florida Legislative Committee on Intergovernmental Relations (LCIR) was not funded in the FY 2010-11 General Appropriations Act, and the Committee ceased operations on June 30, 2010.

⁸ Office of Program Policy Analysis & Government Accountability Sunset Review Report, at 4, *Department of Management Services Advisory Committees Assessment*, Report No. 08-S11 (December 2008).

of reciprocal agreements (agreements to accept a business's certified minority enterprise status issued by other entities) ended in 2003.⁹

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

Effect of Proposed Changes

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

B. SECTION DIRECTORY:

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

1 A bill to be entitled
 2 An act relating to the certification of minority business
 3 enterprises; amending s. 287.0943, F.S.; deleting
 4 provisions establishing the Minority Business
 5 Certification Task Force, requiring that criteria for the
 6 certification of minority business enterprises be approved
 7 by the task force, and authorizing the task force to amend
 8 the statewide and interlocal agreement for the
 9 certification of minority business enterprises; conforming
 10 provisions; providing an effective date.

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

13
 14 Section 1. Subsection (2) and paragraph (e) of subsection
 15 (3) of section 287.0943, Florida Statutes, are amended to read:
 16 287.0943 Certification of minority business enterprises.—

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

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

BILL

ORIGINAL

YEAR

- 29 | ~~1. The Florida League of Cities, Inc.~~
- 30 | ~~2. The Florida Association of Counties.~~
- 31 | ~~3. The Florida School Boards Association, Inc.~~
- 32 | ~~4. The Association of Special Districts.~~
- 33 | ~~5. The Florida Association of Minority Business Enterprise~~
- 34 | ~~Officials.~~
- 35 | ~~6. The Florida Association of Government Purchasing~~
- 36 | ~~Officials.~~

37 |

38 | ~~In addition, the Office of Supplier Diversity shall appoint~~

39 | ~~seven members consisting of three representatives of minority~~

40 | ~~business enterprises, one of whom should be a woman business~~

41 | ~~owner, two officials of the office, and two at-large members to~~

42 | ~~ensure balance. The chairperson of the Legislative Committee on~~

43 | ~~Intergovernmental Relations or a designee shall be a member of~~

44 | ~~the task force, ex officio. A quorum shall consist of one-third~~

45 | ~~of the current members, and the task force may take action by~~

46 | ~~majority vote. Any vacancy may only be filled by the~~

47 | ~~organization or agency originally authorized to appoint the~~

48 | ~~position.~~

49 | ~~(c) The purpose of the task force will be to propose~~

50 | ~~uniform criteria and procedures by which participating entities~~

51 | ~~and organizations can qualify businesses to participate in~~

52 | ~~procurement or contracting programs as certified minority~~

53 | ~~business enterprises in accordance with the certification~~

54 | ~~criteria established by law.~~

55 | ~~(d) A final list of the criteria and procedures proposed~~

56 | ~~by the task force shall be considered by the secretary. The task~~

BILL ORIGINAL YEAR

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

60 | (a) ~~(e)~~ In assessing the status of ownership and control,
 61 | certification criteria shall, at a minimum:

62 | 1. Link ownership by a minority person, as defined in s.
 63 | 288.703(3), or as dictated by the legal obligations of a
 64 | certifying organization, to day-to-day control and financial
 65 | risk by the qualifying minority owner, and to demonstrated
 66 | expertise or licensure of a minority owner in any trade or
 67 | profession that the minority business enterprise will offer to
 68 | the state when certified. Businesses must comply with all state
 69 | licensing requirements prior to becoming certified as a minority
 70 | business enterprise.

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

BILL

ORIGINAL

YEAR

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

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

108 (b) ~~(f)~~ When a business receives payments or awards
 109 exceeding \$100,000 in one fiscal year, a review of its
 110 certification status or an audit will be conducted within 2
 111 years. In addition, random reviews or audits will be conducted
 112 as deemed appropriate by the Office of Supplier Diversity.

BILL

ORIGINAL

YEAR

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

118 | (d)~~(h)~~ The certification procedures should allow an
 119 | applicant seeking certification to designate on the application
 120 | form the information the applicant considers to be proprietary,
 121 | confidential business information. As used in this paragraph,
 122 | "proprietary, confidential business information" includes, but
 123 | is not limited to, any information that would be exempt from
 124 | public inspection pursuant to the provisions of chapter 119;
 125 | trade secrets; internal auditing controls and reports; contract
 126 | costs; or other information the disclosure of which would injure
 127 | the affected party in the marketplace or otherwise violate s.
 128 | 286.041. The executor in receipt of the application shall issue
 129 | written and final notice of any information for which
 130 | noninspection is requested but not provided for by law.

131 | (e)~~(i)~~ A business that is certified under the provisions
 132 | of the statewide and interlocal agreement shall be deemed a
 133 | certified minority enterprise in all jurisdictions or
 134 | organizations where the agreement is in effect, and that
 135 | business is deemed available to do business as such within any
 136 | such jurisdiction or with any such organization statewide. All
 137 | state agencies must accept minority business enterprises
 138 | certified in accordance with the statewide and interlocal
 139 | agreement of s. 287.09431, and that business shall also be
 140 | deemed a "certified minority business enterprise" as defined in

BILL

ORIGINAL

YEAR

141 s. 288.703. However, any governmental jurisdiction or
 142 organization that administers a minority business purchasing
 143 program may reserve the right to establish further certification
 144 procedures necessary to comply with federal law.

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

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

155 (3)

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

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