State Affairs Committee

Friday, March 21, 2014
9:30 AM
Morris Hall (17 HOB)

Meeting Packet

Will Weatherford
Speaker

Jim Boyd
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

State Affairs Committee

Start Date and Time:	Friday, March 21, 2014 09:30 am
End Date and Time:	Friday, March 21, 2014 11:00 am
Location:	Morris Hall (17 HOB)
Duration:	1.50 hrs

Consideration of the following bill(s):

CS/HB 601 Reclaimed Water by Agriculture & Natural Resources Subcommittee, Ray
HM 607 Comprehensive Everglades Restoration Plan by Harrell
HB 683 Hillsborough County by Young
HB 817 City of Cocoa, Brevard County by Workman
HB 1049 Divers by Raschein
HB 7045 OGSR/Florida Insurance Guaranty Association by Government Operations Subcommittee, Cummings
HB 7047 OGSR/Scripps Florida Funding Corporation by Government Operations Subcommittee, Raulerson
HB 7049 OGSR/Dependent Children Insured by Agency Group Insurance Plan by Government Operations Subcommittee, Ahern
HB 7089 Ratification of Rules/Department of Environmental Protection by Rulemaking Oversight & Repeal Subcommittee, Ray
HB 7101 OGSR/Inventory of Estate or Elective Estate and Accounting in Estate Proceeding by Government Operations Subcommittee, Combee
HB 7103 OGSR/Florida Defense Support Task Force by Government Operations Subcommittee, Raulerson

NOTICE FINALIZED on 03/19/2014 12:59 by Love.John

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 601 Reclaimed Water
SPONSOR(S): Agriculture & Natural Resources Subcommittee and Ray
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 536

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N, As CS	Renner	Blalock
2) Agriculture & Natural Resources Appropriations Subcommittee	10 Y, 3 N	Helpling	Massengale
3) State Affairs Committee		Renner	Camechis

SUMMARY ANALYSIS

Reclaimed water is defined by law as water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility. Extensive treatment and disinfection ensure that public health and environmental quality are protected. The use of reclaimed water can reduce the amount of groundwater and surface water that is required to meet non-potable supply needs such as agricultural or residential irrigation, power generation, or recreation (e.g., golf courses or waterparks). However, there are some uncertainties regarding expanding the use of reclaimed water in the state. Surface water is defined as water upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused.

The bill directs the Department of Environmental Protection (DEP), in coordination with the Department of Agriculture and Consumer Services (DACS) and the five water management districts (WMDs), to conduct a study and submit a report on the expansion of the beneficial use of reclaimed water, stormwater, and excess surface water. The bill requires the report to:

- Identify factors that prohibit or complicate the expansion of using reclaimed water, stormwater, and excess surface water and recommend how those factors can be mitigated or eliminated;
- Identify the environmental, engineering, public health, public perception, and fiscal constraints of expanding the use of reclaimed water, including utility rate structures for reclaimed water;
- Identify areas where traditional water supply sources are limited and the use of reclaimed water, stormwater, or excess surface water for irrigation or other uses is necessary;
- Recommend permit incentives, such as extending current authorizations for long-term CUPs for all entities that substitute reclaimed water for traditional water sources that become unavailable or otherwise cost prohibitive; and
- Determine the feasibility, benefit, and cost estimate of the infrastructure needed to construct regional storage features on public or private lands for reclaimed water, stormwater, and excess surface water.

The bill requires DEP to hold a public meeting to gather input on the study design and provide an opportunity for public comment before submitting the report, which must be submitted to the President of the Senate, the Speaker of the House of Representatives, and the Governor by December 1, 2015.

The bill has an indeterminate, but likely insignificant negative fiscal impact on DEP for the cost of conducting the study and submitting the report (see Fiscal Analysis Section below).

The bill's effective date is July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

For water uses other than private wells for domestic use, the Department of Environmental Protection (DEP) and the water management districts (WMDs) have the authority to require any person seeking to use "waters in the state"[1] to obtain a consumptive use permit (CUP). A CUP establishes the duration and type of allowed water use as well as the maximum amount that may be used. Pursuant to s. 373.219, F.S., each CUP must be consistent with the objectives of the WMD and may not be harmful to the water resources of the area. To obtain a CUP, an applicant must establish that the proposed use of water satisfies the statutory test, commonly referred to as "the three-prong test." Specifically, the proposed water use:

1. Must be a reasonable-beneficial use;[2]
2. May not interfere with any presently existing legal use of water; and
3. Must be consistent with the public interest.[3]

In an effort to conserve the State's potable surface water and groundwater resources, WMDs are authorized to restrict water use to the lowest quality water source appropriate for the specific use, and to adopt rules that identify preferred water supply sources for consumptive uses.[4] The WMD may consider all economically and technically feasible alternatives to the proposed water source, including alternative water sources, such as desalination, aquifer storage and recovery, and reuse of non-potable reclaimed water.[5] Of these enumerated alternative water sources, the Legislature expressly encourages the use of reclaimed water as an alternative water source "whenever practicable."[6]

Section 373.019(17), F.S., defines reclaimed water as "water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility."[7] Section 403.866, F.S., defines a "domestic wastewater treatment facility" as any plant or other works used for the purpose of treating, stabilizing, or holding domestic wastes. Extensive treatment and disinfection of water from a domestic wastewater treatment facility ensures that public health and environmental quality are protected.[8]

Section 373.019(21), F.S., defines surface water to mean "water upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused. Water from natural springs shall be classified as surface water when it exits from the spring onto the earth's surface."

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[1] Section 373.019(22), F.S., defines "water" or "waters in the state" to mean any and all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as all coastal waters within the jurisdiction of the state.

[2] Section 373.019(16), F.S., defines "reasonable-beneficial use" to mean the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner that is both reasonable and consistent with the public interest.

[3] Section 373.223(1), F.S.

[4] *See* Section 373.2234, F.S.

[5] Section 373.223(3)(c), F.S.

[6] Section 373.016(4)(a), F.S.

[7] *See also* Florida DEP website on 'water reuse.' This information can be viewed at http://www.dep.state.fl.us/water/reuse/index.htm.

[8] *Id.*

Section 373.250, F.S., governs the reuse of reclaimed water in the state. A WMD is authorized to require the use of reclaimed water in lieu of surface water or groundwater when the use of uncommitted reclaimed water is:

- Available;
- Environmentally, economically, and technically feasible; and
- Of such quality and reliability as is necessary to the user.[9]

However, a WMD may neither specify any user to whom the reuse utility must provide reclaimed water, nor restrict the use of reclaimed water provided by a reuse utility to a customer in a permit or in a water shortage order or water shortage emergency order.[10] Reclaimed water is presumed to be available to a CUP applicant when a reclaimed water provider has uncommitted reclaimed water capacity, and there are distribution facilities provided by the utility to the site of the proposed use.[11] A WMD may not require a permit for the use of reclaimed water. However, when a use includes surface water or groundwater the permit for such sources may include conditions that govern the use of the permitted sources in relation to the feasibility or use of reclaimed water.[12]

As required in statute and implemented in DEP's Water Resource Implementation Rule,[13] WMDs must designate water resource caution areas[14] within which CUP permit holders are required to use a "reasonable" amount of reclaimed water, unless using it is not "economically, environmentally, or technically feasible." For areas outside of designated water resource caution areas, DEP encourages local governments to implement programs for the use of reclaimed water. Specifically, WMDs are encouraged to establish incentives, such as longer permit duration and cost-sharing, for local governments and other interested parties to implement programs for reclaimed water use.[15]

Reclaimed water is designated as an alternative water source in Florida and the use of reclaimed water can reduce the amount surface water and groundwater consumed in the state. The encouragement and promotion of water conservation and reuse of reclaimed water are state objectives and considered to be in the public interest.[16] The use of reclaimed water provided by domestic wastewater treatment plants permitted and operated under a reuse program approved by DEP is environmentally acceptable and not a threat to public health and safety.[17]

The use of reclaimed water saves water that would otherwise need to be withdrawn from surface water and groundwater sources to meet non-potable supply needs such as agricultural or residential irrigation, power generation, or recreation (e.g., golf courses or waterparks). Additionally, reclaiming wastewater reduces reliance on traditional wastewater disposal methods such as surface water discharges, ocean outfalls,[18] or deep injection wells.[19]

However, there are some uncertainties that exist pertaining to expanding the use of reclaimed water in the state. According to the Department of Agriculture and Consumer Services (DACS), one hindrance to increasing reliance on the use of reclaimed water is that there usually is too much of it available

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[9] Section 373.250(3)(c), F.S.
[10] *Id.*
[11] Section 373.250(3)(a), F.S.
[12] Section 373.250(3)(b), F.S.
[13] Section 373.036, F.S., and Rule 62-40, F.A.C.
[14] Pursuant to s. 373.0363, F.S., and Rule 62-40.416, F.A.C., water resource caution areas are designated where water supply problems currently exist or are expected to exist within the next 20 years.
[15] Rule 62-40.416(2), F.A.C.
[16] Section 373.250(1)(a), F.S.
[17] *Id.*
[18] "Ocean outfall" means the outlet or structure through which effluent is finally discharged to the marine environment which includes the territorial sea, contiguous zone and the ocean. Rule 62–600.200(55), F.A.C.
[19] "Injection well" means a well into which fluids are being or will be injected, by gravity flow or under pressure. Rule 62-528.200(39), F.A.C.

during periods of high rainfall and not enough available to meet demands during low rainfall periods. It is necessary to store excess reclaimed water for use during times of peak demand, using water reservoirs or storage tanks. In addition, reclamation facilities and reuse sites are not always located near one another, so reclaimed water must be transported. The transmission lines and facilities necessary to accomplish this can be disruptive or expensive to construct, particularly in older or built-out areas.[20]

Effect of Proposed Changes

The bill directs DEP, in coordination with DACS and the five WMDs, to conduct a study and submit a report on the expansion of the beneficial use of reclaimed water, stormwater, and excess surface water. The bill requires the report to:

- Identify factors that prohibit or complicate the expansion of using reclaimed water, stormwater, and excess surface water and recommend how those factors can be mitigated or eliminated;
- Identify the environmental, engineering, public health, public perception, and fiscal constraints of expanding the use of reclaimed water, including utility rate structures for reclaimed water;
- Identify areas where traditional water supply sources are limited and the use of reclaimed water, stormwater, or excess surface water for irrigation or other uses is necessary;
- Recommend permit incentives, such as extending current authorizations for long-term CUPs for all entities that substitute reclaimed water for traditional water sources that become unavailable or otherwise cost prohibitive; and
- Determine the feasibility, benefit, and cost estimate of the infrastructure needed to construct regional storage features on public or private lands for reclaimed water, stormwater, and excess surface water, including the collection and delivery mechanisms for beneficial uses such as:
    - Agricultural irrigation;
    - Power generation;
    - Public water supply;
    - Wetland restoration;
    - Groundwater recharge; and
    - Waterbody base flow augmentation.

The bill requires DEP to hold a public meeting to gather input on the study design and provide an opportunity for public comment before submitting the report, which must be submitted to the President of the Senate, the Speaker of the House of Representatives, and the Governor by December 1, 2015.

B. SECTION DIRECTORY:

Section 1. Requires DEP, in coordination with DACS and WMDs, to conduct a study on the expansion of the beneficial use of reclaimed water, stormwater, and excess surface water, and submit a report to the Governor and the Legislature.

Section 2. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

[20] DACS bill analysis. On file with Agriculture & Natural Resources Subcommittee staff.

2. Expenditures:

The bill has an indeterminate, but likely insignificant negative fiscal impact on DEP for the cost of conducting the study and submitting the report. According to DEP, existing staff would assist in the report and study required by the bill and would be paid out of the Administrative Trust Fund and the Water Quality Assurance Trust Fund.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to 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:

The bill does not appear to create a need for rulemaking or require additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The intent of the bill is to do a study on the expansion of the beneficial use of reclaimed water, stormwater, and excess surface water. Among other things, the study must recommend permit incentives, such as extending current authorizations for long-term consumptive use permits for all entities *that substitute traditional water sources that become unavailable or otherwise cost prohibitive for reclaimed water*. The bill, as currently written, inadvertently requires the study to recommend certain permit incentives for entities that *substitute reclaimed water for traditional water sources that become unavailable or otherwise cost prohibitive*. However, the bill sponsor is planning on offering an amendment to correct this.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 4, 2014, the Agriculture & Natural Resources Subcommittee adopted one amendment and reported the bill favorably with a committee substitute. The amendment specifies that DEP will take the lead in conducting the study required in the bill and that DACS and the WMDs will work in conjunction

with DEP. Under the bill, stormwater and excess surface water was referenced as examples of reclaimed water. However, stormwater and excess surface water are not statutorily defined as reclaimed water. The amendment makes a technical change to specify that stormwater and excess surface water are separate from reclaimed water.

This analysis is drafted to the committee substitute as passed by the Agriculture & Natural Resources Subcommittee.

A bill to be entitled

An act relating to reclaimed water; requiring the Department of Environmental Protection to conduct a study in coordination with the Department of Agriculture and Consumer Services and the water management districts on the expansion of the beneficial use of reclaimed water, stormwater, and excess surface water and to submit a report based upon such study; providing requirements for the report; requiring the departments to provide the public an opportunity for input and for public comment; requiring that the report be submitted to the Governor and the Legislature by a specified date; providing an effective date.

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

Section 1. Use of reclaimed water, stormwater, and excess surface water.—

(1) The Department of Environmental Protection, in coordination with the Department of Agriculture and Consumer Services and the five water management districts, shall conduct a comprehensive study and submit a report on the expansion of the beneficial use of reclaimed water, stormwater, and excess surface water in this state.

(2) The report must:

(a) Identify factors that prohibit or complicate the expansion of the beneficial use of reclaimed water, stormwater, and excess surface water and recommend how those factors can be mitigated or eliminated.

(b) Identify the environmental, engineering, public health, public perception, and fiscal constraints of such an expansion, including utility rate structures for reclaimed water.

(c) Identify areas in the state where traditional water supply sources are limited and the use of reclaimed water, stormwater, or excess surface water for irrigation or other purposes is necessary.

(d) Recommend permit incentives, such as extending current authorizations for long-term consumptive use permits for all entities that substitute reclaimed water for traditional water sources that become unavailable or otherwise cost prohibitive.

(e) Determine the feasibility, benefit, and cost estimate of the infrastructure needed to construct regional storage features on public or private lands for reclaimed water, stormwater, and excess surface water, including the collection and delivery mechanisms for beneficial uses such as agricultural irrigation, power generation, public water supply, wetland restoration, groundwater recharge, and waterbody base flow augmentation.

(3) The departments shall:

(a) Hold a public meeting to gather input on the study

design.

(b) Provide an opportunity for public comment before submitting the report.

(4) The report shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than December 1, 2015.

Section 2. This act shall take effect July 1, 2014.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: State Affairs Committee

Representative Ray offered the following:

Amendment

Remove lines 31-52 and insert:

(b) Identify measures that would lead to the efficient use of reclaimed water.

(c) Identify the environmental, engineering, public health, public perception, and fiscal constraints of such an expansion, including utility rate structures for reclaimed water.

(d) Identify areas in the state where traditional water supply sources are limited and the use of reclaimed water, stormwater, or excess surface water for irrigation or other purposes is necessary.

(e) Recommend permit incentives, such as extending current authorizations for long-term consumptive use permits for all

entities that substitute reclaimed water for traditional water sources that become unavailable or otherwise cost prohibitive.

(f) Determine the feasibility, benefit, and cost estimate of the infrastructure needed to construct regional storage features on public or private lands for reclaimed water, stormwater, and excess surface water, including the collection and delivery mechanisms for beneficial uses such as agricultural irrigation, power generation, public water supply, wetland restoration, groundwater recharge, and waterbody base flow augmentation.

(3) The departments shall:

(a) Hold two public meetings, at a minimum, to gather input on the study.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 607 Comprehensive Everglades Restoration Plan
SPONSOR(S): Harrell and others
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	15 Y, 1 N	Dougherty	Rojas
2) State Affairs Committee		Renner JR	Camechis

SUMMARY ANALYSIS

Florida has been involved in Everglades restoration efforts since 1948 when the Legislature enacted the Central and South Florida Project (C&SF Project), which provides for flood control, water level control, water supply, conservation, prevention of salt water intrusion, and preservation of fish and wildlife. However, the C&SF Project had unforeseen adverse effects on the Everglades ecosystems. Due to those adverse effects, the C&SF Project is now being modified under the Comprehensive Everglades Restoration Plan (CERP).

CERP provides a framework to restore, protect, and preserve water resources by phased projects implemented through an equal state-federal partnership. CERP covers 16 counties over an 18,000-square-mile area and centers on an update of the C&SF Project also known as the Restudy, includes more than 60 elements, will take more than 30 years to construct, and will cost more than $10 billion dollars. Each phase requires federal authorization and funding before it may begin.

All previously authorized CERP projects are underway and Florida is prepared to start the next phase. However, congressional authorization is required before commencement of additional projects.

This memorial urges Congress to enact before adjournment a Water Resources Development Act authorizing the next phase of Everglades restoration, which includes the Biscayne Bay Coastal Wetlands, the C-111 Spreader Canal, the Broward County Water Preserve Area, the Caloosahatchee River C-43 West Basin Storage Reservoir, and the Central Everglades Planning Project.

Copies of the memorial will be provided to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.

A memorial is a measure addressed to an executive agency or another legislative body, usually Congress, which expresses the consensus of the Florida Legislature or urges that certain action be taken on a matter within the jurisdiction of the agency or body to which it is addressed. When both houses adopt the measure, the memorial is signed by the legislative officers and transmitted to the Secretary of State for presentation to the addressee. A memorial is not subject to the approval or veto powers of the Governor, is not subject to constitutional title requirements, and does not have the effect of law.

This memorial does not have a direct fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

History of South Florida Water Resources Development[1]

Early Drainage Efforts

In 1847 U.S. Senator J.D. Westcott made the first known proposal to drain the overflowed lands of the lower peninsula. A report to the United States Senate in June 1848 asserted the Everglades could be reclaimed by a sensible system of canaling and by deepening the various streams that flowed both east and west to the coasts. It was believed that drainage would insure the growth of a new agricultural empire in south Florida.

Congress passed the "Swamp and Overflowed Lands Act of 1850", which conveyed swamp and overflowed lands in Florida to state ownership. To plan for the development of this huge area, the State Legislature created the Board of Internal Improvements in 1851 to manage the Internal Improvement Fund. However, little progress was made and the Fund fell into debt during the Civil War. Private investment in 1881 began the first drainage projects. The first project was to give Lake Okeechobee an outlet to the Gulf through the Caloosahatchee River. Other large-scale, central and southern Florida drainage projects followed, major parts of which are still functioning today. These projects did not accomplish all that was expected and, in some cases, led to overdrainage.

In 1905, the newly-created Board of Drainage Commissioners received the lands acquired by the Swamp and Overflowed Lands Act from the Legislature. This board was vested with the authority "to establish a system of canals, levees, drains, dikes, and reservoirs...to drain and reclaim the swamp and overflowed lands within the State of Florida." Accordingly, the Trustees of the Internal Improvement Fund and the Drainage Commissioners purchased and operated dredges.[2] The system of canals and locks provided the groundwork for draining the northern and eastern parts of the Everglades. Although 440 miles of canals had been completed and $18,000,000 expended by 1927, only the Caloosahatchee and St. Lucie Canals provided satisfactory outlets from Lake Okeechobee to the sea. In addition, efforts were so widely scattered that, on the whole, there was little return for the money spent.

Disasters Exacerbated by Drainage Efforts

It became apparent that canals alone did not afford sufficient protection from overflow during unusual weather events. The hurricanes of 1926[3] and 1928[4] created wind tides on Lake Okeechobee, which overflowed the surrounding areas resulting in great financial loss and approximately 2,600 deaths.

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[1] Development of the Central & South Florida (C&SF) Project, The Everglades Plan, available at http://www.evergladesplan.org/about/restudy_csf_devel.aspx, citing Central and Southern Florida Flood Control Project, Eight Years of Progress, 1948-57 Report, published by the Central and Southern Florida Flood Control District, 1957.

[2] Between 1906 and 1913, 225.4 miles of drainage canals were dug, including the Miami, North New River, and South New River Canals by the Everglades Drainage District. During the period 1913 to 1927, six large drainage canals and numerous smaller canals, totaling 440 miles; 47 miles of levees; and 16 locks and dams were constructed. The five major canals originated at Lake Okeechobee and flowed easterly toward the Atlantic.

[3] The hurricane which struck Miami and the Lake Okeechobee region in 1926 caused over 200 deaths and great financial loss.

[4] The hurricane of 1928 swept in through the Palm Beach area toward the Lake. Wind-driven water of Lake Okeechobee, augmented by the torrential rains, overflowed the lake shore and drowned approximately 2,400 people near Moore Haven, in addition to destroying a vast amount of property.

These hurricanes marked the start of the federal interest in water control through the U.S. Army Corps of Engineers (Corps).

To prevent a recurrence of these disasters, the Legislature created the Okeechobee Flood Control District in 1929, which was authorized to cooperate with the Corps in the following flood control undertakings:

- Floodways;
- Channels;
- Control gates;
- Major levees along Lake Okeechobee's shores; and
- The Herbert Hoover Dike.

During 15 years of successive, extreme dry spells, it became apparent that water conservation was a necessary function of any drainage plan. The dry years resulted in lowered groundwater levels; the threat of serious saltwater intrusion into the municipal wells of coastal cities; and drying, shrinking, and burning of land which regularly flooded in the past. Structures designed to drain certain areas while protecting them in time of flood, were also depriving them of necessary moisture during other periods. There was an important relationship between the areas around Lake Okeechobee and the other water resources of the region which had been overlooked in earlier efforts to drain the interior.

In 1947, a massive flood ended the drought with 90 percent of southeastern Florida, from Orlando to the Keys, underwater. The total economic damage of this disaster was estimated by the Corps at more than $59,000,000. This flood, coupled with the experiences of the drought and saltwater intrusion, made it imperative that immediate corrective action be started to prevent further loss of life and property damage and to conserve water for periods of drought.

Policy Reversal: The Need for a Conservation Plan

Concerned with flood control and water conservation, the Corps concluded that the problems were too large and complex for the capabilities of either the state or local agencies acting alone. A comprehensive plan for flood control and water conservation – which would encompass the entire area, satisfy the agencies' major needs, and be beneficial to the largest portion of the area – clearly required federal and local cooperation.

The Central and Southern Florida Project (C&SF Project)

Congress approved the C&SF Project as part of the Flood Control Act of 1948. The C&SF Project provides for flood control, water level control, water supply, water conservation, prevention of salt water intrusion, and preservation of fish and wildlife. The primary system includes about 1,000 miles of levees, 720 miles of canals, and almost 200 water control structures.

The following year, the Legislature formed the Central and Southern Florida Flood Control District, later to become the South Florida Water Management District (SFWMD), to act as a single local agency to cooperate with the federal government.

C&SF Project Authorizing Acts

The first C&SF Project phase was authorized by the Flood Control Act of June 30, 1948, for the purposes of flood control, water level control, water conservation, prevention of salt water intrusion, and preservation of fish and wildlife.[5] In June 1970, Congress authorized appropriations for the Corps to

[5] The first phase of the C&SF Project consisted of flood protection works for the agricultural development south of Lake Okeechobee and to the highly developed southeast coast. The second phase, consisting of all remaining works of the original Comprehensive Plan, was authorized by the Flood Control Act of September 3, 1954. Subsequent improvements include the following: Hendry

accelerate canal and pumping station construction.[6] Section 104 of the Everglades National Park Protection and Expansion Act of 1989 directed the Corps "to construct modifications to the Central and Southern Florida Project to improve water deliveries into the park and ... to the extent practicable, take steps to restore the natural hydrological conditions within the park."[7] The Water Resources Development Act of 1992 authorized modifications to the C&SF Project for ecosystem restoration of the Kissimmee River.

These authorizing acts require that local interests provide all lands, easements, and rights-of-way; pay for relocations of highways (with certain exceptions), highway bridges, and public utilities which may be required for construction of project works; hold and save the United States free from damages resulting from construction and operation of the works; maintain and operate all works (except certain major regulating structures) after completion and make a cash contribution for each part of the work prior to its initiation.

Authorized project facilities include 30 pumping stations, 212 control and diversion structures, 990 miles of levees, 978 miles of canals, 25 navigation locks, and 56 railroad relocations (bridges). Construction was begun in January 1950.

C&SF Project Outcome

The C&SF Project has performed its authorized functions since 1948 and continues to provide water supply, flood protection, water management, and other benefits to south Florida. The current C&SF Project includes 1,000 miles of canals, 720 miles of levees, and several hundred water control structures. However, the project has had unintended adverse effects on the diverse environments of the south Florida ecosystems, including the Everglades, Florida Bay, St. Lucie River, Indian River Lagoon, and the Caloosahatchee River and Estuary.

Due to these adverse effects the C&SF Project is now being modified under the Comprehensive Everglades Restoration Plan.

The Comprehensive Everglades Restoration Plan (CERP)

CERP provides a framework and guide to restore, protect, and preserve the water resources of central and southern Florida, including the Everglades. The federal Water Resources Development Act (WRDA) of 2000 approved CERP, which was developed in partnership with local, regional, state, federal, and tribal leaders, as well as numerous other stakeholders. The plan is the world's largest ecosystem restoration effort, including more than 60 major components and a 30-year construction timeline. The plan encompasses 16 counties over an 18,000-square-mile area and centers on an update of the C&SF Project, known as the Restudy.

County and Nicodemus Slough (Flood Control Acts of July 3, 1958, and July 14, 1960, respectively); Boggy Creek, Cutler Drain Area, Shingle Creek, South Dade County, and West Palm Beach Canal (Flood Control Act of October 23, 1962); Southwest Dade County and Hendry County modification (Flood Control Act of October 27, 1965); increased water storage and conservation, improved distribution, recreation as a project purpose, Martin County flood control, and increased delivery of water to Everglades National Park (Flood Control Act of 1968).

[6] Section 2 of Public Law 91-282. Specifically, this funded "construction of borrow canal L-70, canal C-308, canal C-119W, and pumping station S-326, together with such other works in the plan of improvement as the Director of the National Park Service and the Chief of Engineers agree are necessary to meet the water requirements of the Everglades National Park: Provided further, That as soon as practicable and in any event upon completion of the works specified in the preceding proviso, delivery of water from the central and southern Florida project to the Everglades National Park shall be not less than 315,000 acre-feet annually, prorated according to the monthly schedule set forth in the National Park Service letter of October 20, 1967, to the Office of the Chief of Engineers, or 16.5 per centum of total deliveries from the project for all purposes including the park, whichever is less."

[7] Public Law 101-229.

The goal of CERP is to capture unused, fresh water flowing to the Atlantic Ocean and the Gulf of Mexico and redirect it to areas that need it most. The majority of the water is devoted to environmental restoration. The remaining water will benefit cities and farmers by enhancing water supplies for the south Florida economy. These goals are divided into various phases containing discreet, defined projects. Each phase requires authorization and funding before it may begin.

CERP is implemented through an equal state-federal partnership. In 2000, the Legislature passed the Everglades Restoration Investment Act to fund the state's 50 percent of its cost-share through The Save Our Everglades Trust Fund. The SFWMD, as local sponsor, is required to match state appropriations. To date, Florida has invested over $2 billion toward implementing the $13.5 billion plan.

The next phase of CERP includes the Broward County Water Preserve Area,[8] the C-111 Spreader Canal,[9] the Caloosahatchee River C-43 West Basin Storage Reservoir,[10] the Biscayne Bay Coastal Wetlands,[11] and the Central Everglades Planning Project.[12]

Water Resources Development Acts (WRDA)

Water Resources Development Acts refer to federal public laws that deal with various aspects of water resources, including environmental, structural, navigational, and flood protection. WRDA often authorize the Corps to study water resource problems, construct projects, and make major modifications to projects. The provisions and contents of WRDA legislation are cumulative so that new legislation does not supersede or replace previous legislation. Instead, new WRDA add to the original language and often amend provisions of previous acts.

A WRDA is the legislative vehicle that authorizes federal agencies to implement CERP. While Congress has authorized CERP in general, the implementing regulations require that a Project Implementation Report (PIR) be developed for each project and submitted to Congress for project-specific authorization.

WRDA Authorizing CERP Projects

All CERP projects authorized by the last WRDA, which passed in 2007, are under construction; therefore, implementation of the next CERP phase requires congressional authorization by another WRDA.

WRDA legislation is currently under consideration in Congress. The U.S. Senate passed S. 601 in May 2013 and the U.S. House passed H.R. 3080 in October 2013. The legislation has been in conference committee since November 2013 to reconcile the Senate and House Bills. A reconciled version of the bill is expected early 2014.

Currently, four projects of the next phase are eligible for authorization: the Broward County Water Preserve Area, the C-111 Spreader Canal, the Caloosahatchee River C-43 West Basin Storage Reservoir, and the Biscayne Bay Coastal Wetlands. The fifth, the Central Everglades Planning Project, may also be eligible if contingency language is added in conference that allows additional projects to be authorized.

[8] For more information, see http://www.evergladesplan.org/pm/projects/proj_45_broward_wpa.aspx.
[9] For more information, see http://www.evergladesplan.org/pm/projects/proj_29_c111.aspx.
[10] For more information, see http://www.evergladesplan.org/pm/projects/proj_04_c43_basin_1.aspx.
[11] For more information, see http://www.evergladesplan.org/pm/projects/proj_28_biscayne_bay.aspx.
[12] For more information, see http://www.evergladesplan.org/pm/projects/proj_51_cepp.aspx.

Issues in the Indian River Lagoon, St. Lucie River, and Caloosahatchee River and Estuary

Estuaries are partially enclosed bodies of water along coastlines at the interface between oceans and freshwater sources, such as rivers and streams. Estuaries are tidally influenced, but protected from ocean waves, winds, and storms by land.[13]

The exchange of salt and freshwater in an estuary make it a unique and productive community of plants and animals that have adapted to living in brackish waters.[14] Estuarine organisms have unique salt level tolerances and when the salinity of the water is altered, the growth, reproduction, and survival of the organisms may be threatened.[15]

The large releases of water from Lake Okeechobee, as well as significant basin runoff during periods of heavy rain, introduce massive amounts of fresh water into both the Caloosahatchee and Indian River Lagoon Estuaries, lowering salinity levels and significantly altering the water chemistry, causing harm to native species. The freshwater releases also introduce a tremendous amount of silt into the systems, affecting the growth of plants by inhibiting photosynthesis. During drought conditions low discharges lead to elevated salinity levels, resulting in further harm to the ecosystem.[16]

Estuarine ecosystems depend on the balanced cycling of nutrients, particularly nitrogen and phosphorus. Both plants and animals require nutrients for growth. However, excessive nutrients in estuarine environments can lead to significant degradation.[17] The estuaries receive nutrients from point sources such as industrial activities and wastewater treatment facilities, as well as from non-point sources, such as from septic systems and unmanaged stormwater and agricultural runoff.

Areas with high concentrations of septic systems result in elevated levels of nitrates and bacteria in the surrounding water bodies.[18] Stormwater runoff introduces pollutants into the watershed when water runs off of impervious surfaces such as roads and parking lots. Stormwater treatment systems capture and treat some runoff, but they are incapable of capturing all the water that flows into surface waters. Consequently, much of the local stormwater runoff drains directly into surface water bodies without treatment. In addition, excessive and improper application of fertilizer leads to increased nutrient concentrations in surrounding water bodies.[19]

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[13] U.S. Environmental Protection Agency, *Basic Information about Estuaries,* http://water.epa.gov/type/oceb/nep/about.cfm. *See also* The Senate Select Committee on Indian River Lagoon and Lake Okeechobee Basin Final Report, November 8, 2013.

[14] *Id.*

[15] National Oceanic and Atmospheric Administration, *Ocean Service Education – Salinity, http://oceanservice.noaa.gov/education/kits/estuaries/media/supp_estuar10c_salinity.html. See also* The Senate Select Committee on Indian River Lagoon and Lake Okeechobee Basin Final Report, November 8, 2013. Available at www.flsenate.gov/usercontent/topics/irllob/finalreport.pdf.

[16] *See* The Senate Select Committee on Indian River Lagoon and Lake Okeechobee Basin Final Report, November 8, 2013. Available at www.flsenate.gov/usercontent/topics/irllob/finalreport.pdf.

[17] St. Johns River Water Management District, *Indian River Lagoon, An Introduction to a Natural Treasure, http://www.sjrwmd.com/itsyourlagoon/pdfs/IRL_Natural_Treasure_book.pdf. See also* The Senate Select Committee on Indian River Lagoon and Lake Okeechobee Basin Final Report, November 8, 2013. Available at www.flsenate.gov/usercontent/topics/irllob/finalreport.pdf.

[18] South Florida Water Management District, *St. Lucie River Watershed Protection Plan Update,* App. 10-1-1 (2012), *available at http://www.sfwmd.gov/portal/page/portal/xrepository/sfwmd_repository_pdf/slrwpp_2012update_sfer_voli_app10_1.pdf. See also* The Senate Select Committee on Indian River Lagoon and Lake Okeechobee Basin Final Report, November 8, 2013. Available at www.flsenate.gov/usercontent/topics/irllob/finalreport.pdf.

[19] *Id.*

The input of excess nitrogen and phosphorus into the estuaries promotes algae growth, including toxic blue-green algae, which depletes oxygen concentrations and is detrimental to humans and wildlife.[20] The increased algae blooms also inhibit sunlight from reaching aquatic vegetation that is crucial to the health of the ecosystem.[21]

In early 2011, two massive phytoplankton blooms occurred along the entire Indian River Lagoon and resulted in extensive loss of seagrass throughout much of the area. The phytoplankton bloom exceeded any other documented bloom in terms of size, intensity, duration, and magnitude of seagrass loss. By early 2013, a significant number of dolphins, manatees, and pelican deaths were reported in the lagoon. At the same time, South Florida experienced an increase in rainfall, leading to an increase in nutrient pollution, stormwater runoff, and the quantity of water released into the canal systems.

There is no single factor that has caused the decline in the health of the ecosystems along the east and west coasts; however, a significant contributing factor has been the large volume of nutrient rich water being discharged from Lake Okeechobee into the Indian River Lagoon and Caloosahatchee Estuary.[22]

Current and Planned Water Projects Affecting the Area

The following are CERP projects waiting for federal authorization and are needed to restore and protect the Indian River Lagoon, St. Lucie River, and Caloosahatchee River and Estuary:

- The C-111 spreader canal project, which will increase sheetflow into the Everglades and reduce the amount of water from Lake Okeechobee that must be discharged into the St. Lucie and Caloosahatchee Rivers.[23]
- The Caloosahatchee (C-43) West Basin Storage Reservoir project which will improve timing, quantity, and quality of freshwater flows to the river and estuary.[24]
- The Central Everglades Planning Project, which will also allow more water to be directed south into the Everglades instead of east and west into the St. Lucie and Caloosahatchee Rivers.[25]

Effect of Proposed Changes

This memorial urges Congress to enact before adjournment a Water Resources Development Act authorizing the next phase of Everglades restoration, which includes the Biscayne Bay Coastal Wetlands, the C-111 Spreader Canal, the Broward County Water Preserve Area, the Caloosahatchee River C-43 West Basin Storage Reservoir, and the Central Everglades Planning Project.

The memorial also requires copies of the memorial to be provided to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.

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[20] St. Johns River Water Management District, *Blue-Green Algae (Cyanobacteria) in Florida Waters, http://www.sjrwmd.com/algae/bluegreen.html. See also* The Senate Select Committee on Indian River Lagoon and Lake Okeechobee Basin Final Report, November 8, 2013. Available at www.flsenate.gov/usercontent/topics/irllob/finalreport.pdf.

[21] EPA, *Health and Environmental Effects Research, http://www.epa.gov/nheerl/research/aquatic_stressors/nutrient_loading.html#decreased_o2. See also* The Senate Select Committee on Indian River Lagoon and Lake Okeechobee Basin Final Report, November 8, 2013. Available at www.flsenate.gov/usercontent/topics/irllob/finalreport.pdf.

[22] *See* The Senate Select Committee on Indian River Lagoon and Lake Okeechobee Basin Final Report, November 8, 2013. Available at www.flsenate.gov/usercontent/topics/irllob/finalreport.pdf.

[23] *Id.*

[24] *Id.*

[25] *Id.*

A memorial is a measure addressed to an executive agency or another legislative body, usually Congress, which expresses the consensus of the Florida Legislature or urges that certain action be taken on a matter within the jurisdiction of the agency or body to which it is addressed. When both houses adopt the measure, the memorial is signed by the legislative officers and transmitted to the Secretary of State for presentation to the addressee. A memorial is not subject to the approval or veto powers of the Governor, is not subject to constitutional title requirements, and does not have the effect of law.[26]

B. SECTION DIRECTORY: Not applicable.

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.

2. Other: None.

B. RULE-MAKING AUTHORITY: Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[26] *See* The Florida Senate Glossery. Available at https://www.flsenate.gov/Reference/Glossary#memorial.

House Memorial

A memorial to the Congress of the United States, urging Congress to enact before adjournment a Water Resources Development Act authorizing the next phase of Everglades restoration that includes the Biscayne Bay Coastal Wetlands, the C-111 Spreader Canal, the Broward County Water Preserve Area, the Caloosahatchee River C-43 West Basin Storage Reservoir, and the Central Everglades Planning Project.

WHEREAS, a Water Resources Development Act is the legislative vehicle to allow federal agencies to implement the historic Comprehensive Everglades Restoration Plan (CERP) partnership between the State of Florida and the Federal Government, and

WHEREAS, all CERP projects authorized in previous acts are under construction, including the restoration of Picayune Strand and the Indian River Lagoon South, and

WHEREAS, Congressional authorization is needed for the next phase of Everglades restoration, which consists of five key "shovel-ready" CERP components, including the Broward County Water Preserve Area, the C-111 Spreader Canal, the Caloosahatchee River C-43 West Basin Storage Reservoir, the Biscayne Bay Coastal Wetlands, and the Central Everglades Planning Project, and

WHEREAS, the Caloosahatchee River C-43 West Basin Storage Reservoir project and the Central Everglades Planning Project are vital to providing storage and capacity to flow water south to the Everglades National Park and thereby reduce harmful, polluted discharges from Lake Okeechobee, which are currently devastating the St. Lucie and Caloosahatchee Rivers, damaging property values and the local economy, and threatening public health, and

WHEREAS, it is the hope and desire of the Legislature of the State of Florida that the United States Congress will authorize and appropriate the necessary federal funds to continue the restoration process of America's Everglades, NOW, THEREFORE,

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

That the Congress of the United States is urged to enact before adjournment a Water Resources Development Act authorizing the next phase of Everglades restoration that includes the Biscayne Bay Coastal Wetlands, the C-111 Spreader Canal, the Broward County Water Preserve Area, the Caloosahatchee River C-43 West Basin Storage Reservoir, and the Central Everglades Planning Project.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the

President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 683 Hillsborough County
SPONSOR(S): Young
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	14 Y, 4 N	Flegiel	Rojas
2) State Affairs Committee		Stramski	Camechis

SUMMARY ANALYSIS

The Hillsborough County Civil Service Act (Act) provides for the uniform administration of the employment of all classified service employees in Hillsborough County based on merit principles. The Act was created in 1951 and recodified in 2000. The Act applies to all agencies and authorities of Hillsborough County except for the judiciary, the district school board and municipalities in the county. Overall, the Act applies to approximately 9,300 classified employees working for 22 agencies of Hillsborough County.

The Hillsborough County Civil Service Board (Board) administers the Act and provides human resource services, such as recruitment, hiring, performance evaluation, discipline and record keeping, to all agencies subject to the provisions of the act. Non-exempt agencies must use the Board for all human resource services required for classified employees. The county commission must fund the Board at a rate of 0.65 percent of the county payroll for classified employees from the previous fiscal year.

HB 683 allows non-exempt agencies to opt-in or opt-out of all provisions of the Act except for those related to suspension, demotions, dismissals and appeals. The bill provides election periods during which agencies may opt-in or opt-out of the Act. Agencies that elect to opt-out may contract with the Board to provide the same human resource services in a non-regulatory capacity. The bill revises the Board's funding formula to account for when agencies opt-in, opt-out, or contract for additional services with the Board.

The fiscal impact of this bill is indeterminate.

This bill will take effect on July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Civil Service Act

The Hillsborough County Civil Service Act was created in 1951[1] and recodified in 2000 as the "Civil Service Act of 2000."[2] The Act applies to all agencies and authorities of Hillsborough County except for the judiciary, the district school board and municipalities in the county. A classified employee is defined as a person whose position is subject to the rights contained in the Act and in the rules adopted by the board.[3] Non-exempt County agencies employ approximately 10,000 people, approximately 9,300 of which are classified employees.[4]

The purpose of the Act is to ensure the uniform administration of the classified service based on merit principles. The Act contains detailed requirements for executing personnel functions, including:

- creating and abolishing positions,
- filling vacancies,
- probationary employment,
- suspensions, demotions and dismissals,
- appeals, and
- recommendation and adoption of pay plans.

The Civil Service Board

The Civil Service Board is a seven member board responsible for the administration of the Act.[5] The Board employs approximately 29 individuals to carry out its duties.[6] Board duties include: determining the qualifications necessary for classified positions, recruiting personnel for all classified positions, establishing a performance evaluation system, enforcing provisions of the act, making provisions for employee leave, hearing appeals from disciplinary actions, establishing provisions for employee grievances, keeping records and performing any act which may be necessary to carry out the Act.

Application

A classified employee is an employee whose position is subject to the rights contained in the Act and the rules adopted by the Board. Exempt employees, interchangeably called unclassified employees, are subject to the rights provided by their appointing authority and are not subject to the rights provided by the Act. Exempt employees include: elected officials and those appointed by the Governor; members of any board, authority or commission; physicians and attorneys-at-law; executive managers; temporary, part-time and substitute employees; and secretaries and administrative aides to the county attorney, chief executive officer of any board, authority, or commission, and each elected official.

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[1] Ch. 1951, 27601, L.O.F.
[2] Ch. 2000-445, L.O.F.
[3] S. 5, Ch. 2000-445, L.O.F.
[4] November 20, 2013 Civil Service Board Meeting Minutes. Supplement 2, Section 3.
[5] S. 7, Ch. 2000-445, L.O.F.
[6] About Civil Service Board, available at http://www.hillsboroughcounty.org/index.aspx?NID=1076 (last visited March 14, 2014).

The Act applies to all classified personnel employed by the following agencies or authorities within Hillsborough County:

- County Commission
- County Administrator
- Clerk of the Circuit Court
- Supervisor of Elections
- Property Appraiser
- Tax Collector
- Sheriff
- Environmental Protection Commission
- Aviation Authority
- Port Authority
- Planning Commission
- Public Transportation Commission
- Expressway Authority
- Law Library
- Legislative Delegation
- Soil and Water Conservation District
- Civil Service Board
- Sports Authority
- Children's Board
- County Attorney
- Arts Council
- Victim's Assistance

The district school board, the judiciary, and municipalities of the county are explicitly exempt from the provisions of the Act. However, positions within the Administrative Office of the Courts which were classified as of January 1, 1998 and which are funded by the county are subject to hearings to review actions of dismissal, demotion or suspension.

Funding

The county is required to fund the Board at the rate of 0.65 percent of the total classified employee payroll from the prior fiscal year.[7] For example, an agency with an annual classified employee payroll of $1,000,000 would require the county to budget $6,500 in funding to the Board for the upcoming fiscal year. In FY 2011-2012, the total classified payroll for all Hillsborough County agencies was $498.3 million, meaning the county must appropriate $3.238 million to the Board in FY 2013-2014.[8] In FY 2012-2013, the Board had an actual budget of $2.359 million.[9]

Effect of Proposed Changes

Application

HB 683 gives county agencies the ability to opt-in or opt-out of sections 1 – 10 and 13 – 20 of the Act. Participation in the provisions pertaining to suspension, demotions, dismissals, and appeals remains mandatory for all agencies.

Personnel functions subject to the opt-in opt-out election include: employee recruitment, selection and hiring, creation and adoption of classification plans, benefit plans and pay plans, promotions, abolition and creation of new positions, filling vacancies, performance review and evaluation systems, reductions in force and methods of reemployment, guidelines for leave, determination of classified status and tenure, and any other human resource functions.

The bill allows an agency to opt-out of portions of the act without opting out of the entire act. It also allows an agency to make separate elections for different classes of employees. For example, an agency could elect to opt-out of the Act for half its employees, opt-out of portions of the Act for a quarter of its employees, and opt-out of none of the Act for the other quarter of its employees.

[7] S. 15, Ch. 2000-445, L.O.F.
[8] Letter from Clerk of Circuit Court, 13th Circuit, County Finance Dept. to Hillsborough County Civil Service Board. Jan. 15, 2013.
[9] Hillsborough County Recommended Biennial Budget, FY 14 – FY 15, p. 340. Available at http://www.hillsboroughcounty.org/index.aspx?nid=3440 (last visited March 14, 2014).

An agency may make an opt-out or opt-in election within one month of the bill becoming law (in July 2014) or during the month of December every year thereafter. Agencies that make no election shall continue to be subject to all provisions of the Act they were previously subject to. Agencies that opt-out may contract with the Board to continue providing human resource services in a non-regulatory capacity.

Funding

HB 683 changes the Board's funding equation, requiring the county commission to fund the board at a rate of 0.65 percent, less the cost saved from services that agencies have opted out of, plus the cost of services agencies have contracted for the board to provide.

B. SECTION DIRECTORY:

Section 1 Amends sections 4 and 15 of ch. 2000-445, L.O.F., "The Civil Service Act of 2000," allowing Hillsborough County agencies to opt-in or opt-out of certain provisions of the Civil Service Act; amends the Board's funding equation.

Section 2 Provides that the act shall take effect on July 1, 2014.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? December 17, 2013

WHERE? *The Tampa Tribune*, a daily newspaper published in Tampa, Hillsborough County.

B. REFERENDUM(S) REQUIRED? Yes [] No [X]

IF YES, WHEN? Not applicable.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES: None.

B. RULE-MAKING AUTHORITY: Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to Hillsborough County; amending chapter 2000-445, Laws of Florida, relating to the Civil Service Act; providing an agency or authority with the ability to opt out of or opt into provisions of the act that regulate personnel functions; authorizing an agency or authority that has elected to opt out of certain personnel functions to contract with the Civil Service Board to provide the same personnel functions in a nonregulatory capacity; providing for an appropriation to the Civil Service Board to carry out the purposes of the act; requiring the commission to consider the level of services provided by the Civil Service Board to the participating agencies or authorities; providing an effective date.

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

Section 1. Sections 4 and 15 of chapter 2000-445, Laws of Florida, are amended to read:

Section 4. Application.—

(1) The provisions of this act apply to all classified personnel employed by the following agencies or authorities within the county: the commission, the county administrator, clerk of the circuit court, supervisor of elections, property

appraiser, tax collector, sheriff, environmental protection commission, aviation authority, port authority, planning commission, public transportation commission, expressway authority, law library, legislative delegation, soil and water conservation district, civil service board, sports authority, children's board, county attorney, arts council, victim assistance, and any other agency or authority not expressly exempt from this act. Each municipality in the county, the judiciary, and the District School Board of the county are expressly exempt from this act until and unless each executes an interlocal agreement with the board pursuant to general law. Positions within the Administrative Office of the Courts which were classified as of January 1, 1998, and which are funded by the county are subject to section 13 of this act.

(2) Each agency or authority listed in this section that is not expressly exempt from this act remains subject to sections 11 and 12. With respect to the remaining provisions of this act, each agency or authority has the option to either opt out of or opt into any provision that relates to personnel functions by providing notice to the board during the election period as provided in this subsection. Personnel functions subject to the opt-out or opt-in election include, but are not limited to, employee recruitment; selection and hiring process; creation and adoption of classification plans, benefit plans, and pay plans; promotions; abolition and creation of positions; filling vacancies; performance review and evaluation systems;

reductions in force and methods of reemployment; guidelines for leave; determination of classified service status and tenure; and any other human resources functions. The agency or authority that has elected to opt out of or opt into any provision of this act has the exclusive authority to determine which corresponding Civil Service Rules shall apply to that specific agency or authority.

(a) The notice shall cite the specific provision of this act that the agency or authority has elected to either opt out of or opt into, and identify the group of employees subject to the opt-out or opt-in election, including designations based on job classifications, divisions, dates of employment, or any other delineated group of employees as determined by the agency or authority. The notice shall also identify the personnel functions that are covered by the opt-out or opt-in election.

(b) For the initial election period, the agency or authority shall provide notice of its opt-out or opt-in election on or after July 1, 2014, but not later than July 31, 2014, with an implementation date for the election to be October 1, 2014. For each election period thereafter, the agency or authority shall provide notice of its opt-out or opt-in election on or after December 1 but not later than December 31 of that year, with an implementation date for the election to be the first day of the next fiscal year.

(c) If an agency or authority does not submit notice of its opt-out or opt-in election to the board during any

designated election period, the provisions of this act applicable to the agency or authority before the election period shall remain in effect. An agency or authority that elects to opt out of any personnel function regulated by this act may, at its discretion, contract with the board to continue to provide the same personnel functions in a nonregulatory capacity.

Section 15. Appropriation for the board.—The commission shall appropriate to the board annually a sum of money equal to not less than sixty-five hundredths of 1 percent of the classified personnel payroll of the fiscal year just ended, less the cost of providing any personnel functions that an agency or authority has chosen to opt out of, in order to enable the board to properly carry out the purposes of this act. In determining the annual appropriation of funds, the commission shall also consider the cost of personnel functions provided to agencies or authorities that have contracted with the board for some or all of the personnel functions of which it has opted out, and any additional personnel functions that the board has contracted with an agency or authority to provide. It is the duty of the authorities having charge of the public buildings of such county to allow the reasonable use of public buildings and rooms for the holding of any activity of the board provided for by this act and to provide quarters for the use of the board.

Section 2. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 817 City of Cocoa, Brevard County
SPONSOR(S): Workman
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	18 Y, 0 N	Dougherty	Rojas
2) State Affairs Committee		Moore	Camechis

SUMMARY ANALYSIS

The Pinecrest Cemetery and the Evergreen Memorial Park are abandoned cemeteries contiguous with the municipal boundaries of the City of Cocoa and in unincorporated Brevard County. The recorded owners are defunct corporations and the grounds are in disrepair. Cocoa residents complain that the cemeteries are becoming a public nuisance.

In the interests of the public health, safety, and welfare, the city would like to provide maintenance and security for the cemeteries. To that end, the City Council adopted a resolution outlining their intent and terms of the undertaking. The city intends to maintain and secure the cemeteries, and the city's public works director estimated that the city will spend approximately $7,000 annually to provide maintenance and security. Additionally, some capital improvements – such as paving the failing roadways within the cemeteries – may eventually be required. The repaving is estimated to cost $20,000.

However, the city does not have authority to enter the unincorporated properties and must annex the properties before taking stewardship measures. Statutory annexation provisions require action from the owners of the property to be annexed. As such owners are unascertainable, the city seeks legislative annexation in order to maintain and secure the cemeteries.

The bill annexes Pinecrest Cemetery and the Evergreen Memorial Park to the City of Cocoa and provides that the city has all municipal powers and authority over these properties as provided by law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Pinecrest Cemetery and the Evergreen Memorial Park

The Pinecrest Cemetery and the Evergreen Memorial Park (cemeteries) are old, unmanaged memorial grounds located in unincorporated Brevard County contiguous to the existing boundaries of the City of Cocoa. As they are contiguous to the municipal boundaries, their dilapidated condition impacts the health, safety, and welfare of Cocoa's citizens. Citizens have expressed concerns that these properties need regular maintenance and security to avoid becoming a further public nuisance.

The cemeteries appear to be abandoned. To the best of Cocoa's knowledge, the last recorded owners of these cemeteries are now defunct. The last recorded owner of Pinecrest was "The Pinecrest Cemetery Co." in 1929. This was an unrecorded incorporation with no record of formation or dissolution. The cemetery was platted and annexed by the city in 1929, but was omitted from the city's boundary description in 1959. The last recorded owner of Evergreen is "Evergreen Memorial Park, Inc.," which has been a dissolved and inactive Florida corporation since 1970.

Without proper maintenance, the cemeteries have fallen into disrepair. Volunteers formed the Pinecrest Cemetery Association in the 1980s to maintain the graves, but most of the approximately 50 remaining members are too old to perform the necessary maintenance. Brevard County has reportedly mowed the cemeteries before some military holidays in the past few years. No other meaningful upkeep efforts have been made.

Historical Significance

Pinecrest is historically significant for Cocoa. Several Cocoa dignitaries have been laid to rest at Pinecrest, including former city elected officials and Emory L. Bennett, a Congressional Medal of Honor Recipient of the Korean War. Therefore, the City Council of Cocoa claims that the preservation of Pinecrest promotes historical interests.

Annexation Measures

The city is authorized to take necessary and appropriate action to provide for the maintenance and security of any abandoned cemetery within its municipal jurisdiction.[1] Since the cemeteries are located outside the city's boundaries, the city does not have authority to enter and maintain the properties. However, annexing the cemeteries would allow the city to manage them.

The statutory provisions for voluntary annexation of an unincorporated area of a county contiguous to a municipality require that the owners petition the municipality. As the known owners are dissolved and defunct, and no new owners are ascertainable, voluntary annexation is not possible.

The city maintains that the best alternative to ensure the proper care for the cemeteries is by legislatively annexing them into Cocoa's municipal boundaries so that the city may exercise jurisdictional authority.[2] To that end, the City Council adopted a resolution[3] outlining their intent and terms of the undertaking.

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[1] Section 497.284, F.S.
[2] Section 497.284, F.S.
[3] Resolution 2013-119, City of Cocoa, Florida, November 12, 2013.

The city intends to maintain and secure the cemeteries, and the city's public works director estimated that the city will spend approximately $7,000 annually to provide maintenance and security. Additionally, some capital improvements – such as paving the failing roadways within the cemeteries – may eventually be required. The repaving is estimated to cost $20,000.

Terms of the Resolution

The resolution provides, in pertinent part, the following:

- The city invokes the statutory authority[4] to provide maintenance and security of the cemeteries.
- The city must use public funds for such maintenance and security.
- The city must maintain and secure the cemeteries to the extent necessary to reasonably maintain the health, safety, and welfare of the community.
- Maintenance works to be undertaken by the city include, but are not limited to, lawn care, landscaping, lights and maintenance of all roads, sidewalks, fences, private plots, and monuments and other markers, which are not otherwise properly maintained.
- There is no ongoing duty or obligation created on behalf of the city to provide these services in perpetuity.[5]
- The city incurs no civil liability or penalties of any type for damages to property at the cemeteries.[6]

All of these terms are dependent upon the successful annexation of the cemeteries into the municipal jurisdictional limits of the city by the Legislature during the 2014 Legislative Session.

Municipal Annexation Law in Florida

The Florida Constitution provides that "[m]unicipal annexation of unincorporated territory, merger of municipalities, and exercise of extra-territorial powers by municipalities shall be as provided by general or special law."[7] This provision authorizes the Legislature to annex unincorporated property into a municipality by special act. It also authorizes the Legislature to establish procedures in general law for the annexation of property.

Statutory Annexation

Pursuant to this authority, the Legislature established local annexation procedures by general law in 1974, with the enactment of the "Municipal Annexation or Contraction Act."[8] This Act provides for involuntary and voluntary annexation measures that can be undertaken by cities without passage of a special act. Involuntary annexation procedures require, *inter alia*, consent of the owners of 50 percent of the land to be annexed.[9] Voluntary annexation procedures require, *inter alia*, that the owners of the unincorporated real property to be annexed petition for annexation.[10]

Special Act Annexation

The Florida Constitution also authorizes the Legislature to annex unincorporated property into a municipality by special act. There are no additional requirements placed on legislative annexations. As the owners of the property to be annexed are unascertainable, neither the involuntary nor voluntary annexation statutory procedures are workable options for the city to acquire the cemeteries. Therefore, annexation by special act is the only remaining method for the city to pursue.

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[4] Section 497.284,F.S.
[5] Section 497.284(1), F.S.
[6] Section 497.284(2), F.S.
[7] Article VIII, section 2(c), Florida Constitution.
[8] Chapter 171, F.S.
[9] Section 171.0413, F.S.
[10] Section 171.044, F.S.

The Florida Funeral, Cemetery, and Consumer Services Act

With respect to cemeteries, "care and maintenance" are defined as "the perpetual process of keeping a cemetery and its lots, graves, grounds, landscaping, roads, paths, parking lots, fences, mausoleums, columbaria, vaults, crypts, utilities, and other improvements, structures, and embellishments in a well-cared-for and dignified condition, so that the cemetery does not become a nuisance or place of reproach and desolation in the community." This process may include, but is not limited to, "mowing the grass at reasonable intervals; raking and cleaning the grave spaces and adjacent areas; pruning of shrubs and trees; suppression of weeds and exotic flora; and maintenance, upkeep, and repair of drains, water lines, roads, buildings, and other improvements." Specifically excluded from the definition are new grave construction and development and the public sale of interment structures.[11]

A municipality or county may maintain and secure abandoned cemeteries within its jurisdictional boundaries, by public funds or solicited private funds, without incurring any ongoing obligation or duty to provide for the continuous security and maintenance of the cemetery.[12] A liability shield protects the municipality or county from civil liability for property damage occurring to such cemeteries by good faith maintenance or security measures.[13]

Effect of Proposed Changes

The bill annexes the Pinecrest Cemetery and the Evergreen Memorial Park to the City of Cocoa and provides that the city has all municipal powers and authority over these properties as provided by law.

B. SECTION DIRECTORY:

Section 1: Provides the legal descriptions of the Pinecrest Cemetery and the Evergreen Memorial Park.

Section 2: Provides for the annexation of the Pinecrest Cemetery and the Evergreen Memorial Park by the City of Cocoa.

Section 3: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? January 5, 2014

WHERE? The *Florida Today*, a daily newspaper published in Brevard County, Florida.

B. REFERENDUM(S) REQUIRED? Yes [] No [X]

IF YES, WHEN? N/A

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

[11] Section 497.005(9), F.S.
[12] Section 497.284(1), F.S.
[13] Section 497.284(2), F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to the City of Cocoa, Brevard County; providing for the municipal annexation of the Pinecrest Cemetery and Evergreen Memorial Park; providing boundaries; providing an effective date.

WHEREAS, Pinecrest Cemetery and Evergreen Memorial Park are situated in unincorporated Brevard County contiguous to the existing boundaries of the City of Cocoa, and

WHEREAS, the City of Cocoa has determined that the cemeteries have historical significance to the city due to their age and the fact that several Cocoa dignitaries have been laid to rest within the cemeteries, including former City of Cocoa elected officials and Emory L. Bennett, a Congressional Medal of Honor recipient of the Korean War, and

WHEREAS, the City of Cocoa has also determined that the owners of the cemeteries are unascertainable and the cemeteries appear to be abandoned and in need of regular maintenance and security to not only honor those who have been laid to rest within the cemeteries but also to prevent a public nuisance, and

WHEREAS, because of the historical significance and unascertainable ownership of the cemeteries, the City of Cocoa has petitioned, pursuant to City Council Resolution No. 2013-119, that the Legislature annex the cemeteries into the municipal limits of the city so the city can exercise the authority pursuant to s. 497.284, Florida Statutes, which

permits cities to maintain and secure abandoned and unreasonably maintained cemeteries located within their territorial limits, NOW, THEREFORE,

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

Section 1. The legal descriptions of the Pinecrest Cemetery and Evergreen Memorial Park are as follows:

PARCEL 1 (Pinecrest Cemetery):

PART OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 24 SOUTH, RANGE 36 EAST, CITY OF COCOA, BREVARD COUNTY, FLORIDA: BEGIN ON THE EAST LINE OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 24 SOUTH, RANGE 36 EAST AT A POINT WHICH IS 290.00 FEET NORTH OF THE SOUTHEAST CORNER THEREOF; THENCE DUE WEST 660.00 FEET TO A POINT; THENCE DUE NORTH 400.00 FEET TO A POINT; THENCE DUE EAST 660.00 FEET TO A POINT ON SAID EAST LINE OF SAID SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 30; THENCE DUE SOUTH ALONG SAID EAST LINE OF SAID SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 30, 400.00 FEET TO THE POINT OF BEGINNING. LESS AND EXCEPT LAND DESCRIBED IN OFFICIAL RECORDS BOOK 421, PAGE 589 AND OFFICIAL RECORDS BOOK 2038, PAGE 543, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

TOGETHER WITH:

PARCEL 2 (Evergreen Memorial Park):

THE SOUTH FIFTEEN (15) ACRES OF THE SOUTH THIRTY (30) ACRES OF THE WEST ONE-HALF OF THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 24 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA. LESS AND EXCEPT LAND RECORDED IN DEED BOOK 265, PAGE 564 AND DEED BOOK 351, PAGES 547 AND 549, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

Section 2. The real property described in section 1 shall be annexed to and shall be deemed a part of the City of Cocoa upon this act becoming a law. On that date, the property shall be subject to the municipal jurisdiction and laws of the City of Cocoa. The city shall be embodied with all municipal powers and authority over the property as provided by law.

Section 3. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1049 Divers
SPONSOR(S): Raschein
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1176

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N	Filaroski	Blalock
2) State Affairs Committee		Filaroski	Camechis

SUMMARY ANALYSIS

Recreational diving is enjoyed 12 months of the year in Florida and has proven to be an economic benefit to the state. Florida provides many unique and exclusive opportunities for diving, including the only natural living coral reef in North America off the coast of South Florida and the Florida Keys. These unique features of Florida have made the state one of the most popular dive destinations for divers around the world for decades.

Current law requires divers to display a "divers-down flag," a square or rectangular red flag with a white stripe, in the area where the diving occurs. Divers are required to conduct their diving activities within a certain distance to the flag, and vessels are required maintain a certain distance from the flags in most instances. Any violation of the law results in a noncriminal infraction punishable by a $50 civil penalty and a requirement that the person appears before the county court. Vessel operators receive knowledge of the divers-down flag requirements from boater education and safety courses, as diver safety is a required component of these courses.

The bill amends current law to give divers the option to display a "divers-down buoy" instead of a divers-down flag that contains the same universal divers-down symbol. Under the bill, a diver must display either the divers-down flag or the divers-down buoy, or both, when diving. The bill also requires boater education and safety courses to include a component regarding divers-down buoys, along with the divers-down flag component required in current law.

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

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Recreational diving is enjoyed 12 months of the year in Florida and has proven to be an economic benefit to the state. Florida provides many unique and exclusive opportunities for diving, including the only natural living coral reef in North America off the coast of South Florida and the Florida Keys. These unique features of Florida have made the state one of the most popular dive destinations for divers around the world for decades.[1]

Section 327.331, F.S., requires divers to prominently display a "divers-down flag," a square or rectangular red flag with a diagonal white stripe,[2] in the area where the diving occurs.[3] Divers are required to make "reasonable efforts" to stay within 100 feet of the flag on rivers, inlets, and navigational channels, and vessels are required to maintain a distance of at least 100 feet from any such flag.[4] On all waters that are not rivers, inlets, or navigational channels, this "100 feet requirement" becomes a 300 feet requirement.[5] Additionally, vessels (other than law enforcement vessels) that do encroach upon the 100- or 300-foot "restricted area" must proceed "no faster than is necessary to maintain headway and steerageway."[6] Divers are required to display the divers-down flag in a manner that does not "unreasonably constitute a navigational hazard," except in case of emergency,[7] and they must lower the flag once all divers are aboard or ashore.[8]

Any violation of this section results in a noncriminal infraction (insofar as it does not violate s. 327.33, F.S., relating to reckless and careless operation of a vessel) punishable as provided in s. 327.73, F.S.[9] Pursuant to that section, a person cited for violating the divers-down flag requirements must appear before the county court and pay a $50 civil penalty.

To facilitate compliance with s. 327.331, F.S., by persons operating vessels, boater education and boater safety courses must include a component regarding diving vessels, awareness of divers in the water, divers-down flags, and the divers-down flag requirements in s. 327.331, F.S.[10]

Violations of the divers-down flag laws are relatively infrequent. In fiscal year 2012-13, only 225 violations of divers-down flag-related rules occurred. Incidents involving a boat colliding with a diver who is using a divers-down flag and staying within reasonable distance of the flag are also infrequent. Between 2009 and 2013, only 13 boating accidents were reported in which a diver or a snorkeler was struck by a boat and visibility of a divers-down flag may have been a contributing factor. These accidents resulted in 2 deaths and 13 major injuries.[11]

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[1] Florida Fish and Wildlife Conservation Commission analysis, on file with staff.
[2] s. 327.331(1)(c), F.S. The size of the flag varies, dependent on whether it is displayed from a vessel (in which case it shall be at least 20 inches by 24 inches) or a buoy or float towed by the diver (12 inches by 12 inches). s. 327.331(1)(c)4., F.S.
[3] s. 327.331(2), F.S.
[4] s. 327.331(4), F.S.
[5] s. 327.331(5), F.S.
[6] s. 327.331(6), F.S.
[7] s. 327.331(3), F.S.
[8] s. 327.331(7), F.S.
[9] s. 327.331(8), F.S.
[10] s. 327.395(3), F.S.
[11] *Id.*

Effect of Proposed Changes

Section 1.

The bill amends s. 327.331, F.S., to allow a "divers-down buoy" to be displayed in the area in which diving occurs in place of a divers-down flag (though they may not be displayed onboard a vessel, unlike divers-down flags). Thus, divers may choose whether to display a divers-down flag, a divers-down buoy, or both when they engage in diving activities. The bill defines a divers-down buoy as "a buoyant device, other than a vessel, which displays a divers-down symbol of at least 12 inches by 12 inches on four flat sides, which is prominently visible on the water's surface." The bill also creates a definition for "divers-down symbol" that is the same as the rectangular or square red symbol with a white diagonal stripe that is required on divers-down flags under current law. To accommodate the new "divers-down symbol" definition proposed by this bill, "divers-down flag" is redefined as a flag that "must consist of a divers-down symbol on each side." Accordingly, the bill requires a diver to display a divers-down symbol either on a flag or buoy in order to be in compliance with the section. In certain situations, the use of a divers-down buoy on the water may be more visible to passing boaters than a flag displayed on a diver's boat. The bill gives divers the option to use the divers-down buoy for warning others that there are nearby divers in the water.

Section 2.

The bill amends s. 327.395, F.S., to include a component on divers-down buoys (in addition to the component regarding divers-down flags required under current law) within boater education and boater safety courses.

Section 3.

The bill makes a conforming change to s. 327.73, F.S., pertaining to noncriminal infractions, to specify that s. 327.331, F.S., relates to divers-down buoys in addition to divers-down flags.

B. SECTION DIRECTORY:

Section 1. Amends s. 327.331, F.S., relating to the displaying of divers-down flags while conducting diving activities.

Section 2. Amends s. 327.395, F.S., relating to boater education and safety courses.

Section 3. Amends s. 327.73, F.S., relating to the noncriminal infractions imposed on violators of vessel laws.

Section 4. Provides an effective date of July 1, 2014..

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:

Because the bill only adds an additional method divers may use to comply with the requirement to display a symbol when they are participating in diving activities, the bill does not require divers to purchase additional items to continue diving activities. The bill may provide a financial benefit to private companies that manufacture buoys by expanding the market to divers who must display a symbol when they are diving.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to divers; amending s. 327.331, F.S.; defining the terms "divers-down buoy" and "divers-down symbol"; revising the definition of "divers-down flag"; requiring all divers to prominently display a divers-down flag or buoy in the area in which the diving occurs; requiring vessel operators encountering divers-down buoys to take specified actions; prohibiting a divers-down buoy from being used or displayed onboard a vessel; conforming provisions to changes made by the act; making technical changes; amending ss. 327.395 and 327.73, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 327.331, Florida Statutes, is amended, and subsection (1) of that section is reordered, to read:

327.331 Divers; definitions; divers-down flag or buoy required; obstruction to navigation of certain waters; penalty.—

(1) As used in this section:

(a) "Diver" means a ~~any~~ person who is wholly or partially submerged in the waters of the state and is equipped with a face mask and snorkel or underwater breathing apparatus.

(e) ~~(b)~~ "Underwater breathing apparatus" means any

apparatus, whether self-contained or connected to a distant source of air or other gas, whereby a person wholly or partially submerged in water is enabled to obtain or reuse air or any other gas or gases for breathing without returning to the surface of the water.

(b) "Divers-down buoy" means a buoyant device, other than a vessel, which displays a divers-down symbol of at least 12 inches by 12 inches on four flat sides, which is prominently visible on the water's surface when in use.

(c) "Divers-down flag" means a flag that meets the following specifications:

1. The flag must be square or rectangular. If rectangular, the length must not be less than the height, or more than 25 percent longer than the height. The flag must have a wire or other stiffener to hold it fully unfurled and extended in the absence of a wind or breeze.

2. The flag must consist of a divers-down symbol on each side with ~~be red with~~ a white diagonal stripe that begins at the top staff-side of the flag and extends diagonally to the lower opposite corner. ~~The width of the stripe must be 25 percent of the height of the flag.~~

3. The minimum size for any divers-down flag displayed on a buoy or float towed by the diver is 12 inches by 12 inches. The minimum size for any divers-down flag displayed from a vessel or structure is 20 inches by 24 inches.

4. Any divers-down flag displayed from a vessel must be

displayed from the highest point of the vessel or such other location which provides that the visibility of the divers-down flag is not obstructed in any direction.

(d) "Divers-down symbol" means a rectangular or square red symbol with a white diagonal stripe. If rectangular, the length must not be less than the height or more than 25 percent longer than the height. The width of the stripe must be 25 percent of the height of the symbol.

(2) All divers must prominently display a divers-down flag or buoy in the area in which the diving occurs, other than when diving in an area customarily used for swimming only. A divers-down buoy may not be used or displayed onboard a vessel.

(3) A diver or group of divers may not ~~No diver or group of divers shall~~ display one or more divers-down flags or buoys on a river, inlet, or navigation channel, except in case of emergency, in a manner which shall unreasonably constitute a navigational hazard.

(4) Divers shall make reasonable efforts to stay within 100 feet of a ~~the~~ divers-down flag or buoy on rivers, inlets, and navigation channels. A ~~Any~~ person operating a vessel on a river, inlet, or navigation channel must make a reasonable effort to maintain a distance of at least 100 feet from any divers-down flag or buoy.

(5) Divers must make reasonable efforts to stay within 300 feet of a ~~the~~ divers-down flag or buoy on all waters other than rivers, inlets, and navigation channels. A ~~Any~~ person operating

a vessel on waters other than a river, inlet, or navigation channel must make a reasonable effort to maintain a distance of at least 300 feet from any divers-down flag or buoy.

(6) A ~~Any~~ vessel other than a law enforcement or rescue vessel that approaches within 100 feet of a divers-down flag or buoy on a river, inlet, or navigation channel, or within 300 feet of a divers-down flag or buoy on waters other than a river, inlet, or navigation channel, must proceed no faster than is necessary to maintain headway and steerageway.

(7) A ~~The~~ divers-down flag or buoy may not be displayed ~~must be lowered~~ once all divers are aboard or ashore. A ~~No~~ person may not operate any vessel displaying a divers-down flag unless the vessel has one or more divers in the water.

(8) Except as provided in s. 327.33, a ~~any~~ violation of this section is ~~shall be~~ a noncriminal infraction punishable as provided in s. 327.73.

Section 2. Subsection (3) of section 327.395, Florida Statutes, is amended to read:

327.395 Boating safety identification cards.—

(3) Any commission-approved boater education or boater safety course, course-equivalency examination developed or approved by the commission, or temporary certificate examination developed or approved by the commission must include a component regarding diving vessels, awareness of divers in the water, divers-down flags and buoys, and the requirements of s. 327.331.

Section 3. Paragraph (u) of subsection (1) of section

327.73, Florida Statutes, is amended to read:

327.73 Noncriminal infractions.—

(1) Violations of the following provisions of the vessel laws of this state are noncriminal infractions:

(u) Section 327.331, relating to divers-down flags and buoys, except for violations meeting the requirements of s. 327.33.

Section 4. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7045 PCB GVOPS 14-01 OGSR/Florida Insurance Guaranty Association
SPONSOR(S): Government Operations Subcommittee, Cummings
TIED BILLS: **IDEN./SIM. BILLS:** SB 506

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	11 Y, 0 N	Williamson	Williamson
1) Insurance & Banking Subcommittee	12 Y, 0 N	Cooper	Cooper
2) State Affairs Committee		Williamson	Camechis

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 Insurance Guaranty Association (FIGA) is a nonprofit corporation that was created in 1970 to provide a mechanism for the payment of claims of insolvent property and casualty insurance companies in Florida. It operates under a board of directors with members appointed and approved by the Department of Financial Services based upon recommendations by the member insurers.

When a property and casualty insurance company becomes insolvent, FIGA is required to take over the claims of the insurer and pay the claims of the company's policyholders. This ensures that policyholders having paid premiums for insurance are not left without valid claims being paid.

Current law provides a public record exemption for certain FIGA records. Specifically, claims files, medical records, and records pertaining to matters reasonably encompassed in privileged attorney-client communications are confidential and exempt from public record requirements. FIGA may release the confidential and exempt records to a state agency, upon written request, and the state agency must maintain the confidential and exempt status of the records received.

The bill reenacts this public record exemption, which will repeal on October 2, 2014, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

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

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

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

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

Florida Insurance Guaranty Association

The Florida Insurance Guaranty Association (FIGA) is a nonprofit corporation that was created in 1970 to provide a mechanism for the payment of claims of insolvent property and casualty insurance companies in Florida.[4] It operates under a board of directors[5] with members appointed and approved by the Department of Financial Services based upon recommendations by the member insurers.[6] FIGA's membership is composed of all Florida licensed direct writers of property or casualty insurance.[7]

When a property and casualty insurance company becomes insolvent, FIGA is required to take over the claims of the insurer and pay the claims of the company's policyholders. This ensures that policyholders having paid premiums for insurance are not left without valid claims being paid.

In assuming the obligation of certain existing covered claims,[8] FIGA covers only the amount of each covered claim that is greater than $100 and less than $300,000, with certain exceptions. For damages

[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 and exempt records.
[4] Chapter 70-20, L.O.F.; codified as part II of chapter 631, F.S.
[5] Section 631.55(1), F.S.
[6] Section 631.56(1), F.S.
[7] Section 631.55(1), F.S.
[8] Section 631.54(3), F.S., defines the term "covered claim" to mean an unpaid claim, including one of unearned premiums, which arises out of, and is within the coverage, and not in excess of, the applicable limits of an insurance policy to which part II of chapter

to structure and contents on homeowners' claims, the FIGA cap is an additional $200,000, for a total of $500,000.[9] For condominium and homeowners' association claims, the cap is the lesser of policy limits or $100,000 multiplied by the number of units in the association.[10] All claims are subject to a $100 FIGA deductible in addition to any deductible identified in the insurance policy.[11]

FIGA obtains funds to pay claims of insolvent insurance companies, in part, from the liquidation of assets of these companies by the Division of Rehabilitation and Liquidation in the Department of Financial Services. FIGA also obtains funds from the liquidation of assets of insolvent insurers domiciled in other states but having claims in Florida. In addition, after insolvency occurs, FIGA can issue two types of assessments against property and casualty insurance companies to raise funds to pay claims – regular and emergency[12] assessments.

FIGA assesses solvent insurance companies directly for both assessments, and the insurance company is allowed to pass the assessment on to its policyholders. The maximum assessment in any one year is 2 percent of each affected insurer's net direct written premiums on property and casualty insurance policies in the state for the prior year.[13]

Public Record Exemption under Review

In 2009, the Legislature created a public record exemption for certain FIGA records.[14] The following records are confidential and exempt[15] from public record requirements:

- Claims files, until termination of all litigation, settlement, and final closing of all claims arising out of the same incident.[16]
- Medical records that are part of a claims file and information relating to the medical condition or medical status of a claimant.[17]
- Records pertaining to matters reasonably encompassed in privileged attorney-client communications.[18]

631, F.S., applies, issued by an insurer, if such insurer becomes an insolvent insurer and the claimant or insured is a resident of this state at the time of the insured event or the property from which the claim arises is permanently located in this state. For entities other than individuals, the residence of a claimant, insured, or policyholder is the state in which the entity's principal place of business is located at the time of the insured event. The term does not include:

(a) Any amount due any reinsurer, insurer, insurance pool, or underwriting association, sought directly or indirectly through a third party, as subrogation, contribution, indemnification, or otherwise;

(b) Any claim that would otherwise be a covered claim that has been rejected or denied by any other state guaranty fund based upon that state's statutory exclusions, including, but not limited to, those based on coverage, policy type, or an insured's net worth. Member insurers have no right of subrogation, contribution, indemnification, or otherwise, sought directly or indirectly through a third party, against the insured of any insolvent member; or

(c) Any amount payable for a sinkhole loss other than testing deemed appropriate by FIGA or payable for the actual repair of the loss, except that FIGA may not pay for attorney's fees or public adjuster's fees in connection with a sinkhole loss or pay the policyholder. FIGA may pay for actual repairs to the property but is not liable for amounts in excess of policy limits.

[9] Section 631.57(1)(a)2., F.S.

[10] Section 631.57(1)(a)3., F.S.

[11] Section 631.57(1)(a), F.S.

[12] Emergency assessments may only be issued to pay claims of insurers rendered insolvent due to a hurricane. *See* s. 631.57(3)(e), F.S.

[13] *See* s. 631.57(3), F.S. The maximum regular assessment is 2% per FIGA account. Because FIGA has two accounts, the aggregate maximum regular assessment is 4% per year.

[14] Chapter 2009-186, L.O.F.; codified as s. 631.582, F.S.

[15] 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).

[16] Section 631.582(1)(a), F.S.

[17] Section 631.582(1)(b), F.S.

[18] Section 631.582(1)(c), F.S.

Upon written request, such records may be released to any state agency in the furtherance of its official duties and responsibilities. The state agency must maintain the confidential and exempt status of the records received.[19]

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2014, unless reenacted by the Legislature.[20]

During the 2013 interim, subcommittee staff sent a questionnaire to FIGA as part of the Open Government Sunset Review process. As part of its questionnaire response, FIGA recommended reenactment of the public record exemption under review. According to FIGA:

> ...failure to reenact the current public record exemption would expose the personal, private financial and medical information of the insureds of insolvent insurance companies and claimants of such companies to persons who have adverse interests to those individuals. The public dissemination of such personal, private information might be detrimental to the financial and personal affairs of these insureds and claimants.[21]

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record exemption for FIGA's claims files, medical records that are part of a claims file and information relating to the medical condition or medical status of a claimant, and records pertaining to matters reasonably encompassed in privileged attorney-client communications.

B. SECTION DIRECTORY:

Section 1 amends s. 631.582, F.S., to save from repeal the public record exemption for certain records of the Florida Insurance Guaranty Association.

Section 2 provides an effective date of October 1, 2014.

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.

[19] Section 631.582(2), F.S.
[20] Section 631.582(3), F.S.
[21] Open Government Sunset Review questionnaire for the Florida Insurance Guaranty Association, received August 28, 2013, at question 5 (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 appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 631.582, F.S., relating to an exemption from public records requirements for certain records of the Florida Insurance Guaranty Association; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (3) of section 631.582, Florida Statutes, is amended to read:

631.582 Public records exemption.—

~~(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7047 PCB GVOPS 14-02 OGSR/Scripps Florida Funding Corporation
SPONSOR(S): Government Operations Subcommittee, Raulerson
TIED BILLS: **IDEN./SIM. BILLS:** SB 996

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	12 Y, 0 N	Williamson	Williamson
1) Economic Development & Tourism Subcommittee	12 Y, 0 N	Duncan	West
2) State Affairs Committee		Williamson	Camechis

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.

In a 2003 special session, the Legislature created the Scripps Florida Funding Corporation (corporation), which is a 10-member, not-for-profit board. The corporation is responsible for monitoring its 20-year agreement with the California-based Scripps Research Institute (Scripps) for the establishment of a state-of-the-art biomedical research facility in Florida (Scripps Florida), and disbursing state funds on a schedule that coincides with Scripps Florida meeting job-creation targets and other contractual requirements. The corporation is not a unit or entity of the state; however, it is subject to Florida's public record and open meeting laws.

Current law provides a public record exemption for the following information held by the corporation:

- Materials that relate to methods of manufacture or production, potential trade secrets, patentable material, actual trade secrets, or proprietary information received, generated, ascertained, or discovered by or through Scripps or Scripps Florida.
- Agreements and proposals to receive funding, including grant applications.
- Materials that relate to the recruitment of scientists and researchers.
- The identity of donors or potential donors to Scripps who wish to remain anonymous.
- Certain information received from a person from another state or nation or the Federal Government.
- Personal identifying information of individuals who participate in human trials or experiments.
- Medical or health records relating to participants in clinical trials.

In addition, corporation meetings wherein such confidential and exempt information is discussed are exempt from public meeting requirements. Records generated during those closed meetings are confidential and exempt from public record requirements.

The bill repeals the public record and public meeting exemptions. According to the corporation, it operates in the sunshine and does not receive such confidential and exempt information.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

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

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

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

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

Scripps Florida Funding Corporation

In a 2003 special session, the Legislature created the Scripps Florida Funding Corporation (corporation), a 10-member, not-for-profit board[4] responsible for:

- Entering into and monitoring a 20-year agreement with the California-based Scripps Research Institute (Scripps)[5] to establish a state-of-the-art biomedical research facility in Florida (Scripps Florida); and
- Disbursing state funds on a schedule that coincides with the Florida facility meeting job-creation targets and other contractual requirements.[6]

The Legislature appropriated $310 million to the project from federal economic stimulus funds provided to Florida under the Jobs and Growth Tax Reconciliation Act of 2003.[7] In addition, Palm Beach County provided an economic package that included funding for land and construction of temporary laboratories, the current permanent campus, and related costs.[8]

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[1] Section 119.15, F.S.

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

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

[4] The board of directors consists of nine voting members and an ex-officio, nonvoting member. The Governor, President of the Senate, and Speaker of the House of Representatives each appoint three voting members. The executive director of the Department of Economic Opportunity serves as the ex-officio, nonvoting member. Section 288.955(4)(a), F.S.

[5] The Scripps Research Institute is based in La Jolla, California.

[6] Chapter 2003-420, L.O.F.; codified as s. 288.955, F.S.

[7] Section 5, chapter 2003-420, L.O.F.

[8] Information provided at: http://www.scripps.edu/florida/about/ (last visited February 3, 2014).

The state funds are disbursed over a 10-year period,[9] which began in 2004.[10] Undisbursed funds are invested by the State Board of Administration on behalf of the corporation.[11] According to the corporation's 2013 Annual Report, it has disbursed $308,750,000 since inception, plus $40,323,073 in interest.[12]

The corporation is not a unit or entity of the state; however, it is subject to Florida's public record and open meeting laws.[13]

Scripps Florida

Scripps Florida is a Scripps Research Institute that adjoins the Florida Atlantic University campus in Palm Beach County. It is not an independent research institute, but is a division of the California-based Scripps. Scripps Florida focuses on basic biomedical science, drug discovery, and technology development.[14]

As of September 30, 2013, Scripps Florida had employed 528 people;[15] under the terms of its agreement with the corporation, Scripps Florida is required to hire 545 employees by 2014.[16]

Public Record and Public Meeting Exemptions under Review

During the 2003 special session in which the corporation was created, the Legislature also created a public record and public meeting exemption for the corporation and the Office of Tourism, Trade, and Economic Development[17].[18] Pursuant to the Open Government Sunset Review Act, the public record and public meeting exemptions were scheduled to repeal on October 2, 2009; however, the Legislature reenacted the exemptions with changes.[19]

Currently, the following information held by the corporation is confidential and exempt[20] from public

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[9] Originally, the funds were to be disbursed over a seven year period; however, due to site-selection and permitting delays, the disbursement period was extended to 10 years. *See* Amendment to Operating and Funding Agreement, November 28, 2006 (on file with the Government Operations Subcommittee).

[10] Scripps Florida Funding Corporation Annual Report for the year ended September 30, 2013 (2013 Annual Report), at 3, available at: http://www.scripps.edu/florida/about/annual-rpt.html (last visited February 3, 2014).

[11] Section 288.955(7), F.S.

[12] 2013 Annual Report, at 36.

[13] Section 288.955(2)(b), F.S.

[14] 2013 Annual Report, at 3.

[15] The employees include 54 faculty positions, 337 scientific staff positions, and 137 administration positions. Faculty positions include tenure track professors, associate professors, and assistant professors. Scientific staff positions include non-tenure track scientists (research faculty and staff scientists), research associates/post-docs, lab technicians, and Scripps paid graduate students. Administration positions include all other support personnel. *Id.* at 36.

[16] *Id.*, at 36.

[17] Chapter 2011-142, L.O.F., transferred by a type two transfer all powers, duties, functions, records, offices, personnel, associated administrative support positions, property, pending issues, existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds relating to the Office of Tourism, Trade, and Economic Development in the Executive Office of the Governor to the Department of Economic Opportunity.

[18] Chapter 2003-419, L.O.F.; codified as s. 288.9551, F.S.

[19] Chapter 2009-236, L.O.F.

[20] 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).

record requirements:

- Materials that relate to methods of manufacture or production, potential trade secrets, patentable material, actual trade secrets,[21] or proprietary information received, generated, ascertained, or discovered by or through Scripps or Scripps Florida.[22]
- Agreements and proposals to receive funding, including grant applications.[23]
- Materials that relate to the recruitment of scientists and researchers.[24]
- The identity of donors or potential donors to Scripps who wish to remain anonymous.[25]
- Information received from a person from another state or nation or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law.[26]
- Personal identifying information of individuals who participate in human trials or experiments.[27]
- Medical or health records relating to participants in clinical trials.[28]

In addition, those portions of meetings held by the corporation's board of directors, during which confidential and exempt information is presented or discussed, are exempt from public meeting requirements.[29] Records generated during those closed meetings are confidential and exempt from public record requirements.[30]

Current law also requires that public employees be permitted to inspect and copy the confidential and exempt information in the furtherance of their duties and responsibilities.[31]

Any person who willfully and knowingly violates the public record or public meeting exemption commits a misdemeanor of the second degree.[32] A misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days,[33] and a fine not to exceed $500.[34]

Pursuant to the Open Government Sunset Review Act, the public record and public meeting exemptions will repeal on October 2, 2014, unless reenacted by the Legislature.[35]

During the 2013 interim, subcommittee staff sent a questionnaire to the corporation as part of the Open Government Sunset Review process. The corporation recommended repealing the public record and

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[21] The exemption provides a public record exemption for an actual trade secret as defined in s. 688.002, F.S. Section 688.002(4), F.S., defines the term "trade secret" to mean information, including a formula, pattern, compilation, program, device, method, technique, or process that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

[22] Section 288.9551(2)(a), F.S.

[23] Those portions of agreements and proposals to receive funding, including grant applications, that do not contain confidential and exempt information, are not confidential and exempt upon issuance of the report that is made after the conclusion of the project for which funding was provided. In addition, the public record exemption does not apply to any agreement between the corporation and Scripps that governs the release of the state funds. Section 288.9551(2)(b), F.S.

[24] Section 288.9551(2)(c), F.S.

[25] Section 288.9551(2)(d), F.S.

[26] Section 288.9551(2)(e), F.S.

[27] Section 288.9551(2)(f), F.S.

[28] Section 288.9551(2)(g), F.S.

[29] Section 288.9551(3)(a), F.S.

[30] Section 288.9551(3)(b), F.S.

[31] Section 288.9551(4), F.S.

[32] Section 288.9551(5), F.S.

[33] Section 775.082(4)(b), F.S.

[34] Section 775.083(1)(e), F.S.

[35] Section 288.9551(6), F.S.

public meeting exemptions under review, because it "operates in the sunshine and does not hold, gather or disseminate proprietary information about Scripps Florida business or technologies."[36]

Effect of the Bill

The bill repeals s. 288.9551, F.S., thereby repealing the public record and public meeting exemptions for the Scripps Florida Funding Corporation.

B. SECTION DIRECTORY:

Section 1 repeals s. 288.9551, F.S., which provides public record and public meeting exemptions for the Scripps Florida Funding Corporation.

Section 2 provides an effective date of October 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

[36] Open Government Sunset Review Questionnaire for the Scripps Florida Funding Corporation, received September 10, 2013, at question 13 (on file with the Government Operations Subcommittee).

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; repealing s. 288.9551, F.S., relating to exemptions from public records and public meeting requirements for certain records and meetings of the Scripps Florida Funding Corporation; providing an effective date.

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

Section 1. Section 288.9551, Florida Statutes, is repealed.

Section 2. This act shall take effect October 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7049 PCB GVOPS 14-03 OGSR/Dependent Children Insured by Agency Group Insurance Plan
SPONSOR(S): Government Operations Subcommittee, Ahern
TIED BILLS: **IDEN./SIM. BILLS:** SB 1108

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	12 Y, 0 N	Williamson	Williamson
1) State Affairs Committee		Williamson	Camechis

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 information regarding dependent children of agency officers and employees. Specifically, personal identifying information of such dependent children is exempt from public record requirements when that child is insured under an agency group insurance plan.

The bill reenacts this public record exemption, which will repeal on October 2, 2014, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

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

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

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

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

Enrollees in an Agency Group Insurance Plan

In a case decided in October 2008,[4] the School Board of Polk County was ordered to disclose, in response to a public record request, public records regarding the school district's health insurance policy and the name, address, gender, age, title, and telephone number of both agency employees and dependents covered by the policy. The circuit court found that the Health Insurance Portability and Accountability Act of 1996 (HIPAA) was not applicable to the case at hand and that the request sought only non-exempt information under Florida law.

Subsequently, in response to a letter from former State Senator Dockery, the Florida Attorney General's Office issued an informal advisory legal opinion[5] as to whether ss. 112.08(7)[6] and 119.071(4)(b),[7] F.S., preclude the release of information that identifies school district employees, their dependents, and their health insurance plans. The attorney general concluded that while information

[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 and exempt records.
[4] *Chandler v. School Board of Polk County*, Case No. 2008CA-004389.
[5] Informal opinion, November 10, 2008.
[6] Section 112.08(7), F.S., provides a public record exemption for all medical records and medical claims records in the custody of a unit of county or municipal government relating to county or municipal employees, former county or municipal employees, or eligible dependents of such employees enrolled in a county or municipal group insurance plan or self-insurance plan.
[7] Section 119.071(4)(b), F.S., provides a public record exemption for medical information pertaining to a prospective, current, or former officer or employee of an agency which, if disclosed, would identify that officer or employee. This exemption is now found in s. 119.071(4)(b)1., F.S.

relating to an insurance program participant's medical condition is clearly protected from disclosure, it is unclear whether the protection from disclosure extends to an enrollee's personal identifying information.

Public Record Exemption under Review

In 2009, the Legislature created a public record exemption for certain information regarding dependent children of agency[8] officers and employees.[9] Specifically, personal identifying information of a dependent child of a current or former agency officer or employee, when such child is insured under an agency group insurance plan, is exempt[10] from public record requirements.[11] For purposes of the exemption, "dependent child" means any unemancipated person under the age of 18, any person under the age of 21 and still in school, or any person who is mentally or physically incapacitated when such incapacity began prior to such person reaching the age of 18.[12]

Current law provides for retroactive application[13] of the public record exemption under review.[14]

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2014, unless reenacted by the Legislature.[15]

During the 2013 interim, subcommittee staff sent questionnaires to agencies as part of the Open Government Sunset Review process.[16] Of the 22 agencies that responded, 17 recommended reenactment.[17] Common reasons agencies provided for recommending reenactment of the exemption include preventing identity theft and insurance fraud, and maintaining the safety and welfare of dependent children.

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record exemption for personal identifying information of a dependent child of a current or former agency officer or employee when such child is insured under an agency group insurance plan.

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[8] Section 119.011(2), F.S., defines the term "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 chapter 119, F.S., 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.

[9] Chapter 2009-104, L.O.F.; codified as s. 119.071(4)(b)2., F.S.

[10] 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).

[11] Section 119.071(4)(b)2.a., F.S.

[12] The exemption provides that the term "dependent child" has the same meaning as in s. 409.2554, F.S.

[13] The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. Access to public records is a substantive right. Thus, a statute affecting that right is presumptively prospective and there must be a clear legislative intent for the statute to apply retroactively. *See Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

[14] Section 119.071(4)(b)2.b., F.S.

[15] Section 119.071(4)(b)2.c., F.S.

[16] Agency responses to the questionnaire are on file with the Government Operations Subcommittee.

[17] Four agencies responding indicated no position or recommendation regarding the public record exemption, and one recommended repeal of the exemption. The Florida Parole Commission appears to have recommended repeal of the public record exemption, because it indicated the information is already protected under HIPPA; however, in *Chandler v. School Board of Polk County*, the circuit court found that HIPPA was not applicable. Agency responses to the questionnaire are on file with the Government Operations Subcommittee.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to save from repeal the public record exemption for personal identifying information of certain dependent children of current or former agency officers or employees.

Section 2 provides an effective date of October 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.071, F.S., relating to an exemption from public records requirements for personal identifying information of certain dependent children of current or former agency officers or employees; removing the scheduled repeal of the exemption; providing an effective date.

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

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

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

(4) AGENCY PERSONNEL INFORMATION.—

(b)1. Medical information pertaining to a prospective, current, or former officer or employee of an agency which, if disclosed, would identify that officer or employee is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, such information may be disclosed if the person to whom the information pertains or the person's legal representative provides written permission or pursuant to court order.

2.a. Personal identifying information of a dependent child of a current or former officer or employee of an agency, which

dependent child is insured by an agency group insurance plan, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For purposes of this exemption, "dependent child" has the same meaning as in s. 409.2554.

b. This exemption is remedial in nature and applies to such personal identifying information held by an agency before, on, or after the effective date of this exemption.

~~c. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7089 PCB RORS 14-04 Ratification of Rules/Department of Environmental Protection
SPONSOR(S): Rulemaking Oversight & Repeal Subcommittee, Ray
TIED BILLS: **IDEN./SIM. BILLS:** SB 1674

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Rulemaking Oversight & Repeal Subcommittee	11 Y, 0 N	Rubottom	Rubottom
1) State Affairs Committee		Moore	Camechis

SUMMARY ANALYSIS

The petroleum contamination site rehabilitation program, or Petroleum Restoration Program (PRP), was created in 1986 to clean up environmental sites contaminated by petroleum product storage leaks. The program was revised in 1996 and again in 1999. It is funded by an excise tax on petroleum products that generates about $200 million per year in revenue for the Inland Protection Trust Fund. The program is operated by the Florida Department of Environmental Protection (FDEP).

For over 20 years, FDEP has had rulemaking authority with respect to competitive procurement for rehabilitation services required in the PRP. FDEP had never used that authority prior to 2013.

In 2013, SB 1502, the bill implementing the General Appropriations Act, was enacted, requiring all contracts for site rehabilitation to be competitively procured if entered into on or after July 1, 2013. Prior to that date, FDEP initiated rulemaking to develop procedures for competitive procurement of site rehabilitation services. The rules were filed for adoption in December 2013.

The following rules promulgated under the 2013 legislation are estimated to have an economic impact in excess of $1 million over 5 years:

- Rule 62-772.300, F.A.C., establishing the minimum qualifications for contractors performing petroleum contamination rehabilitation activities under the PRP.
- Rule 62-772.400, F.A.C., establishing the procedures FDEP will use for the competitive procurement of contractors.

If an agency rule meets that economic impact threshold, current law requires legislative ratification of the rule before it can take effect.

The scope of this bill is limited to ratifying Rules 62-772.300 and 62-772.400, F.A.C., which will allow the rules to take effect. The bill does not adopt the substance of any rule into the statutes.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Petroleum Restoration Program

The Petroleum Restoration Program (PRP) was created in 1986 by enactment of the State Underground Petroleum Environmental Response Act. It was designed to restore sites polluted by petroleum storage in Florida. After many decades of petroleum storage in Florida, hundreds of sites had been so contaminated that the cost of restoration required by more recently enacted environmental laws, particularly the Water Quality Assurance Act of 1983[1] and the Federal Clean Water Act of 1972,[2] exceeded the owners' and creditors' interests in the property. Economic reality would have led to the private abandonment and state takeover of most of the more polluted sites, with the State of Florida succeeding to legal burden to restore the sites. The PRP provides public funding for the cleanup of these mostly private sites.

The PRP is funded by a dedicated excise tax on all petroleum products produced in or imported into Florida, contributing approximately $200 million annually[3] to the Inland Protection Trust Fund.[4] For fiscal year 2013-14, the Legislature appropriated $125 million for the PRP.[5]

In 1986, the fiscal analysis accompanying that year's legislation predicted that there were 2,000 contaminated sites in Florida. Since that time, over 25,000 contaminated sites have been identified, of which over 17,000 are eligible for funding under the PRP.[6] As of February 2014, approximately 7,300 sites have been rehabilitated, approximately 3,100 sites are currently undergoing some phase of rehabilitation, and approximately 6,900 sites await rehabilitation.

Prior to 1996, site owners had the option of performing their own cleanup and sending the bill to the state for reimbursement, or waiting for the Florida Department of Environmental Protection (FDEP) to rehabilitate their site in priority order. The program was revised in 1996 to remove the option of site owner reimbursement. That legislation left the funding of sites on a priority basis, authorized use of contractors selected by site owners that met certain minimum qualifications, added cost-share programs allowing an owner to clean up a site out of priority order when contributing a share of private funds, and required the application of risk-based principles to corrective actions. In 1999, the Legislature enacted further revisions, providing funding for certain activities, including free product recovery activities at sites in advance of priority order. Until July 1, 2013, most rehabilitation funds have been paid to contractors selected by site owners. FDEP approved the activities of those contractors based on initial site evaluations and rehabilitation plans reviewed and approved by FDEP staff prior to the initiation of rehabilitation activities.

A site's priority for rehabilitation services is scored on relative risk factors including: fire/explosion hazard, threat to uncontaminated drinking water (based on proximity of the site to applicable water

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[1] Sections 376.30-376.317, F.S.
[2] PL 92-500, 86 Stat. 816.
[3] FDEP: "Petroleum Restoration Program Improvements-Presentation to the Legislative Budget Commission," p.1 (Sept. 4, 2013).
[4] Section 376.3071, F.S.
[5] For information on FDEP's plan to improve the efficiency of the PRP, see FDEP: "Petroleum Restoration Program Improvements-Presentation to the Legislative Budget Commission," available at http://www.leg.state.fl.us/Data/Committees/Joint/JLBC/Meetings/Packets/Petroleum%20Restoration%20Program%20Improvements.pdf.
[6] FDEP: "January 2012 Program Briefing," p.1 (latest program briefing found at FDEP website, viewed at: http://www.dep.state.fl.us/waste/quick_topics/publications/pss/pcp/geninfo/2012Program_Briefing_11Jan12.pdf).

sources), migration potential, and other related environmental and geological factors.[7] Site specific data about the level of contamination is not considered in initial scoring of sites.[8]

For over 20 years, FDEP has had authority to establish procurement processes for the PRP by rule.[9] Prior to 2013, it does not appear that FDEP had used that rulemaking authority.

In 2013, the Legislature amended s. 376.30711, F.S., to require: (1) all contracts for providers under the PRP to be procured through competitive bidding; (2) a statement under oath from all owners, responsible parties, and cleanup contractors and subcontractors, that no compensation, remuneration, or gift of any kind, directly or indirectly, has been solicited, offered, accepted, paid or received in exchange for designation or employment in connection with the cleanup of an eligible site, except for the compensation paid by FDEP to the contractor for the cleanup; (3) a statement under oath from all cleanup contractors and subcontractors receiving compensation for cleanup of eligible sites that they have never paid, offered, or provided any compensation in exchange for being designated or hired to do cleanup work, except for the compensation for the cleanup work; and (4) any owner, responsible party or cleanup contractor or subcontractor who falsely executes either of those statements to be prohibited from participating in the PRP.[10]

In addition, SB 1502,[11] which implemented the 2013-2014 General Appropriations Act, was enacted, requiring all contracts for site rehabilitation to be competitively procured if entered into on or after July 1, 2013.

Effective and efficient implementation of the 2013 changes in law necessitated rulemaking, including a new procurement rule. The Department has also undertaken some competitive procurement activities under general procurement laws[12] and applicable existing rules.

Rulemaking Authority and Legislative Ratification

A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.[13] Rulemaking authority is delegated by the Legislature[14] through statute and authorizes an agency to "adopt, develop, establish, or otherwise create"[15] a rule. Agencies do not have discretion as to whether to engage in rulemaking.[16] To adopt a rule an agency must have a general grant of authority to implement a specific law by rulemaking.[17] The grant of rulemaking authority itself need not be detailed.[18] The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.[19]

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[7] Rule 62-771.300(1), F.A.C. The priority scoring is based primarily upon site location with little consideration of the actual contamination of the site. (From a meeting between House staff and FDEP staff, June 28, 2013, in which background questions about site scoring and priorities were addressed informally.)
[8] Rule 62-771.300(5), F.A.C.
[9] Section 287.0595, F.S.
[10] Section 376.30711(2)(d)-(e), F.S. These provisions expire on June 30, 2014.
[11] Chapter 2013-52, L.O.F.
[12] Chapter 287, F.S.
[13] Section 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region,* 969 So. 2d 527, 530 (Fla. 1st DCA 2007).
[14] *Southwest Florida Water Management District v. Save the Manatee Club, Inc.,* 773 So. 2d 594 (Fla. 1st DCA 2000).
[15] Section 120.52(17), F.S.
[16] Section 120.54(1)(a), F.S.
[17] Sections 120.52(8) & 120.536(1), F.S.
[18] *Save the Manatee Club, Inc.,* supra at 599.
[19] *Sloban v. Florida Board of Pharmacy,*982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.,* 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

An agency begins the formal rulemaking process by filing a notice of the proposed rule.[20] The notice is published by the Department of State in the Florida Administrative Register[21] and must provide certain information, including the text of the proposed rule, a summary of the agency's statement of estimated regulatory costs (SERC) if one is prepared, and how a party may request a public hearing on the proposed rule. The SERC must include an economic analysis projecting a proposed rule's adverse effect on specified aspects of the state's economy or increase in regulatory costs.[22]

The economic analysis mandated for each SERC must analyze a rule's potential impact over the 5 year period after the rule goes into effect. First discussed in the analysis is the rule's likely adverse impact on economic growth, private-sector job creation or employment, or private-sector investment.[23] Next is the likely adverse impact on business competitiveness,[24] productivity, or innovation.[25] Finally, the analysis must discuss whether the rule is likely to increase regulatory costs, including any transactional costs.[26] If the analysis shows the projected impact of the proposed rule in any one of these areas will exceed $1 million in the aggregate for the 5-year period, the rule cannot go into effect until ratified by the Legislature.[27]

Current law distinguishes between a rule being "adopted" and becoming enforceable or "effective."[28] A rule must be filed for adoption before it may go into effect[29] and cannot be filed for adoption until completion of the rulemaking process.[30] As a rule submitted under s. 120.541(3), F.S., becomes effective if ratified by the Legislature, a rule must be filed for adoption before being submitted for legislative ratification.

Adoption of Rules

In June 2013, FDEP initiated rulemaking on site priorities and procurement procedures to implement the 2013 reforms. Effective January 16, 2014, FDEP amended its rules governing site priority ranking, Rules 62-771.100 and 62-771.300, F.A.C., to authorize rescoring of sites to better reflect the current law. These rules were estimated to not have an impact significant enough to require the preparation of a SERC.

On December 27, 2014, FDEP filed for adoption competitive procurement rules for the PRP. Two of those rules, Rules 62-772.300 and 62-772.400, F.A.C., require legislative ratification based on SERCs[31] estimating an impact in excess of $1 million over 5 years.

Impact of Rules

Rule 62-772.300, F.A.C., establishes the minimum qualifications for contractors performing petroleum contamination rehabilitation activities under the PRP. The rule is estimated to have a recurring cost in excess of $15 million, based on the estimated cost to contractors of maintaining the minimum

[20] Section 120.54(3)(a)1, F.S.
[21] Section 120.55(1)(b)2, F.S.
[22] Section 120.541(2)(a), F.S.
[23] Section 120.541(2)(a)1., F.S.
[24] This factor includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.
[25] Section 120.541(2)(a) 2., F.S.
[26] Section 120.541(2)(a) 3., F.S.
[27] Section 120.541(3), F.S.
[28] Section 120.54(3)(e)6, F.S. Before a rule becomes enforceable, thus "effective," the agency first must complete the rulemaking process and file the rule for adoption with the Department of State.
[29] Section 120.54(3)(e)6, F.S.
[30] Section 120.54(3)(e), F.S.
[31] Copies of the SERCs prepared on the two rules ratified by the bill are in possession of the staff of the Regulatory Oversight & Repeal Subcommittee.

qualifications established by the rule. This estimate may be high as the law[32] already mandates some of the qualifications in the rule.

Rule 62-772.400, F.A.C., establishes the procedures FDEP will use for the competitive procurement of contractors. The rule is estimated to have a recurring cost of approximately $41.2 million, including the cost of responding to competitive solicitations and the transaction fees associated with the use of MyFloridaMarketPlace under the procurement rules. It is difficult to determine which of these costs result from the statutory requirement for competitive procurement and which derive from the implementing rules.

Effect of Proposed Changes

The sole effect of the bill is to ratify Rules 62-771.300 and 62-771.400, F.A.C., allowing each rule to take effect. The bill directs that it will not be codified in the Florida Statutes but only noted in the historical comments to each rule by the Department of State.

The bill expressly states that it serves no purpose other than ratification of the two rules. Furthermore, the bill specifies that it does not:

- Alter rulemaking authority delegated by prior law,
- Constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the rules cited, or
- Cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of any rule cited.

Lastly, the bill specifies that it is intended to preserve the status of any cited rule as a rule under chapter 120, F.S.

B. SECTION DIRECTORY:

Section 1. Ratifies the following rules solely to meet the condition for effectiveness imposed by s. 120.541(3), F.S.: Rules 62-772.300 and 62-772.400, F.A.C.
Section 2. Provides the act goes into effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The bill itself creates no additional source of state revenues. Application of the rule will generate fees to MyFloridaMarketPlace.

2. Expenditures: The bill itself requires no state expenditures. Costs of implementing the rules ratified are evaluated in the SERC for each rule.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill has no impact on local government revenues.

2. Expenditures: The bill does not impose additional expenditures on local governments.

[32] Section 376.30711(2)(b)-(c), F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: The bill itself does not directly impact the private sector. Any resulting economic impacts are due to the substantive policy of the rule as addressed in the SERC for that rule.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take any 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:

No other constitutional issues are presented by the bill.

B. RULE-MAKING AUTHORITY:

The bill meets the final statutory requirement for FDEP to exercise its rulemaking authority implementing competitive procurement under the PRP. No additional rulemaking authority is required.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to ratification of rules of the Department of Environmental Protection; ratifying specified rules relating to qualifications and performance reviews of contractors performing certain site rehabilitation activities for petroleum contaminated sites, and procedures for procurement of such contractors, for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule meeting any specified thresholds for likely adverse impact or increase in regulatory costs; providing applicability; providing an effective date.

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

Section 1. (1) The following rules are ratified for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), Florida Statutes:

(a) Rule 62-772.300, Florida Administrative Code, entitled "Contractor Qualifications and Performance Reviews," as filed for adoption with the Department of State pursuant to the certification package dated December 27, 2013.

(b) Rule 62-772.400, Florida Administrative Code, entitled "Procedures for the Competitive Procurement of Contractors and Assignment of Work," as filed for adoption with the Department

of State pursuant to the certification package dated December 27, 2013.

(2) This act serves no other purpose and shall not be codified in the Florida Statutes. After this act becomes law, its enactment and effective dates shall be noted in the Florida Administrative Code or the Florida Administrative Register, or both, as appropriate. This act does not alter rulemaking authority delegated by prior law, does not constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the rules cited, and is intended to preserve the status of any cited rule as a rule under chapter 120, Florida Statutes. This act does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of any rule cited.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7101 PCB GVOPS 14-04 OGSR/Inventory of Estate or Elective Estate and Accounting in Estate Proceeding
SPONSOR(S): Government Operations Subcommittee, Combee
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 650

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	12 Y, 0 N	Williamson	Williamson
1) State Affairs Committee		Williamson	Camechis

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 inventories and accountings of an estate. Specifically, an inventory of an estate or elective estate, or an accounting filed in an estate proceeding, is confidential and exempt from public record requirements. The confidential and exempt inventory or accounting may be disclosed for inspection or copying in certain instances.

The bill reenacts this public record exemption, which will repeal on October 2, 2014, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

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

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

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

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

Personal Representative of an Estate

Subject to certain limitations, any person who is able to manage his or her own affairs and is a resident of Florida at the time of the death of the person whose estate is to be administered is qualified to act as personal representative in Florida.[4] A person who is not qualified to act as a personal representative is a person who has been convicted of a felony, is mentally or physically unable to perform the duties, or is under 18 years of age.[5] A person who does not live in Florida may qualify as a personal representative if certain requirements are met.[6]

Inventory of Property of an Estate

A personal representative of an estate is required to file an inventory of the property in an estate within 60 days after issuance of letters of administration of the estate.[7] The inventory must be verified, and an estimated fair market value of the items at the date of death of the decedent must be included.[8]

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[1] Section 119.15, F.S.
[2] Section 24(c), Art. I of the State Constitution.
[3] An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.
[4] Section 733.302, F.S.
[5] Section 733.303(1), F.S.
[6] *See* s. 733.304, F.S.
[7] Section 733.604(1)(a), F.S.; Florida Probate Rule 5.340(1).
[8] *Id.*

The personal representative must file a verified amended or supplementary inventory if he or she learns that property was not included in the original inventory or learns that the estimated value or description was erroneous or misleading.[9]

A beneficiary may make a written request for:

- An explanation from the personal representative regarding how the inventory value was determined; or
- A copy of the appraisal if an appraisal was obtained.[10]

Accountings of an Estate

The Florida Probate Rules provide requirements for the contents of and accounting standards for a fiduciary accounting in a probate proceeding. The fiduciary accounting must include:

- All cash and property transactions since the date of the last accounting or, if none, from the commencement of administration; and
- A schedule of assets at the end of the accounting period.[11]

The accounting must be verified by the fiduciary filing the accounting.[12]

Elective Share

The surviving spouse of a decedent who lives in Florida has the right to a share of the elective estate of the decedent.[13] The elective share is an amount equal to 30 percent of the elective estate.[14]

Public Record Exemption under Review

Current law provides a public record exemption for inventories and accountings of an estate. Specifically, an inventory of an estate or elective estate, or an accounting filed in an estate proceeding, is confidential and exempt[15] from public record requirements.[16] Current law provides for retroactive application[17] of the public record exemption under review.[18]

Such inventory or accounting may be disclosed for inspection or copying:

- To the personal representative or the personal representative's attorney;
- To an interested person;[19] or

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[9] Section 733.604(2), F.S.

[10] Section 733.604(3), F.S.

[11] Florida Probate Rule 5.346(a).

[12] Florida Probate Rule 5.346(d).

[13] Section 732.201, F.S.

[14] Section 732.2065, F.S.; *see* s. 732.2035, F.S., for a discussion of property entering into the elective estate; *see also* s. 732.2055, F.S., for a discussion of the valuation of the elective estate.

[15] 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).

[16] Section 733.604(2)(b)1.-3., F.S.

[17] The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. Access to public records is a substantive right. Thus, a statute affecting that right is presumptively prospective and there must be a clear legislative intent for the statute to apply retroactively. *See Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

[18] Section 733.604(2)(b)5., F.S.

[19] Section 731.201(23), F.S., defines "interested person" to mean

> [A]ny person who may reasonably be expected to be affected by the outcome of the particular proceeding involved. In any proceeding affecting the estate or the rights of a beneficiary in the estate, the personal representative of the estate shall be deemed to be an interested person. In any proceeding affecting the expenses of the administration and obligations of a decedent's estate, or any claims described in s. 733.702(1), the trustee of a trust described in s.

- By court order upon a showing of good cause.[20]

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2014, unless reenacted by the Legislature.[21]

During the 2013 interim, subcommittee staff met with representatives from the Office of the State Courts and the Real Property, Probate, and Trust Law Section of The Florida Bar as part of the Open Government Sunset Review process. The representatives recommended reenactment of the public record exemption due to the sensitive financial information that is contained in such inventories and accountings.[22]

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record exemption for an inventory of an estate or elective estate, or an accounting in an estate proceeding. It also clarifies that the public record exemption applies to such accounting when it is filed with the clerk of court.

B. SECTION DIRECTORY:

Section 1 amends s. 733.604, F.S., to save from repeal the public record exemption for the inventories of an estate or elective estate filed with the clerk of court or the accountings filed in an estate proceeding.

Section 2 provides an effective date of October 1, 2014.

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.

733.707(3) is an interested person in the administration of the grantor's estate. The term does not include a beneficiary who has received complete distribution. The meaning, as it relates to particular persons, may vary from time to time and must be determined according to the particular purpose of, and matter involved in, any proceedings.

[20] Section 733.604(2)(b)4., F.S.

[21] Section 733.604(2)(b)6. F.S.

[22] Meeting on October 15, 2013, with Eric Maclure, representing the Office of the State Courts, and Martha Edenfield, representing the Real Property, Probate, and Trust Section of The Florida Bar.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 733.604, F.S., relating to an exemption from public record requirements for the inventories of an estate or elective estate filed with the clerk of the court or the accountings filed in an estate proceeding; specifying that accountings in estate proceedings must be filed with the clerk of the court to be confidential; saving the exemption from repeal under the Open Government Sunset Review Act; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1) of section 733.604, Florida Statutes, is amended to read:

733.604 Inventories and accountings; public records exemptions.—

(1)

(b)1. Any inventory of an estate, whether initial, amended, or supplementary, filed with the clerk of the court in conjunction with the administration of an estate is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. Any inventory of an elective estate, whether initial, amended, or supplementary, filed with the clerk of the court in

conjunction with an election made in accordance with part II of chapter 732 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

3. Any accounting, whether interim, final, amended, or supplementary, filed with the clerk of the court in an estate proceeding is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

4. Any inventory or accounting made confidential and exempt by subparagraph 1., subparagraph 2., or subparagraph 3. shall be disclosed by the custodian for inspection or copying:

a. To the personal representative;

b. To the personal representative's attorney;

c. To an interested person as defined in s. 731.201; or

d. By court order upon a showing of good cause.

5. These exemptions apply to any inventory or accounting filed before, on, or after July 1, 2009.

~~6. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7103 PCB GVOPS 14-05 OGSR/Florida Defense Support Task Force
SPONSOR(S): Government Operations Subcommittee, Raulerson
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 858

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	12 Y, 0 N	Williamson	Williamson
1) State Affairs Committee		Williamson	Camechis

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 base realignment and closure (BRAC) process is the process in which military installations across the nation are reviewed to determine if functions and bases can be consolidated or closed. The BRAC process reflects the Department of Defense's desire to eliminate excess capacity, experience the savings from that reduction in capacity, and fund higher priority weapon platforms and troop training.

Florida has recognized the threat that BRAC decisions pose to the state's economy and, as such, has established organizations with the direct mission to enhance Florida's military value and to advocate on behalf of the state. Currently, the Florida Defense Support Task Force (task force) is tasked with the mission to preserve and protect military installations in Florida.

Current law provides a public record and public meeting exemption for the task force. Portions of records held by the task force that relate to strengths and weaknesses of military installations or military missions in Florida and other states and territories, and to Florida's strategy to retain its military bases during any United States BRAC process, are exempt from public record requirements. Any portion of a task force meeting wherein such information is discussed is exempt from public meeting requirements. In addition, records generated during those closed meetings are exempt from public record requirements.

The bill reenacts the public record and public meeting exemptions, which will repeal on October 2, 2014, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

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

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

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

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

United States Department of Defense Base Realignment and Closure Process

The base realignment and closure (BRAC) process is the process in which military installations across the nation are reviewed to determine if functions and bases can be consolidated or closed.[4] The BRAC process reflects the Department of Defense's desire to eliminate excess capacity, experience the savings from that reduction in capacity, and fund higher priority weapon platforms and troop training.

Under a BRAC process, the Secretary of Defense makes recommendations to the Defense Base Closure and Realignment Commission (commission).[5] After receiving recommendations from the Secretary, the commission conducts public hearings on the recommendations. By July 1 of each year in which the Secretary submits recommendations, the commission must transmit to the President a report containing the commission's findings and conclusions regarding the Secretary's recommendations, along with the commission's recommendations for closures and realignments of military installations inside the United States.[6] By July 15 of each year in which the commission makes recommendations, the President must transmit to the commission and to Congress a report containing the President's approval or disapproval of the commission's recommendations.[7]

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[1] Section 119.15, F.S.
[2] Section 24(c), Art. I of the State Constitution.
[3] An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.
[4] *See* Public Law 101-510, as amended through the Authorization Act of Fiscal Year 2005.
[5] The commission is nominated by the President and confirmed by the Senate. Public Law 101-510, s. 2902.
[6] *Id.* at s. 2903.
[7] *Id.*

Since 1988, Congress has approved five BRAC rounds, which occurred in 1988, 1991, 1993, 1995, and 2005. During the BRAC rounds that occurred from 1988 to 1995, 501 military bases, military commands, and military housing developments were recommended closed, realigned, or a previous BRAC's decision was recommended changed. Twenty-seven of those decisions were related to military bases or military commands located in Florida.[8]

Florida Defense Support Task Force

Florida has recognized the threat that BRAC decisions pose to the state's economy and, as such, has established organizations with the direct mission to enhance Florida's military value and to advocate on behalf of the state.[9]

In 2011, the Legislature created the Florida Defense Support Task Force (task force)[10] with the mission to:

> [M]ake recommendations to preserve and protect military installations to support the state's position in research and development related to or arising out of military missions and contracting, and to improve the state's military-friendly environment for service members, military dependents, military retirees, and businesses that bring military and base-related jobs to the state.[11]

The task force is comprised of the Governor, or his or her designee, and 12 members representing defense-related industries or communities that host military bases and installations. The Governor, President of the Senate, and Speaker of the House of Representatives each appoint four members to serve on the task force.[12]

Public Record and Public Meeting Exemption under Review

In 2009, the Legislature established the Florida Council on Military Base and Mission Support (council)[13] and created a public record and public meeting exemption specific to BRAC preparations by the council.[14] In 2012, the council was repealed and the public record and public meeting exemptions were transferred to the newly created Florida Defense Support Task Force.[15]

Current law provides a public record exemption for certain records held by the task force. Specifically, the following records are exempt[16] from public record requirements:

- That portion of a record that relates to strengths and weaknesses of military installations or military missions in Florida relative to the selection criteria for the realignment and closure of military bases and missions under the United States BRAC process.[17]

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[8] 2005 Defense Base Closure and Realignment Commission Report, Appendix F: Base Closures and Realignments by State: 1995, 1993, 1991, and 1988; available at http://www.brac.gov/Finalreport.html (last visited March 2, 2014).

[9] Such entities include the Governor's Advisory Council on Base Realignment and Closure, which was created in 2003; Florida Council on Military Base and Mission support, which was created in 2009; and Florida Defense Support Task Force, which was created in 2011.

[10] Section 38, chapter 2011-76, L.O.F.; codified as s. 288.987, F.S.

[11] Section 288.987(2), F.S.

[12] Section 288.987(3), F.S.

[13] *See* chapter 2009-155, L.O.F.

[14] Chapter 2009-156, L.O.F.; codified as s. 288.985, F.S.

[15] *See* chapter 2012-98, L.O.F.

[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 288.985(1)(a), F.S.

- That portion of a record that relates to strengths and weaknesses of military installations or military missions in other state or territories and the vulnerability of such installations or missions to base realignment or closure under the United States BRAC process, and any agreements or proposals to relocate or realign military units and missions from other states or territories.[18]
- That portion of a record that relates to Florida's strategy to retain its military bases during any United States BRAC process and any agreements or proposals to relocate or realign military units and missions.[19]

Current law also provides a public meeting exemption for any portion of a meeting of the task force, or a workgroup of the task force, wherein such exempt records are presented or discussed.[20] In addition, any records generated during the closed portion of the meeting are exempt from public record requirements.[21]

Any person who willfully and knowingly violates the exemptions commits a misdemeanor of the first degree.[22,23]

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2014, unless reenacted by the Legislature.[24]

During the 2013 interim, subcommittee staff met with staff of the task force as part of the Open Government Sunset Review process.[25] According to staff of the task force, the public record and public meeting exemptions are used by the task force and are necessary in allowing the task force to accomplish its mission. The exemptions are necessary as long as the task force is in existence.

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record and public meeting exemptions for the task force. It also removes the misdemeanor penalty as penalties typically are not provided for exemptions wherein records are made exempt only, because the records custodian has the discretion to release exempt records when necessary.[26] The bill also removes superfluous language.

B. SECTION DIRECTORY:

Section 1 amends s. 288.985, F.S., to save from repeal the public record and public meeting exemptions for the Florida Defense Support Task Force.

Section 2 provides an effective date of October 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

[18] Section 288.985(1)(b), F.S.
[19] Section 288.985(1)(c), F.S.
[20] Section 288.985(2), F.S.
[21] Section 288.985(3), F.S.
[22] Section 288.985(4), F.S.
[23] A misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year and a fine not to exceed $1,000. *See* ss. 775.082 and 775.083, F.S.
[24] Section 288.985(5), F.S.
[25] Meeting with Rocky McPherson and Bruce Grant, staff for the task force, on August 21, 2013.
[26] *See* footnote 16 for a discussion of the differences between exempt records and confidential and exempt records.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 288.985, F.S., relating to an exemption from public records and public meetings requirements for certain records pertaining to any United States Department of Defense base realignment and closure process held by the Florida Defense Support Task Force and those meetings or portions of meetings at which those records are presented or discussed; specifies that records generated during those portions of meetings during which exempt records are presented or discussed are also exempt from public records requirements; removing a penalty; saving the exemption from repeal under the Open Government Sunset Review Act; providing an effective date.

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

Section 1. Section 288.985, Florida Statutes, is amended to read:

288.985 Exemptions from public records and public meetings requirements.—

(1) The following records held by the Florida Defense Support Task Force are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) That portion of a record which relates to strengths and weaknesses of military installations or military missions in this state relative to the selection criteria for the realignment and closure of military bases and missions under any United States Department of Defense base realignment and closure process.

(b) That portion of a record which relates to strengths and weaknesses of military installations or military missions in other states or territories and the vulnerability of such installations or missions to base realignment or closure under the United States Department of Defense base realignment and closure process, and any agreements or proposals to relocate or realign military units and missions from other states or territories.

(c) That portion of a record which relates to the state's strategy to retain its military bases during any United States Department of Defense base realignment and closure process and any agreements or proposals to relocate or realign military units and missions.

(2)(a) Meetings or portions of meetings of the Florida Defense Support Task Force, or a workgroup of the task force, at which records are presented or discussed that ~~which~~ are exempt under subsection (1) are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(b)~~(3)~~ ~~Any~~ Records generated during those portions of meetings that ~~which~~ are exempt ~~closed to the public~~ under

paragraph (a) ~~subsection (2), including, but not limited to, minutes, tape recordings, videotapes, digital recordings, transcriptions, or notes,~~ are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

~~(4) Any person who willfully and knowingly violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.~~

~~(5) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2014.