



Government Operations Subcommittee

**Monday, March 18 2013
4:00 PM
Webster Hall (212 Knott)**

MEETING PACKET

**Will Weatherford
Speaker**

**Jason T. Brodeur
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Government Operations Subcommittee

Start Date and Time: Monday, March 18, 2013 04:00 pm
End Date and Time: Monday, March 18, 2013 06:00 pm
Location: Webster Hall (212 Knott)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 323 Flag Etiquette by Moskowitz
CS/HB 361 Public Meetings/Criminal Justice Commissions by Criminal Justice Subcommittee, Kerner
CS/HB 649 Public Records/Proprietary Confidential Business by Energy & Utilities Subcommittee, Cummings
HB 853 Public Retirement Plans by Taylor, McBurney
HB 1075 Public Records by Rangel
HB 1297 Pub. Rec./Florida False Claims Act by Young

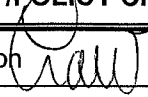
Consideration of the following proposed committee bill(s):

PCB GVOPS 13-05 -- OGSR Paratransit Services

NOTICE FINALIZED on 03/14/2013 16:23 by Sims-Davis.Linda

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 323 Flag Etiquette
SPONSOR(S): Moskowitz and others
TIED BILLS: IDEN./SIM. BILLS: SB 230

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

SUMMARY ANALYSIS

While there are currently a number of statutes requiring display of the national flag, the state flag, and the POW-MIA flag, there do not appear to be any statutes requiring that a flag be flown at half-staff for particular persons or in particular circumstances. The Governor's Office has a written protocol relating to when and for whom flags may be flown at half-staff.

The bill requires the Governor to adopt a protocol on flag display that provides guidelines for the proper display of the state flag and for the lowering of the state flag to half-staff on appropriate occasions, such as on holidays and upon the death of high-ranking state officials, uniformed law enforcement and fire service personnel, and prominent citizens. The bill also authorizes the Governor to adopt, repeal, or modify any rule or custom as the Governor deems appropriate which pertains to the display of the state flag.

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

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Display of Flags

Current law provides requirements regarding the display of the national flag, the state flag, and the POW-MIA flag. For example, the national and state flags must be displayed at public schools,¹ and the national flag must be displayed at the state capitol and each county courthouse if weather permits.² Each state-owned building at which the national flag is displayed must display the POW-MIA flag if such flag is available free of charge to the agency that occupies the building.³

Current law does not provide any requirements for flying a flag at half-staff for particular persons or in particular circumstances.

Flag Protocol

The Governor's Office has a written protocol relating to when and for whom flags may be flown at half-staff.⁴

According to the Governor's protocol, by order of the President of the United States or the Governor, the national flag must be flown at half-staff upon the death of principal figures of the United States or state government as a mark of respect to their memory, pursuant to 4 U.S.C. Section (7)(m) and United States General Service Administration Flag Policy. The national flag is flown at half-staff at all federal buildings, all state-owned buildings, and, in most cases, all courthouses and city halls throughout Florida for specified periods on national occasions proclaimed by the President of the United States and after the death of the following persons:

- President or former President of the United States.
- Vice President or former Vice President of the United States.
- Chief Justice, former Chief Justice, or an Associate Justice of the United States Supreme Court.
- Speaker of the United States House of Representatives.
- Secretary of an executive or military department.
- President Pro Tempore of the United States Senate.
- Majority Leader or Minority Leader of the United States House of Representatives.
- Governor or former Governor of Florida.
- Member or former member of the Florida Cabinet.
- Justice or former Justice of the Florida Supreme Court.
- Member or former member of Congress from Florida.
- Member or former member of the Florida Legislature.
- State, county, district, or city official.
- Prominent citizens.

The protocol also provides that the Governor may order or proclaim that the state flag be flown at half-staff after the death of the above listed persons.

The protocol further states that the Governor may proclaim that the national and state flags be flown at half-staff in the event of the death of a member of the Armed Forces who dies while serving on active

¹ Sections 256.032 and 1000.06, F.S.

² Section 256.01, F.S.

³ Section 256.12, F.S.

⁴ *Flag Protocol*, Executive Office of the Governor. Available at <http://www.flgov.com/wp-content/uploads/2012/09/EOG-Flag-Protocol-FINAL1.pdf> (last visited March 11, 2013).

duty. The Governor, by proclamation, may have the flags flown at half-staff at the state Capitol and the county courthouse and city hall where the deceased servicemember resided.⁵

The protocol provides that, if timely requested, the Governor may approve flying the national and state flags at half-staff for a police officer or firefighter who dies in the line of duty and for a state employee. The flags are flown at half-staff at the city hall and courthouse where the deceased lived. The Governor may use his discretion as to whether he or she will grant any request for flying flags at half-staff at state buildings or facilities or other local buildings or facilities on a case-by-case basis. The Executive Assistant of the Governor's Legal Office notifies the requestor by e-mail if the request is granted and the requestor notifies the appropriate local officials. The flags are flown at half-staff one day only, from sunrise to sunset, giving deference to the family's day of preference.

Additionally, a constituent may request flags be flown at half-staff for any reason not addressed in the protocol. The Governor has the discretion whether to grant or deny the request.⁶

Effect of the Bill

The bill requires the Governor to adopt a protocol on flag display that provides guidelines for the proper display of the state flag and for the lowering of the state flag to half-staff on appropriate occasions, such as on holidays and upon the death of high-ranking state officials, uniformed law enforcement and fire service personnel, and prominent citizens. The bill also authorizes the Governor to adopt, repeal, or modify any rule or custom as the Governor deems appropriate which pertains to the display of the state flag.

It is unclear what the practical effect of the bill will be, as the Governor has adopted a protocol addressing the flying of the flag on the occasions specified in the bill.

The bill provides an effective date of July 1, 2013.

B. SECTION DIRECTORY:

Section 1 creates s. 256.15, F.S., requiring that the Governor adopt a protocol on flag display.

Section 2 provides an effective date of July 1, 2013.

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.

⁵ 4 U.S.C. s. (7)(m).

⁶ *Flag Protocol*, supra at fn. 1.

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:

See RULE-MAKING AUTHORITY.

B. RULE-MAKING AUTHORITY:

It is unclear if the protocol that is to be adopted pursuant to this bill is in the nature of an agency rule that comes under the ambit of the Administrative Procedure Act (APA).⁷ The APA defines a rule in relevant part as an “agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency...”⁸ The Governor is covered by this provision.⁹

If the Governor’s flag protocol mandated by this bill would require compliance or otherwise have the consistent effect of law, the protocol would have to be promulgated in accordance with the rulemaking procedures of the APA.¹⁰

Additionally, if the requirement to adopt a protocol relating to the display of the state flag is a delegation of rulemaking authority, the bill would have to contain sufficient standards for the implementation of the protocol; the Legislature cannot delegate unrestricted discretion to enact or apply law.¹¹ In other words, some minimal standards and guidelines to be followed would have to be provided by the delegating legislation.¹² It is unclear whether the provision in the bill that permits the Governor to adopt, repeal, or modify any rule or custom as the Governor deems appropriate which pertains to the display of the state flag would meet the applicable standard for a proper delegation of power by the Legislature.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

⁷ Chapter 120, F.S.

⁸ Section 120.52(16), F.S.

⁹ Section 120.52(1), F.S., in part defining “agency” as “[t]he Governor...”

¹⁰ *Coventry First, LLC v. State, Office of Ins. Regulation*, 38 So.3d 200, 203 (Fla. 1st DCA, 2010) (internal citations omitted).

¹¹ *Bush v. Schiavo*, 885 So.2d 321 (Fla. 2004); Art. II, s. 3, Fla. Const.

¹² *Askew v. Cross Key Waterways*, 372 So.2d 913, 925 (Fla.1978)

1 A bill to be entitled
2 An act relating to flag etiquette; creating s.
3 256.015, F.S.; requiring that the Governor adopt a
4 protocol on flag display; requiring the protocol to
5 have guidelines for proper flag display and for
6 lowering the state flag to half-staff on certain
7 occasions; authorizing the Governor to adopt, repeal,
8 or modify any rule or custom as the Governor deems
9 appropriate which pertains to the display of the state
10 flag; providing an effective date.

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

13
14 Section 1. Section 256.015, Florida Statutes, is created
15 to read:

16 256.015 Display of flag.-

17 (1) The Governor shall adopt a protocol on flag display.
18 The protocol must provide guidelines for the proper display of
19 the state flag and for the lowering of the state flag to half-
20 staff on appropriate occasions, such as on holidays and upon the
21 death of high-ranking state officials, uniformed law enforcement
22 and fire service personnel, and prominent citizens.

23 (2) The Governor may adopt, repeal, or modify any rule or
24 custom as the Governor deems appropriate which pertains to the
25 display of the state flag.

26 Section 2. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 361 Public Meetings/Criminal Justice Commissions
SPONSOR(S): Criminal Justice Subcommittee; Kerner
TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Cox	Cunningham
2) Government Operations Subcommittee	JS	Stramski	Williams <i>Law</i>
3) Judiciary Committee			

SUMMARY ANALYSIS

Both the Florida Constitution and Florida Statutes require all meetings of any public body of the executive branch or local government at which official acts are to be taken or at which public business of such body is to be discussed to be open and noticed to the public.

Currently, two counties in Florida have established "criminal justice commissions," each of which is comprised of members of both the public and private sector. The commissions discuss a multitude of issues relating to local criminal justice practices, policies, and program developments, including issues related to jail population and overcrowding, tracking crimes in the community, and matters of general policing.

Criminal justice commissions are currently subject to public meetings requirements. Therefore, discussions that occur among two or more members of the commission, which involve matters that are being considered or may foreseeably come before the commission, must be properly noticed and should be conducted as an open meeting.

The bill exempts duly constituted criminal justice commissions from public meeting requirements. This exemption is limited to any portion of a meeting of commission members where the members discuss active criminal intelligence or active criminal investigative information which is currently being considered, or may foreseeably come before the commission.

The bill repeals the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill provides an effective date of July 1, 2013.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Meetings Laws

State Constitution: Open Meetings

Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.

Article I, s. 24(c) of the State Constitution authorizes the Legislature to provide exemptions from the open meeting requirements upon a two-thirds vote of both legislative chambers, in a bill that specifies the public necessity giving rise to the exemption.

Government in the Sunshine Law

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.¹ The board or commission must provide reasonable notice of all public meetings.² Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.³ Minutes of a public meeting must be promptly recorded and be open to public inspection.⁴

The Open Government Sunset Review Act⁵ provides that a public meeting exemption may be created or maintained only if it serves an identifiable public purpose and the "[l]egislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."⁶ However, the exemption 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; or
- Protects trade or business secrets.⁷

Criminal Justice Commissions

Currently, two counties in Florida have established "criminal justice commissions."⁸ Membership of these commissions is comprised of members of both the public⁹ and private sectors. These members

¹ Section 286.011(1), F.S.

² *Id.*

³ Section 286.011(6), F.S.

⁴ Section 286.011(2), F.S.

⁵ Section 119.15, F.S.

⁶ *Id.*

⁷ *Id.*

⁸ In 2004, the Board of County Commissioners of Sarasota County passed Resolution number 2004-251, creating the Sarasota County Criminal Justice Commission. (On file with the Criminal Justice Subcommittee staff). In 1988, Palm Beach County enacted

collaborate to improve the criminal justice system in their community.¹⁰ The commissions discuss and make recommendations to the boards of county commissioners on a multitude of issues relating to local criminal justice practices, policies, and program developments.¹¹ Other issues discussed at commission meetings include jail population and overcrowding, tracking crimes in the community, and matters of general policing.¹²

Because a criminal justice commission is an appointed commission that is not specifically exempted, they are currently covered under the Sunshine Law. Therefore, any meetings of a commission are subject to the Sunshine Law. Consequently, discussions that occur among members of a commission, such as the sheriff, public defender, or state attorney, which involve matters that may foreseeably come before or are currently being considered by the commission, must be properly noticed and should be conducted as an open meeting in accordance with the Sunshine Law.¹³ Discussions among public officials on issues that do not require action by the commission do not violate the Sunshine Law.¹⁴

Effect of the Bill

The bill creates a public meeting exemption for “that portion of a meeting of a duly constituted criminal justice commission at which members of the commission discuss active criminal intelligence information or active criminal investigative information that is currently being considered by, or which may foreseeably come before, the commission” from public meeting requirements. However, at any meeting in which such matters are being discussed, the bill requires the commission members to publicly disclose the fact that such matters will be discussed.

The bill defines a “duly constituted criminal justice commission” as an advisory commission created by municipal or county ordinance whose membership is comprised of private and public sector persons and whose purpose is to examine local criminal justice issues.

The bill also provides the following definitions by reference to s. 119.011, F.S.:

- “Criminal intelligence information” means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.
- “Criminal investigative information” means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.¹⁵

Ordinance No. 88-16, creating the Palm Beach County Criminal Justice Commission. (On file with the Criminal Justice Subcommittee Staff).

⁹ *Id.* Public sector members include: the chief judge of the respective county; the county sheriff; members of the board of county commission; the state attorney; the public defender; the clerk of the circuit court; a representative from the police chief’s association; a representative from the Bureau of Alcohol, Tobacco, and Firearms; the police chief; a representative from Florida Department of Law Enforcement; and a representative from Florida Department of Corrections.

¹⁰ About the Criminal Justice Commission, <http://www.pbcgov.org/criminaljustice/aboutcjc/> (last visited on March 14, 2013).

¹¹ *Id.*

¹² *Id.*

¹³ Attorney General Opinion 93-41.

¹⁴ *Id.*

¹⁵ “Criminal intelligence information” and “criminal investigative information” does not include:

- The time, date, location, and nature of a reported crime.
- The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.071(2)(h), F.S.
- The time, date, and location of the incident and of the arrest.
- The crime charged.
- Documents given or required by law or agency rule to be given to the person arrested, except as provided in s. 119.071(2)(h), F.S., and, except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the provisions of s. 119.07(1), F.S., until released at trial if it is found that the release of such information would:
 - Be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness; and
 - Impair the ability of a state attorney to locate or prosecute a codefendant.

- “Active” has the following meanings:
 - Criminal intelligence information is considered “active” as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.
 - Criminal investigative information is considered “active” as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.
 - In addition, criminal intelligence and criminal investigative information is considered “active” while such information is directly related to pending prosecutions or appeals. The word “active” does not apply to information in cases that are barred from prosecution under the provisions of s. 775.15, F.S., or other statute of limitation.

The bill provides for the repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.¹⁶

B. SECTION DIRECTORY:

Section 1 creates an unnumbered section of law relating to criminal justice commissions and provides a public meeting exemption.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

• Information and indictments except as provided in s. 905.26., F.S.

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: Sunshine Law Exemption

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public meeting exemption; thus, it requires a two-thirds vote for final passage. Article I, Section 24(c) of the Florida Constitution, also provides that a general law providing for a public meeting exemption "shall state with specificity the public necessity justifying the exemption." It could be argued that the bill's public necessity statement does not articulate with specificity a public necessity that is "sufficiently compelling to override the strong public policy of open government."¹⁷

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 12, 2013, the Criminal Justice Subcommittee adopted one strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Removes the public records exemption;
- Narrows the public meetings exemption to "that portion of a meeting of a duly constituted criminal justice commission in which members of the commission discuss active criminal intelligence information or active criminal investigative information;" and
- Defines the terms "duly constituted criminal justice commission," "active," "criminal intelligence information," and "criminal investigative information."

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

¹⁷ Section 119.15, F.S.

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A bill to be entitled
 An act relating to public meetings; providing
 definitions; providing an exemption from public
 meeting requirements for that portion of a meeting of
 a duly constituted criminal justice commission at
 which members of the commission discuss active
 criminal intelligence information or active criminal
 investigative information currently being considered
 by, or which may foreseeably come before, the
 commission; providing for future review and repeal of
 the exemption under the Open Government Sunset Review
 Act; providing a statement of public necessity;
 providing an effective date.

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

Section 1. Criminal justice commissions; public meetings exemption.-

(1) As used in this section, the term:

(a) "Duly constituted criminal justice commission" means an advisory commission created by municipal or county ordinance whose membership is comprised of individuals from the private sector and the public sector and whose purpose is to examine local criminal justice issues.

(b) "Active" has the same meaning as provided in s. 119.011, Florida Statutes.

(c) "Criminal intelligence information" has the same meaning as provided in s. 119.011, Florida Statutes.

29 (d) "Criminal investigative information" has the same
 30 meaning as provided in s. 119.011, Florida Statutes.

31 (2) That portion of a meeting of a duly constituted
 32 criminal justice commission at which members of the commission
 33 discuss active criminal intelligence information or active
 34 criminal investigative information that is currently being
 35 considered by, or which may foreseeably come before, the
 36 commission is exempt from s. 286.011, Florida Statutes, and s.
 37 24(b), Art. I of the State Constitution, provided that at any
 38 public meeting of the criminal justice commission at which such
 39 matter is being considered, the commission members publicly
 40 disclose the fact that the matter has been discussed.

41 (3) This section is subject to the Open Government Sunset
 42 Review Act in accordance with s. 119.15, Florida Statutes, and
 43 shall stand repealed on October 2, 2018, unless reviewed and
 44 saved from repeal through reenactment by the Legislature.

45 Section 2. It is the finding of the Legislature that it is
 46 a public necessity that the portion of a meeting of a duly
 47 constituted criminal justice commission at which members of the
 48 commission discuss active criminal intelligence information or
 49 active criminal investigative information currently being
 50 considered by, or which may foreseeably come before, the
 51 criminal justice commission be made exempt from public meeting
 52 requirements. If the meetings at which exempt information is
 53 discussed were open to the public, the purpose of the exemption
 54 from public records requirements found in chapter 119, Florida
 55 Statutes, would be defeated. The members of a criminal justice
 56 commission must be able to hear and discuss exempt information

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57 freely in order to make sound recommendations regarding
58 strategies and activities that are best suited to protect the
59 welfare of the people of this state. The ability to conduct
60 meetings at which members can freely discuss and fully
61 understand the details of active criminal intelligence
62 information and active criminal investigative information is
63 critical to the ability of a criminal justice commission to
64 operate effectively.

65 Section 3. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 649 Public Records/Proprietary Confidential Business Information
SPONSOR(S): Energy & Utilities Subcommittee and Cummings
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 714

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	12 Y, 1 N, As CS	Keating	Collins
2) Government Operations Subcommittee		Harrington	Williamson
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Unless specifically exempted, all agency records are available for public inspection. Current law does not provide an exemption for proprietary confidential business information held by an electric utility.

The bill creates a new public record exemption for proprietary confidential business information held by an electric utility that is subject to chapter 119, F.S., in conjunction with a due diligence review of an electric project as defined in s. 163.01(3)(d), F.S., or a project to improve the delivery, cost, or diversification of fuel or renewable energy resources. The bill provides that such information is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution. Further, the bill requires that such information be retained for one year after the due diligence review has been completed and the electric utility has decided whether or not to participate in the project.

The bill provides that the public record exemption created by the bill is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall be repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also provides a statement of public necessity for the exemption. The statement provides that:

- The purpose for the public record exemption is to remove an impediment to the opportunities for electric utilities to find cost-effective or strategic solutions for providing electric service or improving the delivery, cost, or diversification of fuel or renewable energy.
- An electric utility, in performing a due diligence review of such projects, may need to obtain proprietary confidential business information, which may consist of trade secrets; internal auditing controls and reports; security measures, systems, or procedures; or other information relating to competitive interests.
- The disclosure of this information could injure the provider of the information in the marketplace, thus discouraging the provider from doing business with the electric utility and limiting the utility's opportunities to identify cost-effective projects, which may also impact costs to customers.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Records Law

Article I, s. 24(a) of the State Constitution, sets forth the state's public policy regarding access to government records. The State Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

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

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

Information Provided to Electric Utilities Subject to the Public Records Law

Electric utilities, from time to time, seek or receive proposals from business entities concerning the development of projects related to the provision of electric service. Information received from these business entities by municipal electric utilities, which are subject to the requirements of Florida's public records law, is available to the public for inspection and copying. According to municipal electric utilities, this discourages some providers of new technologies from sharing information about opportunities to participate in projects for fear of harming their business by exposing competitively sensitive information.

Section 119.071, F.S., provides a list of general exemptions from the inspection and copying requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. Section 119.0713, F.S., provides a list of exemptions specific to local governments. There is no current exemption for proprietary confidential business information held by a municipal electric utility in conjunction with a due diligence review of projects related to the provision of electric service.

Effect of Proposed Changes

The bill creates a new public record exemption for proprietary confidential business information held by an electric utility that is subject to chapter 119, F.S., in conjunction with a due diligence review of an electric project as defined in s. 163.01(3)(d), F.S.,³ or a project to improve the delivery, cost, or

¹ Article I, s. 24(c) of the State Constitution.

² Section 119.15, F.S.

³ Section 163.01(3)(d), F.S., defines an "electric project" as:

1. Any plant, works, system, facilities, and real property and personal property of any nature whatsoever, together with all parts thereof and appurtenances thereto, which is located within or without the state and which is used or useful in the

diversification of fuel or renewable energy resources. The bill provides that such information is confidential and exempt⁴ from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. Further, the bill requires that such information be retained for one year after the due diligence review has been completed and the electric utility has decided whether or not to participate in the project.

The bill defines "proprietary confidential business information" as:

[I]nformation, regardless of form or characteristics, which is owned or controlled by an electric utility that is subject to chapter 119, is intended to be and is treated by the entity that provided the information to the electric utility as private in that the disclosure of the information would cause harm to the providing entity or its business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. The term includes, but is not limited to:

1. Trade secrets.
2. Internal auditing controls and reports of internal auditors.
3. Security measures, systems, or procedures.
4. Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the company or its affiliates to contract for goods or services on favorable terms.
5. Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of information.

This definition is substantially similar to existing provisions of law defining proprietary confidential business information.⁵

The bill provides that the public record exemption created by the bill is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will be repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also provides a finding that there is a public necessity for this exemption. This finding notes that the disclosure of proprietary confidential business information, as defined by the bill, could injure the provider of that information in the marketplace by giving its competitors insight into its financial status and strategic plans, thus putting the provider at a competitive disadvantage. The finding also states that, without this exemption, business entities might be unwilling to enter into discussions with an electric utility regarding the feasibility of future contracting, which may limit opportunities for the utility to find cost-effective or strategic solutions for providing electric service or improving the delivery, cost, or diversification of fuel or renewable energy. This finding further states that disclosure of such proprietary confidential business information would cause economic harm to ratepayers through reduced competition for the provision of vital electric utility services. The bill provides an additional finding that

generation, production, transmission, purchase, sale, exchange, or interchange of electric capacity and energy, including facilities and property for the acquisition, extraction, conversion, transportation, storage, reprocessing, or disposal of fuel and other materials of any kind for any such purposes.

2. Any interest in, or right to, the use, services, output, or capacity of any such plant, works, system, or facilities.
3. Any study to determine the feasibility or costs of any of the foregoing, including, but not limited to, engineering, legal, financial, and other services necessary or appropriate to determine the legality and financial and engineering feasibility of any project referred to in subparagraph 1. or subparagraph 2.

⁴ There is a difference between records that the Legislature has made exempt from public inspection and those that are confidential and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute. Florida Attorney General Opinion 85-62. If instead, the record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991), review denied, 589 So.2d 289 (Fla. 1991).

⁵ See, e.g., ss. 364.183 (telecommunications), 366.093 (investor-owned electric and natural gas utilities), 367.156 (water and wastewater utilities), and 368.108, F.S. (natural gas transmission companies).

the public and private harm in disclosing such proprietary confidential business information significantly outweighs any public benefit derived from disclosure of the information.

B. SECTION DIRECTORY:

Section 1. Amends s. 119.0713, F.S., relating to local government agency exemptions from inspection or copying of public records.

Section 2. Provides a legislative finding of public necessity for a public record exemption.

Section 3. Provides an effective date of July 1, 2013.

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:

The bill may expand opportunities for private sector entities to do business with municipal electric utilities by creating a public record exemption for proprietary confidential business information. The public record exemption may encourage more private sector participation and sharing of information that the private sector entity would not otherwise wish to have disclosed.

D. FISCAL COMMENTS:

This bill likely could create a minimal fiscal impact on agencies, because staff responsible for complying with public record requests could require training related to expansion of the public record exemption. In addition, those agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have

to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

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

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a public necessity statement justifying a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption and includes a public necessity statement, which provides that:

- The purpose for the public record exemption is to remove an impediment to the opportunities for electric utilities to find cost-effective or strategic solutions for providing electric service or improving the delivery, cost, or diversification of fuel or renewable energy.
- An electric utility, in performing a due diligence review of such projects, may need to obtain proprietary confidential business information, which may consist of trade secrets; internal auditing controls and reports; security measures, systems, or procedures; or other information relating to competitive interests.
- The disclosure of this information could injure the provider of the information in the marketplace, thus discouraging the provider from doing business with the electric utility and limiting the utility's opportunities to identify cost-effective projects, which may also impact costs to customers.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution, requires that an exemption be no broader than necessary to accomplish its stated purpose. The public necessity statement provides that the purpose for the public record exemption is to remove an impediment to the opportunities for electric utilities to find cost-effective or strategic solutions for providing electric service or improving the delivery, cost, or diversification of fuel or renewable energy. Based on the statement of public necessity, as summarized above, it appears that the exemption is no broader than necessary to accomplish its stated purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 5, 2013, the Energy & Utilities Subcommittee adopted a Proposed Committee Substitute (PCS) for the bill and passed the bill as a Committee Substitute. The PCS made the following changes to the filed version of the bill:

- Provided a definition for "proprietary confidential business information."
- Provided that proprietary confidential business information held by an electric utility in conjunction with certain due diligence reviews is confidential and exempt (rather than just exempt) under Florida's public records law and must be retained by the electric utility for one year.

The staff analysis has been updated to reflect the Committee Substitute.

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.0713, F.S.; providing an exemption from public
 4 records requirements for specified proprietary
 5 confidential business information held by an electric
 6 utility that is subject to chapter 119, F.S., in
 7 conjunction with a due diligence review of an electric
 8 project or a project to improve the delivery, cost, or
 9 diversification of fuel or renewable energy resources;
 10 providing for the retention of such information for a
 11 specified time; providing for future review and repeal
 12 of the exemption; providing a statement of public
 13 necessity; providing an effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:
 16

17 Section 1. Subsection (4) is added to section 119.0713,
 18 Florida Statutes, to read:

19 119.0713 Local government agency exemptions from
 20 inspection or copying of public records.—

21 (4) (a) Proprietary confidential business information means
 22 information, regardless of form or characteristics, which is
 23 held by an electric utility that is subject to chapter 119, is
 24 intended to be and is treated by the entity that provided the
 25 information to the electric utility as private in that the
 26 disclosure of the information would cause harm to the entity
 27 providing the information or its business operations, and has
 28 not been disclosed unless disclosed pursuant to a statutory

29 provision, an order of a court or administrative body, or a
 30 private agreement that provides that the information will not be
 31 released to the public. Proprietary confidential business
 32 information includes, but is not limited to:

33 1. Trade secrets.

34 2. Internal auditing controls and reports of internal
 35 auditors.

36 3. Security measures, systems, or procedures.

37 4. Information concerning bids or other contractual data,
 38 the disclosure of which would impair the efforts of the electric
 39 utility to contract for goods or services on favorable terms.

40 5. Information relating to competitive interests, the
 41 disclosure of which would impair the competitive business of the
 42 provider of the information.

43 (b) Proprietary confidential business information held by
 44 an electric utility that is subject to chapter 119 in
 45 conjunction with a due diligence review of an electric project
 46 as defined in s. 163.01(3)(d) or a project to improve the
 47 delivery, cost, or diversification of fuel or renewable energy
 48 resources is confidential and exempt from s. 119.07(1) and s.
 49 24(a), Art. I of the State Constitution.

50 (c) All proprietary confidential business information
 51 described in paragraph (b) shall be retained for 1 year after
 52 the due diligence review has been completed and the electric
 53 utility has decided whether or not to participate in the
 54 project.

55 (d) This subsection is subject to the Open Government
 56 Sunset Review Act in accordance with s. 119.15, and shall stand

57 repealed on October 2, 2018, unless reviewed and saved from
 58 repeal through reenactment by the Legislature.

59 Section 2. (1) The Legislature finds that it is a public
 60 necessity that proprietary confidential business information
 61 held by an electric utility that is subject to chapter 119,
 62 Florida Statutes, in conjunction with a due diligence review of
 63 an electric project as defined in s. 163.01(3)(d), Florida
 64 Statutes, or a project to improve the delivery, cost, or
 65 diversification of fuel or renewable energy resources be made
 66 confidential and exempt from public records requirements. The
 67 disclosure of such proprietary confidential business
 68 information, such as trade secrets, internal auditing controls
 69 and reports, security measures, systems, or procedures, or other
 70 information relating to competitive interests, could injure the
 71 provider in the marketplace by giving its competitors detailed
 72 insights into its financial status and strategic plans, thereby
 73 putting the provider at a competitive disadvantage. Without this
 74 exemption, providers might be unwilling to enter into
 75 discussions with the electric utility regarding the feasibility
 76 of future contracting. This could, in turn, limit opportunities
 77 the electric utility might otherwise have for finding cost-
 78 effective or strategic solutions for providing electric service
 79 or improving the delivery, cost, or diversification of fuel or
 80 renewable energy. This would put public providers of electric
 81 utility services at a competitive disadvantage by limiting their
 82 ability to optimize services to their customers and adversely
 83 affecting the customers of those utilities by depriving them of
 84 opportunities for rate reductions or other improvements in

85 services.

86 (2) Proprietary confidential business information derives
87 actual or potential independent economic value from not being
88 generally known to, and not being readily ascertainable by
89 proper means by, other persons who can derive economic value
90 from its disclosure or use. An electric utility, in performing
91 the appropriate due diligence review of electric projects or
92 projects to improve the delivery, cost, or diversification of
93 fuel or renewable energy sources, may need to obtain proprietary
94 confidential business information. Without an exemption from
95 public records requirements for this information, it becomes a
96 public record when received by an electric utility and must be
97 disclosed upon request. Disclosure of any propriety confidential
98 business information under the public records law would destroy
99 the value of that property and cause economic harm not only to
100 the entity or person providing the information, but to the
101 ratepayers through reduced competition for the provision of
102 vital electric utility services.

103 (3) In finding that the public records exemption created
104 by this act is a public necessity, the Legislature also finds
105 that the public and private harm in disclosing such proprietary
106 confidential business information significantly outweighs any
107 public benefit derived from disclosure of the information and
108 that the exemption created by this act will enhance the ability
109 of electric utilities to optimize their performance, thereby
110 benefiting the ratepayers.

111 Section 3. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 853 Public Retirement Plans
SPONSOR(S): Taylor and McBurney
TIED BILLS: IDEN./SIM. BILLS: SB 1246

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Harrington	Williamson <i>(Signature)</i>
2) Finance & Tax Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The Marvin B. Clayton Police Officers Pension Trust Fund Act (act) provides a uniform retirement system for the benefit of municipal police officers. All municipal police officer retirement trust fund systems or plans must be managed, administered, operated, and funded to maximize the protection of police officers' pension trust funds. The act provides an incentive – access to premium tax revenues – to encourage the establishment of police officer retirement plans by cities. The act only applies to municipalities organized and established by law, and the act does not apply to unincorporated areas of any county or counties.

The bill expands the applicability of the act. It provides that the act applies to municipalities organized as a single consolidated government consisting of a former county and one or more municipalities. The bill requires the consolidated government to notify the Florida Department of Management Services, Division of Retirement, when it enters into an interlocal agreement to provide police services to a municipality within its boundaries. It provides that the municipality may enact an ordinance to levy a premium tax as authorized in law, and the municipality may distribute any premium taxes reported for the municipality to the consolidated government as long as the interlocal agreement is in effect.

The bill provides an effective date of July 1, 2013.

The bill may have an indeterminate negative fiscal impact on state governments and an indeterminate positive fiscal impact on local governments. See Fiscal Comments section for further discussion.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Municipal Police Officers' Retirement Trust Fund

Local police officer pension plans are governed by chapter 185, F.S., which is known as the Marvin B. Clayton Police Officers Pension Trust Fund Act (act).¹ The act declares it a legitimate state purpose to provide a uniform retirement system for the benefit of municipal police officers.² Chapter 185, F.S., was originally enacted in 1953 to provide an incentive – access to premium tax revenues – to encourage the establishment of police officer pension plans by cities.

All municipal police officer retirement trust fund systems or plans must be managed, administered, operated, and funded to maximize the protection of police officers' pension trust funds.³ The act sets forth the minimum benefits or minimum standards for pensions for municipal police officers. The benefits provided in the act may not be reduced by municipalities; however, the benefits provided in a local plan may vary from the provisions in that act so long as the minimum standards are met.

Funding for these pension plans comes from four sources:⁴

- Net proceeds from an excise tax levied by a city upon property insurance companies (known as the premium tax);
- Employee contributions;
- Other revenue sources; and
- Mandatory payments by the city of the normal cost of the plan.

Each municipality with a municipal police officers' retirement trust fund is authorized to assess an excise tax of 0.85 percent imposed on the gross premiums on casualty insurance policies covering property within the boundaries of the municipality.⁵ The excise tax is payable by the insurers to the Department of Revenue, and the net proceeds are transferred to the appropriate fund at the Department of Management, Division of Retirement (division).⁶ In 2011, premium tax distributions to municipalities from the Police Officers' Retirement Trust Fund amounted to \$59.6 million. Under current law, a municipality may not receive another municipality's premium tax revenues when there is an interlocal agreement in place to provide police services.⁷

To qualify for insurance premium tax dollars, plans must meet requirements found in chapter 185, F.S. Responsibility for overseeing and monitoring these plans is assigned to the division; however, the day-to-day operational control rests with the local boards of trustees. The board of trustees must invest and reinvest the assets of the fund according to s. 185.06, F.S., as applicable, unless specifically authorized to vary from the law. If the division deems that a police officer pension plan created pursuant to chapter 185, F.S., is not in compliance, the sponsoring municipality could be denied its insurance premium tax revenues.

¹ See chapter 185, F.S.

² Section 185.01(1), F.S.

³ See s. 185.01(1), F.S.

⁴ Section 185.07(1), F.S.

⁵ Section 185.08, F.S.

⁶ A copy of the 2011 Premium Tax Distribution report is available online at:

http://www.dms.myflorida.com/human_resource_support/retirement/local_retirement_plans/municipal_police_and_fire_plans.

⁷ Chapter 175, F.S., authorizes a municipality to receive another municipality's premium tax revenues when there is an interlocal agreement in place to provide fire protection services. Section 175.041(3)(c), F.S.

Consolidation

Consolidation involves combining city and county governments so that the boundaries of the county and affected city or cities become the same. Consolidation can be total or partial. Total consolidation occurs when all independent government units within a county are assimilated into the consolidated government. When some of the governments remain independent, the consolidation is partial.

Section 3, Art. VIII, of the State Constitution, provides:

Consolidation. – The government of a county and the government of one or more municipalities located therein may be consolidated into a single government which may exercise any and all powers of the county and the several municipalities. The consolidation plan may be proposed only by special law, which shall become effective if approved by vote of the electors of the county, or of the county and municipalities affected, as may be provided in the plan. Consolidation shall not extend the territorial scope of taxation for the payment of pre-existing debt except to areas whose residents receive a benefit from the facility or service from which the indebtedness was incurred.

The voters of the City of Jacksonville and Duval County adopted a municipal charter pursuant to this constitutional provision in 1967. Section 9, of Article VIII, of the Constitution of 1885 establishes the Jacksonville/Duval County consolidated charter. This is the only consolidated government in the state.

Effect of the Bill

The bill provides that chapter 185, F.S., applies to municipalities organized as a single consolidated government consisting of a former county and one or more municipalities, consolidated pursuant to s. 3 or s. 6(e), Art. VIII of the State Constitution. The bill requires the consolidated government to notify the division when it enters into an interlocal agreement to provide police services to a municipality within its boundaries. It authorizes the municipality to enact an ordinance levying the tax as provided in s. 185.08, F.S., and the municipality may distribute any premium taxes reported for the municipality to the consolidated government as long as the interlocal agreement is in effect.

The bill provides an effective date of July 1, 2013.

B. SECTION DIRECTORY:

Sections 1. and 2. amend ss. 185.03 and 185.08, F.S., specifying applicability of chapter 185, F.S., to certain consolidated governments; providing that a consolidated government that has entered into an interlocal agreement to provide police protection services to a municipality within its boundaries is eligible to receive the premium taxes reported for the municipality under certain circumstances; authorizing the municipality receiving the police protection services to enact an ordinance levying the tax as provided by law.

Section 3. provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments section.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments section.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill specifies that a consolidated government is entitled to premium tax distributions provided by chapter 185, F.S. As a result, this bill may have a fiscal impact on state revenues because state premium taxes paid by a casualty insurer to fund a municipal police officers' retirement plan are credited against the premium taxes paid to the state by the insurance company.⁸ The fiscal impact is indeterminate, but likely minimal.

The bill may result in a positive fiscal impact on local governments because the bill provides that a consolidated government may collect premium tax revenues collected by the municipality receiving police protection services if the consolidated government provides a municipal police officer retirement plan, as provided for in chapter 185, F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

⁸ Section 624.509(4), F.S.
STORAGE NAME: h0853.GVOPS.DOCX
DATE: 3/15/2013

1 A bill to be entitled
 2 An act relating to public retirement plans; amending
 3 ss. 185.03 and 185.08, F.S.; specifying applicability
 4 of ch. 185, F.S., to certain consolidated governments;
 5 providing that a consolidated government that has
 6 entered into an interlocal agreement to provide police
 7 protection services to a municipality within its
 8 boundaries is eligible to receive the premium taxes
 9 reported for the municipality under certain
 10 circumstances; authorizing the municipality receiving
 11 the police protection services to enact an ordinance
 12 levying the tax as provided by law; providing an
 13 effective date.

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

16
 17 Section 1. Subsection (2) of section 185.03, Florida
 18 Statutes, is amended to read:

19 185.03 Municipal police officers' retirement trust funds;
 20 creation; applicability of provisions; participation by public
 21 safety officers.—For any municipality, chapter plan, local law
 22 municipality, or local law plan under this chapter:

23 (2) (a) ~~The provisions of This chapter applies shall apply~~
 24 only to municipalities organized and established pursuant to the
 25 laws of the state, and does ~~said provisions shall~~ not apply to
 26 the unincorporated areas of a any county or ~~counties nor shall~~
 27 ~~the provisions hereof apply~~ to any governmental entity whose
 28 police officers are eligible to participate in the Florida

29 Retirement System.

30 (b) With respect to the distribution of premium taxes, a
 31 single consolidated government consisting of a former county and
 32 one or more municipalities, consolidated pursuant to s. 3 or s.
 33 6(e), Art. VIII of the State Constitution, is also eligible to
 34 participate under this chapter. The consolidated government
 35 shall notify the division when it has entered into an interlocal
 36 agreement to provide police services to a municipality within
 37 its boundaries. The municipality may enact an ordinance levying
 38 the tax as provided in s. 185.08. Upon being provided copies of
 39 the interlocal agreement and the municipal ordinance levying the
 40 tax, the division may distribute any premium taxes reported for
 41 the municipality to the consolidated government as long as the
 42 interlocal agreement is in effect.

43 Section 2. Subsection (1) of section 185.08, Florida
 44 Statutes, is amended to read:

45 185.08 State excise tax on casualty insurance premiums
 46 authorized; procedure.—For any municipality, chapter plan, local
 47 law municipality, or local law plan under this chapter:

48 (1) (a) Each incorporated municipality in this state
 49 described and classified in s. 185.03, as well as each other
 50 city or town of this state which on July 31, 1953, had a
 51 lawfully established municipal police officers' retirement trust
 52 fund or city fund, by whatever name known, providing pension or
 53 relief benefits to police officers as provided under this
 54 chapter, may assess and impose on every insurance company,
 55 corporation, or other insurer now engaged in or carrying on, or
 56 who shall hereafter engage in or carry on, the business of

57 | casualty insurance as shown by records of the Office of
 58 | Insurance Regulation of the Financial Services Commission, an
 59 | excise tax in addition to any lawful license or excise tax now
 60 | levied by each of the ~~said~~ municipalities, respectively,
 61 | amounting to .85 percent of the gross amount of receipts of
 62 | premiums from policyholders on all premiums collected on
 63 | casualty insurance policies covering property within the
 64 | corporate limits of such municipalities, respectively.

65 | **(b) With respect to the distribution of premium taxes, a**
 66 | **single consolidated government consisting of a former county and**
 67 | **one or more municipalities, consolidated pursuant to s. 3 or s.**
 68 | **6(e), Art. VIII of the State Constitution, is also eligible to**
 69 | **participate under this chapter. The consolidated government**
 70 | **shall notify the division when it has entered into an interlocal**
 71 | **agreement to provide police services to a municipality within**
 72 | **its boundaries. The municipality may enact an ordinance levying**
 73 | **the tax as provided in this section. Upon being provided copies**
 74 | **of the interlocal agreement and the municipal ordinance levying**
 75 | **the tax, the division may distribute any premium taxes reported**
 76 | **for the municipality to the consolidated government as long as**
 77 | **the interlocal agreement is in effect.**

78 | Section 3. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1075 Public Records
SPONSOR(S): Rangel
TIED BILLS: IDEN./SIM. **BILLS:** SB 1318

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		JS Stramski	Williamson <i>RAW</i>
2) State Affairs Committee			

SUMMARY ANALYSIS

While state law provides limited exemptions from public record requirements for information relating to complaints alleging misconduct and ensuing investigations carried out by agencies in certain contexts, there is no general exemption for information obtained pursuant to an investigation following a complaint of misconduct filed against a public employee.

This bill creates a public record exemption for a complaint of misconduct filed against a public employee with a state agency or a political subdivision of the state, and all information obtained pursuant to the investigation by the agency or political subdivision of the complaint of misconduct. The information is confidential and exempt from public record requirements until the investigation ceases to be active, or until the agency provides written notice to the employee who is the subject of the complaint that the agency concluded the investigation and either will or will not proceed with disciplinary action or file charges.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. In addition, the bill provides a statement of public necessity as required by the State Constitution.

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

The bill provides an effective date of July 1, 2013.

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

FULL ANALYSIS
I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

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

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

Public Record Exemptions

State law provides limited exemptions from public record requirements for information relating to complaints of misconduct and investigations carried out by agencies in certain contexts. For example, a complaint filed against a law enforcement officer, and all information obtained pursuant to the investigation of the complaint by the agency, is confidential and exempt from s. 119.07(1), F.S., until the investigation ceases to be active or until the agency head or designee informs the subject of the complaint that the agency will or will not proceed with disciplinary action or the filing of charges.³ Similarly, a complaint filed against an individual certified by the Department of Education, and all information obtained pursuant to the investigation of the complaint by the agency, is confidential and exempt from s. 119.07(1), F.S., until the conclusion of the preliminary investigation of the complaint, until such time as the preliminary investigation ceases to be active, or until such time as otherwise provided by s. 1012.798(6), F.S.⁴ However, there is no general exemption for information obtained pursuant to an investigation following a complaint of misconduct filed against a public employee.

Effect of the Bill

This bill creates a public record exemption for certain information pertaining to a complaint of misconduct filed against a public employee with a state agency or a political subdivision of the state. Specifically, the complaint and all information obtained pursuant to the investigation by the agency or

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

² See s. 119.15, F.S.

³ Section 112.533(2), F.S.

⁴ Section 1012.796(4), F.S. Section 1012.798(6), F.S. does not provide any additional limit on the duration of the exemption.

political subdivision of the complaint of misconduct is confidential and exempt⁵ from public record requirements until the:

- Investigation ceases to be active;
- Agency provides written notice to the employee who is the subject of the complaint that the agency concluded the investigation with a finding not to proceed with disciplinary action or file charges; or
- Agency provides written notice to the employee who is the subject of the complaint that the agency concluded the investigation with a finding to proceed with disciplinary action or file charges.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature.

In addition, the bill provides a statement of public necessity as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., creating an exemption from public record requirements for a complaint of misconduct filed against a public employee and all information obtained pursuant to the investigation of such a complaint.

Section 2 provides a statement of public necessity.

Section 3 provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

⁵ 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).

D. FISCAL COMMENTS:

The bill likely could create a minimal fiscal impact on agencies, because staff responsible for complying with public record requests could require training related to expansion of the public record exemption. In addition, those agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

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

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption of limited duration for a complaint of misconduct filed against a public employee with a state agency or a political subdivision of the state, and all information obtained pursuant to the investigation by the agency or political subdivision of the complaint of misconduct. The purpose of the exemption is to facilitate the investigation of such complaints, and the exemption does not extend past the duration of such an investigation. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Comments: Agency and Political Subdivision Terminology

Chapter 119, F.S., defines "agency" to include political subdivisions of the state.⁶ The terminology "state agency or political subdivision of the state" is therefore redundant, and ought to be simplified to "agency" to ensure consistency with other public record exemptions created in chapter 119, F.S.

⁶ 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.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; providing an exemption from public
 4 records requirements for a complaint of misconduct
 5 filed against a public employee with a state agency or
 6 a political subdivision of the state and all
 7 information obtained pursuant to the investigation by
 8 the agency or political subdivision of the complaint
 9 of misconduct; providing for limited duration of the
 10 exemption; providing for future review and repeal of
 11 the exemption under the Open Government Sunset Review
 12 Act; providing a statement of public necessity;
 13 providing an effective date.

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

16
 17 Section 1. Paragraph (k) is added to subsection (2) of
 18 section 119.071, Florida Statutes, to read:

19 119.071 General exemptions from inspection or copying of
 20 public records.—

21 (2) AGENCY INVESTIGATIONS.—

22 (k)1. A complaint of misconduct filed against a public
 23 employee with a state agency or a political subdivision of the
 24 state and all information obtained pursuant to the investigation
 25 by the agency or political subdivision of the complaint of
 26 misconduct is confidential and exempt from s. 119.07(1) and s.
 27 24(a), Art. I of the State Constitution until the investigation
 28 ceases to be active, or until the agency provides written notice

29 to the employee who is the subject of the complaint, either
 30 personally or by mail, that the agency has either:
 31 a. Concluded the investigation with a finding not to
 32 proceed with disciplinary action or file charges; or
 33 b. Concluded the investigation with a finding to proceed
 34 with disciplinary action or file charges.
 35 2. Subparagraph 1. is subject to the Open Government
 36 Sunset Review Act in accordance with s. 119.15 and shall stand
 37 repealed on July 1, 2018, unless reviewed and saved from repeal
 38 through reenactment by the Legislature.
 39 Section 2. The Legislature finds that it is a public
 40 necessity that a complaint of misconduct filed against a public
 41 employee with a state agency or a political subdivision of the
 42 state and all information obtained pursuant to the investigation
 43 by the agency or political subdivision of the complaint of
 44 misconduct be made confidential and exempt from the requirements
 45 of s. 119.07(1), Florida Statutes, and s. 24(a), Article I of
 46 the State Constitution. The disclosure of information, such as
 47 the nature of the complaint against a public employee and
 48 testimony and evidence given in the investigation of the
 49 complaint, could injure an individual and deter that person from
 50 providing information pertaining to internal investigations,
 51 thus impairing the ability of an agency to conduct an
 52 investigation that is fair and reasonable. In the performance of
 53 its lawful duties and responsibilities, an agency may need to
 54 obtain information for the purpose of determining an
 55 administrative action. Without an exemption from public records
 56 requirements to protect information of a sensitive personal

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2013

57 | nature provided to an agency in the course of an internal
58 | investigation, such information becomes a public record when
59 | received and must be divulged upon request. Disclosure of
60 | information obtained during an internal investigation conducted
61 | by an agency inhibits voluntary participation of individuals
62 | during internal investigations and makes it difficult if not
63 | impossible to determine the truth. Therefore, the Legislature
64 | declares that it is a public necessity that a complaint of
65 | misconduct filed against a public employee with a state agency
66 | or a political subdivision of the state and all information
67 | obtained pursuant to the investigation by the agency or
68 | political subdivision of the complaint of misconduct be held
69 | confidential and exempt from public records requirements.

70 | Section 3. This act shall take effect July 1, 2013.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Government Operations
2 Subcommittee

3 Representative Rangel offered the following:

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

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (k) is added to subsection (2) of
8 section 119.071, Florida Statutes, to read:

9 119.071 General exemptions from inspection or copying of
10 public records.-

11 (2) AGENCY INVESTIGATIONS.-

12 (k)1. A complaint of misconduct filed with an agency
13 against an agency employee and all information obtained pursuant
14 to an investigation by the agency of the complaint of misconduct
15 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.
16 I of the State Constitution until the investigation ceases to be
17 active, or until the agency provides written notice to the
18 employee who is the subject of the complaint, either personally
19 or by mail, that the agency has either:



Amendment No.

20 a. Concluded the investigation with a finding not to
21 proceed with disciplinary action or file charges; or

22 b. Concluded the investigation with a finding to proceed
23 with disciplinary action or file charges.

24 2. Subparagraph 1. is subject to the Open Government
25 Sunset Review Act in accordance with s. 119.15 and shall stand
26 repealed on October 2, 2018, unless reviewed and saved from
27 repeal through reenactment by the Legislature.

28 Section 2. The Legislature finds that it is a public
29 necessity that a complaint of misconduct filed with an agency
30 against an agency employee and all information obtained pursuant
31 to an investigation by the agency of the complaint of misconduct
32 be made confidential and exempt from the requirements of s.
33 119.07(1), Florida Statutes, and s. 24(a), Article I of the
34 State Constitution. The disclosure of information, such as the
35 nature of the complaint against an agency employee and testimony
36 and evidence given in the investigation of the complaint, could
37 injure an individual and deter that person from providing
38 information pertaining to internal investigations, thus
39 impairing the ability of an agency to conduct an investigation
40 that is fair and reasonable. In the performance of its lawful
41 duties and responsibilities, an agency may need to obtain
42 information for the purpose of determining an administrative
43 action. Without an exemption from public record requirements to
44 protect information of a sensitive personal nature provided to
45 an agency in the course of an internal investigation, such
46 information becomes a public record when received and must be
47 divulged upon request. Disclosure of information obtained during



Amendment No.

48 an internal investigation conducted by an agency inhibits
49 voluntary participation of individuals during internal
50 investigations and makes it difficult if not impossible to
51 determine the truth. Therefore, the Legislature declares that it
52 is a public necessity that a complaint of misconduct filed
53 against with an agency against an agency employee and all
54 information obtained pursuant to an investigation by the agency
55 of the complaint of misconduct be held confidential and exempt
56 from public record requirements.

57 Section 3. This act shall take effect July 1, 2013.
58
59

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


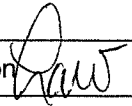
62 Remove everything before the enacting clause and insert:

63 A bill to be entitled

64 An act relating to public records; amending s.
65 119.071, F.S.; providing an exemption from public
66 record requirements for a complaint of misconduct
67 filed with an agency against an agency employee and
68 all information obtained pursuant to an investigation
69 of the complaint by the agency; providing for limited
70 duration of the exemption; providing for future review
71 and repeal of the exemption under the Open Government
72 Sunset Review Act; providing a statement of public
73 necessity; providing an effective date.
74

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1297 Pub. Rec./Florida False Claims Act
SPONSOR(S): Young
TIED BILLS: CS/HB 935 **IDEN./SIM. BILLS:** SB 1496

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N	Ward	Bond
2) Government Operations Subcommittee		 Stramski	Williamson 
3) Judiciary Committee			

SUMMARY ANALYSIS

This public records bill amends the Florida False Claims Act to provide that both the complaint and information held by the Department of Legal Affairs or the Department of Financial Services pursuant to an investigation under the Act are confidential and exempt from disclosure under the public records law. The information may be disclosed by either department to a law enforcement agency or other administrative agency. The exemption expires once the investigation is completed, unless otherwise protected from disclosure.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill provides that the exemption will take effect on the same date as House Bill 935 or similar legislation if such legislation is adopted in the same legislative session, or an extension thereof, and becomes law.

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption for investigative records related to the Florida False Claims Act; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

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

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

Confidential versus Confidential and Exempt

There is a difference between records the legislature has determined to be exempt and those which have been determined to be confidential and exempt.³ If the legislature has determined the information to be confidential then the information is not subject to inspection by the public.⁴ Also, if the information is deemed to be confidential it may only be released to those person and entities designated in the statute.⁵ However, the agency is not prohibited from disclosing the documents in all circumstances where the records are only exempt.⁶

The Florida False Claims Act

The Florida False Claims Act (FFCA)⁷ authorizes civil actions by individuals and the state against persons who file false claims for payment or approval with a state agency. Actions that violate the FFCA include:

- Submitting a false claim for payment or approval;
- Making or using a false record to get a false or fraudulent claim paid or approved;
- Conspiring to make a false claim or to deceive an agency to get a false or fraudulent claim allowed or paid; or

¹ Art I., s. 24(c), Fla. Const.

² See s. 119.15, F.S.

³ *WFTV, Inc. v. School Board of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004).

⁴ *Id.*

⁵ *Id.*

⁶ See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA), *review denied*, 589 So. 2d 289 (Fla. 1991).

⁷ Sections 68.081 - 68.09, F.S.

- Making or using a false record to conceal, avoid, or decrease payments owed to the state government.

The penalty for violating the FFCA is \$5,500 to \$11,000 per claim, plus three times the amount of damages to the state government for the FFCA violation.

Under current law, an agency which has been damaged by a false claim, the Department of Financial Services, or the Department of Legal Affairs may bring an action for a false claim, or may join a private action brought on the grounds set out in the statute.

Effect of the Changes

Currently the Attorney General may investigate claims but does not have subpoena powers prior to the filing of a civil action. A companion bill, House Bill 935, grants the Department of Legal Affairs discovery capabilities prior to the institution of a civil proceeding if it has reason to believe that any person has testimony or evidence relevant to the investigation. House Bill 935 provides that the department may issue subpoenas requiring the recipient to:

- Produce documents;
- Answer interrogatories under oath; and
- Give sworn testimony.

The instant bill provides that the complaint and information held by the department⁸ pursuant to an investigation of s. 68.082, F.S., is confidential and exempt from the public records laws. Such information may be disclosed to another agency or law enforcement. The information is no longer confidential and exempt once the investigation is completed unless the information is otherwise protected by law.

An investigation is complete when:

- The department files its own action;
- Closes the investigation without filing an action;
- Upon unsealing of the action; or
- Voluntary dismissal of the action.

The exemption is repealed on October 2, 2018, unless reviewed and saved from repeal.

The bill includes a public necessity statement.

B. SECTION DIRECTORY:

Section 1 amends s. 68.083., F.S., regarding civil actions for false claims.

Section 2 provides a statement of public necessity.

Section 3 provides for an effective date to coincide with HB 935.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

⁸ The "department" may mean the Department of Legal Affairs or the Department of Financial Services, according to s. 68.083(4), F.S.
STORAGE NAME: h1297b.GVOPS.docx
DATE: 3/15/2013

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

Like any other public records exemption, the bill may lead to a minimal fiscal impact on the affected portions of the government, in this case, the Department of Legal Affairs, the Department of Financial Services, the court system and clerks of court. Staff responsible for complying with public record requests could require training related to expansion of the public record exemption, and the above named offices could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed as day to day duties of the department, the court system and court clerks.

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:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption related to false claims; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption related to investigations; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption related to investigations under the Florida False Claims Act. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

Compliance with the Open Government Sunset Review Act

The Open Government Sunset Review Act places several requirements on many bills that would create or expand a public record exemption. Although it purports to be mandatory, it is important to note that nothing in the Constitution allows a previous Legislature to bind the actions of this Legislature. As such, the Act is advisory, not mandatory; and while this bill appears to comply with the Act, the bill if passed would be valid even if it did not comply with the Act.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 68.083(2), F.S., references the unsealing of a complaint filed in a false claims action under the statute. The reference appears again in s. 68.083(5), F.S., and is referred to in the bill. However, there is no provision in the false claims statute that expressly directs the complaint be filed in camera or under seal. Thus the application of the exemption to "the complaint and information held by the department" is unclear. It could be construed to mean the department's own copies of the complaint, or it could refer to the complaint in the court's file. However, the complaint file in court is not expressly sealed unless the statute is amended to so provide. On the other hand, Rule 2.420(c)(7) of the Florida Rules of Judicial Administration provides in part that all records made confidential under Florida law are confidential; pursuant to Rule 2.420(d)(2), Fla. R. Jud. Admin., any person filing such a complaint would be required to indicate to the clerk of court that the complaint is confidential and exempt at the time of filing.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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A bill to be entitled

An act relating to public records; amending s. 68.083, F.S.; providing an exemption from public records requirements for the complaint and information held by the Department of Legal Affairs pursuant to an investigation of a violation of s. 68.082, F.S., relating to false claims against the state; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing for specified disclosure; specifying duration of the exemption; specifying conditions under which an investigation is considered complete; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (8) is added to section 68.083, Florida Statutes, to read:

68.083 Civil actions for false claims.—

(8)(a) Except as otherwise provided in this subsection, the complaint and information held by the department pursuant to an investigation of a violation of s. 68.082 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

29 (b) Information made confidential and exempt under
 30 paragraph (a) may be disclosed by the department to a law
 31 enforcement agency or another administrative agency in the
 32 performance of its official duties and responsibilities.

33 (c) Information made confidential and exempt under
 34 paragraph (a) is no longer confidential and exempt once the
 35 investigation is completed, unless the information is otherwise
 36 protected by law.

37 (d) For purposes of this subsection, an investigation is
 38 considered complete:

39 1. Under s. 68.083(1) once the department either files its
 40 own action or closes its investigation without filing an action.

41 2. Under s. 68.083(2) upon the unsealing of the qui tam
 42 action or its voluntary dismissal prior to any unsealing.

43 Section 2. The Legislature finds that it is a public
 44 necessity that the complaint and information held by the
 45 Department of Legal Affairs pursuant to an investigation of a
 46 violation of s. 68.082, Florida Statutes, relating to false
 47 claims against the state, be held confidential and exempt from
 48 public records requirements. Because a false claims
 49 investigation conducted by the Department of Legal Affairs may
 50 lead to the filing of an administrative or civil proceeding, the
 51 premature release of the complaint and information held by the
 52 department could frustrate or thwart the investigation and
 53 impair the ability of the department to effectively and
 54 efficiently administer its duties under the Florida False Claims
 55 Act, ss. 68.081-68.092, Florida Statutes. This exemption also
 56 protects the reputation of the named defendant in the event the

57 allegations of the qui tam complaint ultimately prove to be
 58 unfounded. Without this exemption, a plaintiff can subject a
 59 defendant to serious fraud allegations in the name of the State
 60 of Florida merely by filing a qui tam complaint. Additionally,
 61 given the department's subpoena powers for all qui tam
 62 investigations, this exemption, which mirrors the existing
 63 statutory exemption in s. 409.913(12), Florida Statutes, for
 64 information obtained during investigations of Medicaid claims,
 65 is especially appropriate. Therefore, the Legislature finds that
 66 it is a public necessity that the complaint and information held
 67 by the Department of Legal Affairs pursuant to an investigation
 68 of a violation of s. 68.082, Florida Statutes, relating to false
 69 claims against the state, be held confidential and exempt from
 70 public records requirements.

71 Section 3. This act shall take effect on the same date
 72 that HB 935 or similar legislation takes effect, if such
 73 legislation is adopted in the same legislative session or an
 74 extension thereof and becomes law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 13-05 OGSR Paratransit Services
SPONSOR(S): Government Operations Subcommittee
TIED BILLS: IDEN./SIM. BILLS: SB 1768

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

SUMMARY ANALYSIS

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

The Americans with Disabilities Act of 1990 requires public entities operating non-commuter fixed route transportation services to provide paratransit and other special transportation services to individuals who are unable to use the fixed route system. The United States Department of Transportation has issued regulations specifying circumstances under which such services should be provided, including requirements on state and local entities to administer a process for determining eligibility.

Current law provides that personal identifying information of an applicant for or a recipient of paratransit services, held by an agency, is confidential and exempt from public record requirements. The confidential and exempt information must be disclosed in certain circumstances.

The bill reenacts this public record exemption, which will repeal on October 2, 2013, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

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

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

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

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

Paratransit Services

The Americans with Disabilities Act of 1990 (ADA) requires public entities operating non-commuter fixed route transportation services to provide paratransit⁴ and other special transportation services to individuals who are unable to use the fixed route system.⁵ The United States Department of Transportation has issued regulations specifying circumstances under which such services should be provided, including requirements on state and local entities to administer a process for determining eligibility. Eligible recipients for such services include:

- Individuals unable to get on or off public transit without assistance;
- Individuals who use a wheelchair lift on public transportation but such transportation is not available when needed; and
- Disabled individuals with a specific impairment that prevents travel to a point of departure or travel from a disembarking location.⁶

¹ Section 119.15, F.S.

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

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

⁴ Federal law defines "paratransit" to mean "comparable transportation service required by the ADA for individuals with disabilities who are unable to use fixed route transportation systems." (49 CFR. 37.3) Florida law defines "paratransit" to mean "those elements of public transit which provide service between specific origins and destinations selected by the individual user with such service being provided at a time that is agreed upon by the user and provider of the service. Paratransit service is provided by taxis, limousines, 'dial-a-ride,' buses, and other demand-responsive operations that are characterized by their nonscheduled, nonfixed route nature." (Section 427.011(9), F.S.)

⁵ 49 CFR 37, Subpart F.

⁶ 49 CFR 37.123.

Federal law also requires that each state plan to provide Medicaid services indicate that the Medicaid agency “will ensure necessary transportation for recipients to and from providers; and describe the methods that the agency will use to meet this requirement.”⁷ The Medicaid agency in Florida is the Agency for Health Care Administration (AHCA).

Florida law requires each agency that purchases transportation services for the transportation disadvantaged, including AHCA, to pay the rates established in the service plan or negotiated statewide contract, unless a more cost-effective method exists or if the community transportation coordinator (CTC) does not coordinate such services.⁸ These services are referred to as Medicaid Non-Emergency Transportation Services.

The Commission for the Transportation Disadvantaged⁹ (commission) manages such services.¹⁰ The commission contracts with a CTC and a planning agency in each county to provide transportation services.¹¹ The local coordinating board¹² develops applicant-qualifying criteria. The CTC uses the qualifying criteria to determine eligibility for services.¹³ Applicants must submit an application that requires the disclosure of medical and disability information, among other information.

Public Record Exemption under Review

Current law provides that personal identifying information of an applicant for or a recipient of paratransit services, held by an agency,¹⁴ is confidential and exempt¹⁵ from public record requirements.¹⁶ The confidential and exempt information must be disclosed:

- With the express written consent of the applicant or recipient, or the legally authorized representative of such applicant or recipient;
- In a medical emergency, but only to the extent that is necessary to protect the health or life of the applicant or recipient;
- By court order upon a showing of good cause; or
- To another agency in the performance of its duties and responsibilities.¹⁷

⁷ 42 CFR 431.53

⁸ See s. 427.0135, F.S.

⁹ Part I of chapter 427, F.S., establishes the Commission for the Transportation Disadvantaged (commission) with a purpose of coordinating transportation services provided to the transportation disadvantaged and a goal of providing cost-effective transportation by qualified community transportation coordinators or operators. The commission is housed within the Department of Transportation and consists of seven members appointed by the Governor. In addition, a technical working group advises the commission on issues of importance to the state. Section 427.012, F.S.

¹⁰ The commission has been providing transportation for AHCA under a fixed fee basis since 2004. The current multi-year contract between AHCA and the commission was executed in December 2008. *2012 Annual Performance Report Florida Commission for the Transportation Disadvantaged*, at 13 (January 1, 2013). The report is available at:

<http://www.dot.state.fl.us/ctd/programinfo/commissioninformation/commissioninformattion.htm> (last visited March 10, 2013).

¹¹ See ss. 427.013 and 427.0155, F.S.

¹² The local coordinating board is appointed and staffed by the metropolitan planning organization or designated official planning agency, and oversees and annually evaluates the CTC.

¹³ See ss. 427.0155 and 427.0157, F.S.

¹⁴ Section 119.011(2), F.S., defines “agency” to mean “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

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 119.071(5)(h)1., F.S.

¹⁷ Section 119.071(5)(h)3., F.S.

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2013, unless reenacted by the Legislature.

During the 2012 interim, subcommittee staff sent questionnaires to state and local government agencies as part of the Open Government Sunset Review process. Those agencies responding to the questionnaire indicated that there is a public necessity to continue to protect the confidential and exempt information, and recommended reenactment of the public record exemption under review.

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record exemption for personal identifying information of an applicant for or a recipient of paratransit services, which is held by an agency. The bill also makes clarifying changes.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to save from repeal the public record exemption for personal identifying information of an applicant for or recipient of paratransit services.

Section 2 provides an effective date of October 1, 2013.

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 require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of 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

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1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 119.071, F.S., relating
 4 to an exemption from public record requirements for
 5 personal identifying information of an applicant for
 6 or recipient of paratransit services; making
 7 clarifying changes; removing the scheduled repeal of
 8 the exemption; providing an effective date.

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

11
 12 Section 1. Paragraph (h) of subsection (5) of section
 13 119.071, Florida Statutes, is amended to read:

14 119.071 General exemptions from inspection or copying of
 15 public records.—

16 (5) OTHER PERSONAL INFORMATION.—

17 (h)1. Personal identifying information of an applicant for
 18 or a recipient of paratransit services which is held by an
 19 agency is confidential and exempt from s. 119.07(1) and s.
 20 24(a), Art. I of the State Constitution.

21 2. This exemption applies to personal identifying
 22 information of an applicant for or a recipient of paratransit
 23 services which is held by an agency before, on, or after the
 24 effective date of this exemption.

25 3. Confidential and exempt personal identifying
 26 information shall be disclosed:

27 a. With the express written consent of the applicant or
 28 recipient, ~~individual~~ or the ~~individual's~~ legally authorized

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29 | representative of such applicant or recipient;

30 | b. In a medical emergency, but only to the extent that is
31 | necessary to protect the health or life of the applicant or
32 | recipient individual;

33 | c. By court order upon a showing of good cause; or

34 | d. To another agency in the performance of its duties and
35 | responsibilities.

36 | ~~4. This paragraph is subject to the Open Government Sunset~~
37 | ~~Review Act in accordance with s. 119.15, and shall stand~~
38 | ~~repealed on October 2, 2013, unless reviewed and saved from~~
39 | ~~repeal through reenactment by the Legislature.~~

40 | Section 2. This act shall take effect October 1, 2013.