Government Operations Subcommittee

Wednesday, March 27, 2013
10:30 AM
Webster Hall (212 Knott)

Will Weatherford
Speaker

Jason T. Brodeur
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Government Operations Subcommittee

Start Date and Time:	Wednesday, March 27, 2013 10:30 am
End Date and Time:	Wednesday, March 27, 2013 12:30 pm
Location:	Webster Hall (212 Knott)
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 263 Disposition of Unclaimed Property by Mayfield
CS/HB 359 Public Meetings by Higher Education & Workforce Subcommittee, Pigman
CS/HB 383 Interstate Insurance Product Regulation Compact by Insurance & Banking Subcommittee, Hudson
HB 601 Department of Elderly Affairs by Hudson
HB 687 Local Bids and Contracts for Public Construction Works by McBurney
HB 725 Public Records and Public Meetings Exemptions by Harrell
CS/HB 731 Pub. Rec./Spouses & Children of Law Enforcement Personnel by Criminal Justice Subcommittee, Kerner
HB 745 Pub. Rec./Fracturing Chemical Usage Disclosure Act by Rodrigues, R.
CS/HB 823 Public Records by Insurance & Banking Subcommittee, Ingram
HB 943 Public Records Exemption by Schwartz
HB 991 Pub. Rec./School District After-Drill Report by Rodrigues, R.
HB 1017 State Procurement by Fresen
HB 1115 Pub. Rec./Dental Workforce Surveys by Williams, A.
HB 1145 State-Owned or State-Leased Space by La Rosa
HB 1327 Pub. Rec./Crim. Hist./Human Trafficking Victims by Spano
HB 1333 Public Records/Toll Facilities by La Rosa
HB 7089 Public Records Exemption/School Food and Nutrition Service Program Participants by Agriculture & Natural Resources Subcommittee, Beshears
HB 7095 Public Records/Citizens Property Insurance Corporation Clearinghouse Program by Insurance & Banking Subcommittee, Nelson

Consideration of the following proposed committee bill(s):

PCB GVOPS 13-04 -- OGSR Direct-support Organization of the Department of Veterans' Affairs
PCB GVOPS 13-06 -- OGSR Employment Discrimination Complaints

NOTICE FINALIZED on 03/25/2013 16:22 by Sims-Davis.Linda

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 263 Disposition of Unclaimed Property
SPONSOR(S): Mayfield
TIED BILLS: **IDEN./SIM. BILLS:** SB 464

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		JJ Stramski	Williamson
2) Rulemaking Oversight & Repeal Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Unclaimed property consists of any funds or other property, tangible or intangible, that has remained unclaimed by the owner for a certain period of time. Savings and checking accounts, money orders, travelers' checks, uncashed payroll or cashiers' checks, stocks, bonds, other securities, insurance policy payments, refunds, security and utility deposits, and contents of safe deposit boxes are potentially unclaimed property. Holders of unclaimed property, which typically include banks and insurance companies, are required to report unclaimed property to the Department of Financial Services (DFS).

Current law places an obligation on the state to notify owners of unclaimed property accounts valued at over $250, in a cost-effective manner, including through attempts to directly contact the owner.

This bill authorizes DFS to adopt rules that allow an apparent owner of unclaimed property to electronically submit a claim for such property. This bill also provides that s. 717.124, F.S., relating to unclaimed property claims, applies to property reported and remitted to the Chief Financial Officer pursuant to:

- Section 43.19, F.S., which provides that unclaimed funds held in the court registry for five years must be deposited with the Chief Financial Officer to the credit of the State School Fund.
- Section 45.032, F.S., which provides that unclaimed funds as a result of a property foreclosure must be deposited with the Chief Financial Officer.
- Section 732.107, F.S., which provides that property held by an estate without heirs escheats to the state.
- Section 733.816, F.S., which provides that property held by a personal representative that cannot be distributed to a beneficiary is deposited into the court registry and then deposited with the Chief Financial Officer.
- Section 744.534, F.S., which provides that property held by a legal guardian that cannot be distributed to a ward or ward's estate is deposited into the court registry and then deposited with the Chief Financial Officer.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Unclaimed Property

Unclaimed property consists of any funds or other property, tangible or intangible, that has remained unclaimed by the owner for a certain period of time.[1] Savings and checking accounts, money orders, travelers' checks, uncashed payroll or cashiers' checks, stocks, bonds, other securities, insurance policy payments, refunds, security and utility deposits, and contents of safe deposit boxes are potentially unclaimed property.[2] Holders of unclaimed property, which typically include banks and insurance companies, are required to report unclaimed property to the Department of Financial Services (DFS).[3] Unclaimed property is deposited by DFS into the Department of Education School Trust Fund (State School Fund), except for a $15 million balance that is retained in a separate account (the Unclaimed Property Trust Fund) for the prompt payment of verified claims.[4]

Florida Disposition of Unclaimed Property Act

The Florida Disposition of Unclaimed Property Act serves to protect the interest of missing owners of property while the people of the state derive a benefit from the unclaimed and abandoned property until the property is claimed, if ever. DFS administers the Act through its Bureau of Unclaimed Property (bureau).[5]

Holders of inactive accounts (presumed unclaimed property) are required to use due diligence to locate apparent owners through at least one search for the owners within 180 days after an account becomes inactive (two years). Once the allowable time period for holding unclaimed property has expired, a holder is required to file a report with DFS by May 1, for all property valued at $50 or more and presumed unclaimed for the preceding calendar year. The report generally must contain the name and social security number or federal employer identification number, if known, and the last known address of the apparent owner.[6]

Current law places an obligation on the state to notify owners of unclaimed property accounts valued at over $250 in a cost-effective manner, including through attempts to directly contact the owner.[7] DFS indicates that the means used to find lost property owners include social security numbers, direct mailing, motor vehicle records, state payroll records, newspaper advertisements, and a state website[8] where unclaimed property can be found.

Attorneys, Florida-certified public accountants, Florida-licensed private investigators, and Florida-licensed private investigative agencies register with DFS in order to act as a claimant's representative, to assist claimants in locating and submitting claims for unclaimed property, and receive a distribution of fees and costs from DFS.[9]

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[1] *See* s. 717.102(1), F.S.
[2] *See* ss. 717.104 – 717.116, F.S.
[3] Section 717.117(1), F.S.
[4] *See* s. 717.123, F.S.
[5] *See* chapter 717, F.S.
[6] *See* s. 717.117, F.S.
[7] *See* s. 717.118, F.S.
[8] www.fltreasurehunt.org.
[9] Section 717.1400, F.S.

Effect of the Bill

This bill authorizes DFS to adopt rules that allow an apparent owner of unclaimed property to electronically submit a claim for such property. However, the rulemaking authority authorized by the bill does not appear necessary as s. 717.138, F.S., already permits DFS to adopt rules to allow for electronic filing of fees, forms, and reports. *See* section III. of the analysis for further discussion.

This bill also provides that s. 717.124, F.S., relating to unclaimed property claims, applies to property reported and remitted to the Chief Financial Officer pursuant to:

- Section 43.19, F.S., which provides that unclaimed funds held in the court registry for five years must be deposited with the Chief Financial Officer to the credit of the State School Fund.[10]
- Section 45.032, F.S., which provides that unclaimed funds as a result of a property foreclosure must be deposited with the Chief Financial Officer.[11]
- Section 732.107, F.S., which provides that property held by an estate without heirs escheats to the state.[12]
- Section 733.816, F.S., which provides that property held by a personal representative that cannot be distributed to a beneficiary is deposited into the court registry and then deposited with the Chief Financial Officer.[13]
- Section 744.534, F.S., which provides that property held by a legal guardian that cannot be distributed to a ward or ward's estate is deposited into the court registry and then deposited with the Chief Financial Officer.[14]

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

B. SECTION DIRECTORY:

Section 1 amends s. 717.124, F.S., to authorize DFS to adopt rules to allow apparent owners of unclaimed property to electronically submit a claim for such property and to provide that the section is applicable to certain property reported and remitted to the Chief Financial Officer.

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.

[10] Accounts or funds are held in perpetuity.
[11] Accounts or funds are held in perpetuity.
[12] Accounts or funds can be claimed for 10 years, after which the funds permanently escheat.
[13] Accounts or funds can be claimed for 10 years, after which the funds permanently escheat.
[14] Accounts or funds can be claimed for five years, after which the funds permanently escheat.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Provisions in the bill could expedite the return of unclaimed property to the rightful owners.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill grants rulemaking authority to the Department of Financial Services (DFS) to allow apparent owners to electronically submit claims for unclaimed property. The grant of rulemaking authority in appears to be redundant as s. 717.138, F.S., already permits DFS to "adopt rules to allow for electronic filing of fees, forms, and reports required by this chapter." As such, it appears DFS already has sufficient rulemaking authority to allow apparent owners of unclaimed property to electronically submit claim forms for such property.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides that s. 717.124, F.S., applies to property reported and remitted to the Chief Financial Officer pursuant to ss. 43.19, 45.032, 732.107, 733.816, and 744.534, F.S. This could be interpreted to limit the current scope of s. 717.124, F.S., as that section currently applies to all property delivered to the DFS pursuant to chapter 717, F.S. As such, the provision in the bill should be clarified.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to disposition of unclaimed property; amending s. 717.124, F.S.; authorizing the Department of Financial Services to adopt rules that allow an apparent owner of unclaimed property to submit a claim to the department electronically; providing for applicability with respect to specified property reported and remitted to the Chief Financial Officer; providing an effective date.

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

Section 1. Subsections (7) and (8) are added to section 717.124, Florida Statutes, to read:

717.124 Unclaimed property claims.—

(7) Notwithstanding any other provision of law, the department may adopt rules that allow an apparent owner to electronically submit a claim for unclaimed property to the department.

(8) This section applies to property reported and remitted to the Chief Financial Officer pursuant to ss. 43.19, 45.032, 732.107, 733.816, and 744.534.

Section 2. 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		

Committee/Subcommittee hearing bill: Government Operations Subcommittee

Representative Mayfield offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsections (7) and (8) are added to section 717.124, Florida Statutes, to read:

717.124 Unclaimed property claims.—

(7) The department may allow an apparent owner to electronically submit a claim for unclaimed property to the department. If a claim is submitted electronically for no more than $1,000, the department may utilize a method of identity verification other than a copy of a valid driver's license, other government issued photographic identification, or sworn notarized statement.

(8) This section applies to all unclaimed property reported and remitted to the Chief Financial Officer including,

but not limited to, property reported pursuant to ss. 43.19, 45.032, 732.107, 733.816, and 744.534.

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

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

Remove everything before the enacting clause and insert:
An act relating to disposition of unclaimed property; amending s. 717.124, F.S.; authorizing the Department of Financial Services to permit alternative methods of verifying claimant identification for certain electronically filed claims; providing for applicability with respect to specified property reported and remitted to the Chief Financial Officer; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 359 Public Meetings
SPONSOR(S): Higher Education and Workforce Subcommittee, Pigman and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1276

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Higher Education & Workforce Subcommittee	12 Y, 0 N, As CS	Brink	Sherry
2) Government Operations Subcommittee		Harrington	Williamson
3) Judiciary Committee			

SUMMARY ANALYSIS

Current law provides that certain university direct-support organization (DSO) documents are public records, while all other documents are confidential and exempt from public records laws. However, there is no comparable public meetings exemption for university DSO board meetings at which confidential documents are discussed.

The bill creates a public meetings exemption for any portion of a meeting of the board of directors of the DSO or of a committee of the DSO in which the board or committee discusses the identity of a donor or prospective donor, proposal seeking research funding from the DSO, or a plan or program for either initiating or supporting research.

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.

There is no anticipated fiscal impact associated with the bill.

The bill provides for an effective date of October 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 public records or public meetings exemption. The bill creates a public meetings exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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 Act[5] 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]

University Direct-Support Organizations

Current law defines "university direct-support organization" to mean an organization that is:

- A Florida corporation not for profit incorporated under the provisions of chapter 617, F.S., and approved by the Department of State.

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[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.*

- Organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a state university in Florida or for the benefit of a research and development park or research and development authority affiliated with a state university and organized under part V of chapter 159, F.S.
- An organization that a state university board of trustees, after review, has certified to be operating in a manner consistent with the goals of the university and in the best interest of the state. Any organization that is denied certification by the board of trustees shall not use the name of the university that it serves.[8]

The DSO serves a role in raising private support for university academic, research, and athletic activities.[9] The DSO may establish accounts with the State Board of Administration for investment of funds pursuant to part IV of chapter 218, F.S.[10] The DSO is prohibited from giving any gift to a political committee or committee of continuous existence for any purpose other than those certified by a majority roll call vote of the governing board of the DSO at a regularly scheduled meeting as being directly related to the educational mission of the university.[11]

DSOs are subject to public records and public meetings laws.[12] Current law provides that the following records are confidential and exempt[13] from public records requirements:

- The identity of donors who desire to remain anonymous; and
- All records of the DSO other than the auditor's report,[14] management letter, and any supplemental data required by the Board of Governors, the university board of trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability.[15]

However, there is no similar exemption for DSO board meetings during which confidential and exempt records are discussed.

Effect of Proposed Changes

This bill creates a public meetings exemption for meetings of the university DSO. Specifically, the bill provides that any portion of a meeting of the board of directors for the DSO, or of the executive committee or other committee of such board, where the identify of a donor or prospective donor, any proposal seeking research funding from the organization, or a plan or program for either initiating or supporting research is discussed, is exempt from the public meetings requirements in s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution.

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[8] Section 1004.28(1)(a), F.S.

[9] State University System Board of Governors, *2013 Legislative Bill Analysis for HB 359* (Feb. 14, 2013) (on file with the Higher Education and Workforce Subcommittee).

[10] Section 1004.28(2)(a), F.S.

[11] Section 1004.28(4), F.S.

[12] *See Palm Beach Community College Foundation, Inc. v. WTFT, Inc.*, 611 So.2d 588 (Fla. 4th DCA 1993). The Florida Attorney General opined that community college direct-support organizations are subject to Sunshine Law. Op. Att'y Gen. Fla. 05-27 (2005). *See also* Op. Att'y Gen. Fla. 92-53 (1992) (providing that John and Mable Ringling Museum of Art Foundation, Inc., established pursuant to statute as a not-for-profit corporation to assist the museum in carrying out its functions by raising funds for the museum, is subject to Sunshine Law by virtue of its substantial ties with the museum).

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

[14] Current law requires a DSO to provide for an annual financial audit of its accounts and records conducted by an independent certified public accountant in accordance with certain requirements. The annual audit report must be submitted to the Auditor General and the Board of Governors for review.

[15] Section 1004.28(5), F.S.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a statement of public necessity, which in part provides that the meetings included in the exemption frequently demand great sensitivity and discretion, as donors frequently seek anonymity and express concerns over the release of sensitive financial information.

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

B. SECTION DIRECTORY:

Section 1. Amends s. 1004.28, F.S., providing an exemption from public meetings requirements for a meeting or portion of a meeting of the board of directors of a university direct-support organization or of the executive committee or other committees of the board; providing for review and repeal of the exemption.

Section 2. Provides a statement of public necessity.

Section 3. 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 affect county or municipal governments.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meetings exemption. The bill creates a public meetings 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 meetings exemption. The bill creates a public meetings 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 meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill's public necessity statement provides that DSOs serve a vital role in raising charitable donations from private sources, an undertaking that often demands great sensitivity and discretion. Since DSOs must evaluate proposals that contain highly proprietary information, the documents are protected as confidential by current law. However, failure to close meetings in which exempt or confidential records are reported or discussed significantly compromises their confidentiality. The bill limits the public meetings exemption to only the portion of the meeting in which the University DSO discusses the identity of a donor or prospective donor, proposal seeking research funding from the DSO, or a plan or program for either initiating or supporting research.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On line 57 of the bill, "Florida Statutes" should be inserted after s. 1004.28, as section 2 of the bill is an unnumbered section of law.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2013, the Higher Education & Workforce Subcommittee adopted one strike-all amendment and reported the bill favorably. The strike-all amendment narrows the scope of the public meetings exemption, limiting its applicability to meetings at which the identity of a donor or prospective donor, any proposal seeking research funding from the organization, or a plan or program for either initiating or supporting research is discussed. It also adds greater detail to the bill's statement of public necessity. This change aligns the exemption more closely with the statement of public necessity and serves to avoid constitutional issues related to overbroad public meetings exemptions.

A bill to be entitled

An act relating to public meetings; amending s. 1004.28, F.S.; providing an exemption from public meeting requirements for any portion of a meeting of the board of directors of a university direct-support organization, or of the executive committee or other committees of such board, at which the identity of a donor or prospective donor, any proposal seeking research funding from the organization, or a plan or program for either initiating or supporting research is discussed; providing for review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Subsection (5) of section 1004.28, Florida Statutes, is amended to read:

1004.28 Direct-support organizations; use of property; board of directors; activities; audit; facilities.—

(5) ANNUAL AUDIT; PUBLIC RECORDS EXEMPTION; PUBLIC MEETINGS EXEMPTION.—

(a) Each direct-support organization shall provide for an annual financial audit of its accounts and records to be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General pursuant to s. 11.45(8) and by the university board of trustees. The annual audit report shall be submitted, within 9 months after the end

of the fiscal year, to the Auditor General and the Board of Governors for review. The Board of Governors, the university board of trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability shall have the authority to require and receive from the organization or from its independent auditor any records relative to the operation of the organization. The identity of donors who desire to remain anonymous shall be protected, and that anonymity shall be maintained in the auditor's report.

(b) All records of the organization other than the auditor's report, management letter, and any supplemental data requested by the Board of Governors, the university board of trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability shall be confidential and exempt from ~~the provisions of~~ s. 119.07(1).

(c) Any portion of a meeting of the board of directors of the organization, or of the executive committee or other committees of such board, at which the identity of a donor or prospective donor, any proposal seeking research funding from the organization, or a plan or program for either initiating or supporting research is discussed is exempt from s. 286.011 and s. 24(b), 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.

Section 2. The Legislature finds that it is a public necessity that meetings of the board of directors of a direct-

support organization established under s. 1004.28, or of the executive committee or other committees of such board, at which the identity of a donor or prospective donor, any proposal seeking research funding from the organization, or a plan or program for either initiating or supporting research is discussed should be held exempt from s. 286.011, Florida Statutes, and s. 24(b), Art. I of the State Constitution. For the benefit of our state universities, and ultimately all the people of Florida, direct-support organizations serve a vital role in raising donations from private sources. This undertaking demands great sensitivity and discretion, as donors frequently seek anonymity and are concerned about the potential release of sensitive financial information. If direct-support organizations cannot honor those requests and protect such information from public disclosure, potential donors may decline to contribute, thus hampering the ability of the direct-support organization to carry out its activities. The state has recognized these realities by making most of the records of direct-support organizations confidential and exempt from the state's public records requirements, including the identity of donors and prospective donors. However, without the exemption from public meeting requirements, release of the identity of donors or prospective donors via a public meeting would defeat the purpose of the public records exemption. It is therefore the finding of the Legislature that the exemption from public meeting requirements is a public necessity. Additionally, the resources raised by direct-support organizations are frequently used to initiate, develop, and fund plans and programs for research that routinely

contain sensitive proprietary information, including university-connected research projects, which provide valuable opportunities for faculty and students and may lead to future commercial applications. This activity requires the direct-support organization to develop research strategies and evaluate proposals for research grants that routinely contain sensitive or proprietary information, including specific research approaches and targets of investigation, the disclosure of which could injure those conducting the research. Maintaining the confidentiality of research strategies, plans, and proposals is a hallmark of a responsible funding process, is practiced by the National Science Foundation and the National Institutes of Health, and allows for candid exchanges among reviewers. The state has recognized these realities by expressly making most of the records of direct-support organizations confidential and exempt from the state's public records requirements, including proposals seeking research funding. Failure to close meetings in which these activities are discussed would significantly undermine the confidentiality of the strategies, plans, and proposals themselves. Without the exemption from public meeting requirements, the release during a public meeting of a proposal seeking research funding from the direct-support organization or a plan or program for either initiating or supporting research would defeat the purpose of the public records exemption. It is therefore the finding of the Legislature that the exemption from public meeting requirements is a public necessity.

Section 3. This act shall take effect October 1, 2013.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 359 (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	____

Committee/Subcommittee hearing bill: Government Operations Subcommittee

Representative Pigman offered the following:

Amendment

Remove line 57 and insert:

support organization established under s. 1004.28, Florida Statutes, or of the

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 383 Interstate Insurance Product Regulation Compact
SPONSOR(S): Insurance & Banking Subcommittee; Hudson and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 242

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Reilly	Cooper
2) Government Operations Subcommittee		Williamson	Williamson
3) Government Operations Appropriations Subcommittee			
4) Regulatory Affairs Committee			

SUMMARY ANALYSIS

House Bill 383 enacts into Florida law the Interstate Insurance Product Regulation Compact (the Compact), model legislation adopted by the National Association of Insurance Commissioners. The Compact provides for the development of uniform national standards for life insurance, annuity, disability income insurance, and long-term care products (including rate filings for the latter two insurance products) and application of these standards to insurer filings. A filing approved through the Compact is effective in all compacting states in which the insurer is authorized to write that line of business. Currently 40 states (and the Commonwealth of Puerto Rico), representing approximately two-thirds of premium volume nationwide, have enacted the Compact. Insurers, however, have the option of filing with individuals states, rather than utilizing the Compact.

Under the bill, Florida:

- Opts out of all uniform standards (current standards and those subsequently adopted) related to long-term care insurance.
- Adopts uniform standards for all other covered products adopted under the Compact as of March 1, 2013.
- Opts out of uniform standards adopted under the Compact after March 1, 2013 and amendments to existing uniform standards adopted after this date that substantially alter or add to existing uniform standards. However, the Florida Legislature may subsequently enact such standards and amendments into law.

The Compact is implemented through the Interstate Insurance Product Regulation Commission (the Commission), which has the authority to adopt rules and uniform standards; prescribe bylaws; and borrow money. The Commission is authorized to protect certain information from disclosure and close meetings in whole or in part. However, the bill does not abrogate a person's right to access information under Florida law.

Article II, s. 3 of the Florida Constitution provides for separation of powers among the executive, legislative, and judicial branches. This provision has been interpreted to preclude legislative adoption of rules not yet promulgated by federal administrative bodies; such action being held an impermissible delegation of legislative authority. Under the bill, Florida prospectively opts out of subsequently adopted uniform standards and subsequently adopted amendments to existing standards that substantially alter or add to such standards.

The bill will have a positive fiscal impact on the private sector, as insurers may submit a single filing to the Commission, rather than making separate filings in each state in which they are authorized to do business. There is minimal fiscal impact on state or local government.

The bill is effective October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Regulatory Review of Insurer Filings[1]

The Office of Insurance Regulation (OIR) reviews and approves insurance product forms and rates in Florida. Form filings include policy forms (contracts), which include new products, and may in some product lines include applications and marketing materials. Rate filings are requests from an insurer to increase, decrease, or maintain current rates associated with specific policy forms. Policy forms and rates are reviewed to determine compliance with Florida law and to ensure that the products are offered at a fair and adequate price, that premiums are reasonable in relation to the benefits they provide, and that they do not unfairly discriminate against segments of the public.

The Interstate Insurance Product Regulation Compact[2]

Background

In 2002, a working group of the National Association of Insurance Commissioners (NAIC) adopted the initial Interstate Insurance Compact Model (the Compact) to modernize state insurance regulation. The current version of the Compact includes amendments that were adopted in 2003. The Compact is designed to increase speed to market while retaining consumer protections relating to life insurance, annuity, disability income insurance, and long-term care insurance products. It also permits insurers and third-party filers to submit rate filings for disability income and long-term care insurance products.

Changes in the financial services marketplace have resulted in the previously mentioned insurance products competing directly with other retirement and estate planning instruments sold by banks and security firms. The Compact provides compacting states with the ability to develop uniform national product standards for these insurance products; establish a central point of filing; and thoroughly review filings and make regulatory decisions according to uniform product standards. A filing approved by the Interstate Insurance Product Regulation Commission, i.e., that satisfies uniform standards, is effective in all compacting states in which the insurer is authorized to write that particular line of business without further regulatory review. Currently, 40 states (and the Commonwealth of Puerto Rico),[3] representing approximately two-thirds of premium volume nationwide, have enacted the Compact.

Overview

The Compact is implemented through the Interstate Insurance Product Regulation Commission (the Commission), a multi-state public entity. Each compacting state is represented by one member, each with one vote. Florida's Insurance Commissioner, or the Commissioner's designee, will serve as the state's representative on the Commission. The Commission came into existence in 2004 upon legislative enactment in Colorado and Utah and satisfied requirements to become operational in 2006.[4]

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[1] *See* "Office of Insurance Regulation, 2010 Transition Manual" (December 2010). Available at http://www.floir.com/ (last accessed: March 4, 2013).

[2] Background information available at the Interstate Insurance Product Regulation Commission's website, http://insurancecompact.org/ (last accessed: March 4, 2013).

[3] Alabama, Alaska, Colorado, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. The Commonwealth of Puerto Rico is also a Commission member.

[4] The Commission would become operational when either 26 states had joined the Compact or compacting states represented more than 40% of nationwide premium volume.

The Commission's affairs are governed by a management committee, comprised of up to 14 members, as follows:

- One member from each of the six compacting states with the largest premium volume for products covered by the Compact, as determined from NAIC records for the prior year.
- Four members from compacting states with at least 2% of the market based on premium volume for covered products, which are selected on a rotating basis.
- Four members from compacting states with less than 2% of the market, based on premium volume for covered products, one from each of the NAIC's four zone regions.

A management committee establishes and oversees the Commission's organizational structure, and, upon a two-thirds vote of committee members, is authorized to submit proposed uniform standards to compacting states for adoption.

The Compact further provides for a legislative committee, comprised of state legislators or their designees, and two advisory committees (whose members are consumer and insurance industry representatives, respectively). The legislative committee monitors and makes recommendations to the Commission.

Authority of the Commission

The Commission is authorized to:

- Adopt rules and establish reasonable uniform standards for covered products and related advertisements, which have the force and effect of law and are binding in the compacting states to the extent provided in the Compact.
- Receive and review, in an expeditious manner, product filings for covered products and rate filings for disability income and long-term care insurance products. Commission approval of a filing has the force and effect of law and is binding in the compacting states to the extent provided in the Compact.
- Adopt operating procedures, which are binding in the compacting states to the extent provided in the Compact.
- Issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence.
- Establish and maintain offices.
- Purchase and maintain insurance and bonds.
- Borrow, accept, or contract for services of personnel, including employees of a compacting state. Any such action with respect to employees of the State of Florida requires the express written consent of the state.
- Hire employees, professionals, and specialists, and elect or appoint officers.
- Accept appropriate donations and grants, avoiding the appearance of impropriety.
- Establish a budget, [5] make expenditures, and remit filing fees[6] to compacting states.
- Enforce compliance by compacting states with rules, uniform standards, operating procedures, and bylaws.
- Borrow money, provided that this power does not, in any manner, obligate the financial resources of Florida.

[5] The Compact's operating revenue is based on an annual registration fee and a per filing fee (discussed in footnote 6). The registration fee is $5,000 per company (insurers and third-party filers) or $2,500 (for companies with less than $50 million in premium volume and/or that file in 12 or fewer compacting states). The filing fee is prorated for companies that register after July 1st. Correspondence from the Interstate Insurance Product Regulation Commission, dated February 26, 2013, on file with staff of the Insurance & Banking Subcommittee.

[6] *Id.* A filing must be accompanied by the applicable fee under the Commission's schedule of fees. Additionally, if the filing company is authorized in compacting states that have filing fees, these fees must also accompany the filing. The Commission will then remit such fees to the respective compacting states.

- Perform such other functions as may be necessary or appropriate to achieve the Compact's purposes consistent with state regulation of the business of insurance.
- Prescribe bylaws.
- Adopt a code of ethics, which does not supersede or otherwise limit the obligations of Florida's Insurance Commissioner or the Commissioner's designee under Florida's ethics laws or rules.

The Commission is required to provide written notice to compacting states that are not in compliance with adopted bylaws, rules, uniform standards, and operating procedures, with a timeframe for remedying the noncompliance. States that fail to timely comply are deemed in default, with all privileges and benefits conferred by the Compact suspended.

Key Terms Defined

Key terms defined by the Compact, include:

- Bylaws: Bylaws adopted by the Commission as of March 1, 2013, for its governance or for directing or controlling the Commission's actions or conduct.
- Compacting state: Any state which has enacted this Compact legislation and has not withdrawn...or been terminated... [from] the Compact.
- Insurer: Any entity licensed by a state to issue contracts of insurance for any of the lines of insurance covered by the Compact.
- Operating procedures: Procedures adopted by the Commission as of March 1, 2013, and subsequent amendments thereto if the methodology remains substantially consistent, implementing a rule, uniform standard, or provision of the Compact.
- Product: The form of a policy or contract, including any application, endorsement, or related form which is attached to and made a part of the policy or contract, and any evidence of coverage or certificate, for an individual or group annuity, life insurance, disability income, or long-term care insurance product that an insurer is authorized to issue.
- Rule: A statement of general or particular applicability and future effect adopted by the Commission as of March 1, 2013, and subsequent amendments thereto if the methodology remains substantially consistent, including a uniform standard ..., designed to implement, interpret, or prescribe law or policy or describe the organization, procedure, or practice requirements of the Commission, which shall have the force and effect of law in the compacting states.
- Third-party filer: An entity that submits a product filing to the Commission on behalf of an insurer.
- Uniform standard: A standard adopted by the Commission as of March 1, 2013, and subsequent amendments thereto if the methodology remains substantially consistent, for a product line pursuant to Article VII of the Compact and shall include all of the product requirements in aggregate; provided, each uniform standard shall be construed, whether express or implied, to prohibit the use of any inconsistent, misleading, or ambiguous provisions in a product and the form of the product made available to the public shall not be unfair, inequitable, or against public policy as determined by the Commission.

Product/Rate Filings and Commission Approval

Product filings for covered products and rate filings for disability income and long-term care insurance products may be submitted to: (1) the Commission or (2) a state regulator for a state in which the insurer is licensed to write that line of business. A filing that is approved by the Commission, i.e., that satisfies uniform standards, is effective in all compacting states in which the insurer is authorized to write that line of business without further regulatory review. By contrast, a filing submitted to a state is reviewed by the state for compliance with state standards and, if approved, is effective only in that state.

Appeals from adverse decisions of the Commission must be made within 30 days; with the review conducted by a panel appointed by the Commission. However, judicial review is available for appeals based on allegations that the Commission acted arbitrarily, capriciously, or abused its discretion.

Florida's Policy of Opting Out of Subsequently Adopted Uniform Standards and Amendments

Uniform standards have the force and effect of law, are binding in the compacting states, and require a two-thirds vote for adoption. Under the bill, Florida:

- Prospectively opts out of all uniform standards adopted by the Commission involving long-term care insurance products.
- Adopts all uniform standards (except those relating to long-term care) adopted by the Commission as of March 1, 2013.

The bill provides that it is Florida's policy to opt out, and requires the OIR to opt out, of: (1) new uniform standards adopted by the Commission after March 1, 2013; and (2) amendments adopted after March 1, 2013 to existing uniform standards that substantially alter or add to existing uniform standards until Florida enacts legislation to adopt or opt out of such standards or amendments. The OIR is required to immediately notify the Florida Legislature of any such actions by the Commission. The Financial Services Commission is given rulemaking authority to implement this act, which must be used to promulgate rules for opting out of subsequently adopted standards and amendments. If the OIR or a court of competent jurisdiction finds that the procedure for opting out has not been followed, the Florida Legislature will be notified, and reasonable and prompt measures must be taken to opt out of a uniform standard that has not been legislatively approved by Florida.

Delegation of Legislative Authority under the Florida Constitution

Article II, Sec. 3 of the Florida Constitution provides for separation of powers among the executive, legislative, and judicial branches. The Florida Supreme Court has held that it is an unconstitutional delegation of legislative authority for the Legislature to prospectively adopt rules not yet promulgated by federal administrative bodies.[7] There does not appear to be any binding Florida case law that squarely addressed this issue in the context of interstate compacts. However, it can be argued that this prohibition (against prospective adoption by the Legislature of federal rules that have not yet been promulgated) extends to preclude the prospective adoption of uniform standards not yet adopted under an interstate compact.

Pursuant to the Compact, uniform standards adopted by the Commission have the force and effect of law and are binding in the compacting states. Under the bill, Florida adopts all uniform standards (except those relating to long-term care insurance) that have been adopted by the Commission as of March 1, 2013. It also establishes Florida's policy to opt out, and requires the OIR to opt out, of subsequently adopted uniform standards and certain subsequently adopted amendments to existing uniform standards until the state enacts legislation to adopt or opt out of such standards or amendments. Thus, only those subsequently adopted standards or amendments that are reviewed by the Florida Legislature and enacted into state law will become effective in this state.

Meetings and Records under the Compact

The Commission is authorized to:

- Close a meeting[8] in whole or in part. The Insurance Commissioner, or the Commissioner's designee, may only attend, or otherwise participate in, a closed meeting or executive session to the extent permitted by Florida law.

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[7] *Freimuth v. State*, 272 So.2d 473, 476 (Fla. 1972); *Fla. Indus. Commission v. State ex rel. Orange State Oil Co.*, 21 So.2d 599, 603 (Fla. 1945).

[8] Notices of all Commission meetings, including instructions for public participation, provided to the office, the Commissioner, or the Commissioner's designee must be published in the Florida Administrative Register.

- Provide for the right of citizens to attend Committee meetings, except when necessary to protect the public's interest, the privacy of individuals, and insurers' proprietary information, including trade secrets.
- Adopt rules regarding conditions and procedures for public inspection and copying of the Commission's information and official records, except for records involving an individual's privacy or an insurer's trade secrets.
- Adopt rules to establish conditions and procedures for providing public access to product filing information.

Such provisions do not abrogate a person's right to access information under Florida law.
The bill provides for the Commission's records and books to be maintained pursuant to the bylaws, and that confidential information of the Commission remains confidential when provided to any Commission member. However, all requests from the public to inspect or copy records, data, or information of the Commission, wherever received, by and in possession of the Insurance Commissioner, the Commissioner's designee, or the OIR are made subject to Florida's Public Records Law, ch. 119, F.S.

Florida's Public Records Law and the Compact

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records and the exemption of meetings 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. A bill enacting an exemption or substantially amending an existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[9]

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[10] 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.

The Compact holds ineffective, as to a compacting state, any provisions that exceed the constitutional limits imposed on the legislature of that state. Provisions limiting access to information expressly provide that they do not abrogate a person's right to access information under Florida law. Although the Commission may close a meeting[11] in whole or in part, the Insurance Commissioner, or the Commissioner's designee, may only attend, or otherwise participate in such meeting or executive session, to the extent consistent with Florida law. Further, all requests from the public to inspect or copy

[9] Section 24(c), Art. I of the State Constitution.
[10] Section 119.15, F.S.
[11] In an informal opinion, the Florida Attorney General states that Florida's Sunshine Laws are applicable to Florida officials who transact business pursuant to an interstate compact. Op. Att'y Gen. Fla. Informal (1998) (regarding the Appalachicola-Chattahoochee-Flint River Basin Compact). The compact created the "ACF Basin Commission," comprised of one representative each representing Alabama, Florida, and Georgia, and a non-voting member representing the United States. Available at http://myfloridalegal.com (last accessed: March 7, 2013).

records, data, or information of the Commission, wherever received, by and in possession of the Insurance Commissioner, the Commissioner's designee, or the OIR are made subject to Florida's Public Records Law, ch. 119, F.S.

Miscellaneous

The bill:

- Requires the Commission to make an annual report to the governor and the legislature of each compacting state.
- Provides for the withdrawal of compacting states, dissolution of the Compact when there are fewer than two compacting states, and winding up of the Compact's affairs.
- Provides that the terms of the Compact are severable if any provision is deemed unenforceable, and that the provisions of the Compact are to be liberally construed to effectuate its purposes.

B. SECTION DIRECTORY:

Section 1. Provides Legislative findings relating to the Interstate Insurance Product Regulation Model Compact.

Section 2. Sets forth the Interstate Insurance Product Regulation Compact.

Section 3. Provides for the adoption of uniform standards adopted under the Compact as of March 1, 2013, and establishes the state's policy to opt out of subsequently adopted standards.

Section 4. Provides that the Commission is subject to unemployment and reemployment taxes for persons who perform services for the Commission within the state, and for taxes for Commission business and other activities in Florida.

Section 5. Requires that requests for information that concern insurer trade secrets or matters of privacy be responded to in accordance with Florida law.

Section 6. Grants rulemaking authority to the Financial Services Commission.

Section 7. 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:

The bill potentially reduces the cost to insurers of filing and obtaining approval of products and advertising materials, since the Commission provides a clearinghouse that allows insurers to make one filing rather than separate filings in each state in which they do business.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Financial Services Commission is granted rulemaking authority to implement the Compact.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2013, the Insurance & Banking Subcommittee considered a proposed committee substitute and reported the proposed committee substitute favorably with a committee substitute. The proposed committee substitute made the following changes to the filed version of the bill:

- Provided that subsequently adopted uniform standards or amendments to existing uniform standards adopted by the Interstate Insurance Product Regulation Commission must be enacted into state law to take effect in Florida.
- Provided that the Commission is subject to state unemployment or reemployment taxes for employees who perform services in the state and for taxation for any Commission business or activity conducted or performed in Florida.
- Established a process for referring requests for public inspection or copying of information, data, or official records of the Commission that includes insurer trade secrets or matters of privacy to Florida's Insurance Commissioner, who will respond in accordance with Florida law.
- Clarified that the provisions of the Interstate Insurance Product Regulation Compact do not abrogate a person's right to access information consistent with the State Constitution and laws of Florida.
- Specified that Florida's Insurance Commissioner or the Commissioner's designee may only attend or participate in meetings closed by the Commission to the extent permitted by Florida law.
- Provided that if there is any inconsistency between a code of ethics adopted by the Commission and standards imposed under Florida's ethics laws or rules, that the Insurance Commissioner or the Commissioner's designee is required to adhere to the stricter standard of conduct.

The staff analysis was updated to reflect the committee substitute.

A bill to be entitled

An act relating to the Interstate Insurance Product Regulation Compact; providing legislative findings and intent; providing purposes; providing definitions; providing for the establishment of an Interstate Insurance Product Regulation Commission; providing responsibilities of the commission; specifying the commission as an instrumentality of the compacting states; providing for venue; specifying the commission as a separate, not-for-profit entity; providing powers of the commission; providing for organization of the commission; providing for membership, voting, and bylaws; designating the Commissioner of Insurance Regulation as the representative of the state on the commission; authorizing the Commissioner of Insurance to designate a person to represent the state on the commission; providing for a management committee, officers, and personnel of the commission; providing authority of the management committee; providing for legislative and advisory committees; providing for qualified immunity, defense, and indemnification of members, officers, employees, and representatives of the commission; providing for meetings and acts of the commission; providing rules and operating procedures; providing rulemaking functions of the commission; providing for opting out of uniform standards; providing procedures and requirements; providing for commission records and enforcement; authorizing the

commission to adopt rules; providing for disclosure of certain information; specifying that certain records, data, or information of the commission, wherever received, by and in possession of the Office of Insurance Regulation, the commissioner, or the commissioner's designee are subject to ch. 119, F.S.; requiring the commission to monitor for compliance; providing for dispute resolution; providing for product filing and approval; requiring the commission to establish filing and review processes and procedures; providing for review of commission decisions regarding filings; providing for finance of commission activities; providing for payment of expenses; authorizing the commission to collect filing fees for certain purposes; providing for approval of a commission budget; exempting the commission from all taxation, except as otherwise provided by the act; prohibiting the commission from pledging the credit of any compacting states without authority; requiring the commission to keep complete accurate accounts, provide for audits, and make annual reports to the Governors and Legislatures of compacting states; providing for amendment of the compact; providing for withdrawal from the compact, default by compacting states, and dissolution of the compact; providing severability and construction; providing for binding effect of this compact and other laws; prospectively opting out of all uniform standards adopted by the commission

involving long-term care insurance products; adopting all other existing uniform standards that have been adopted by the commission; providing a procedure for adoption of any new uniform standards or amendments to existing uniform standards of the commission; requiring the office to notify the Legislature of any new uniform standards or amendments to existing uniform standards of the commission; providing that any new uniform standards or amendments to existing uniform standards of the commission may only be adopted via legislation; providing for applicability with respect to taxation of the commission; providing for applicability and process with respect to certain requests for inspection and copying of information, data, or records; authorizing the Financial Services Commission to adopt rules to implement this act and opt out of certain uniform standards; providing an effective date.

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

Section 1. Legislative findings; intent.—

(1) The Legislature finds that the financial services marketplace has changed significantly in recent years and that asset-based insurance products, which include life insurance, annuities, disability income insurance, and long-term care insurance, now compete directly with other retirement and estate planning instruments that are sold by banks and securities

firms.

(2) The Legislature further finds that the increased mobility of the population and the risks borne by these asset-based products are not local in nature.

(3) The Legislature further finds that the Interstate Insurance Product Regulation Compact Model adopted by the National Association of Insurance Commissioners and endorsed by the National Conference of Insurance Legislators and the National Conference of State Legislatures is designed to address these market changes by providing a uniform set of product standards and a single source for filing of new products.

(4) The Legislature further finds that the product standards that have been developed provide a high level of consumer protection. Further, it is noted that the Interstate Insurance Product Regulation Compact Model includes a mechanism for opting out of any product standard that the state determines would not reasonably protect its citizens. With respect to long-term care insurance, the Legislature understands that the compact does not intend to develop a uniform standard for rate increase filings, thereby leaving the authority over long-term care rate increases with the state. The state relies on that understanding in adopting this legislation. The state, pursuant to the terms and conditions of this act, seeks to join with other states and establish the Interstate Insurance Product Regulation Compact, and thus become a member of the Interstate Insurance Product Regulation Commission. The Commissioner of Insurance Regulation is hereby designated to serve as the representative of this state on the commission. The commissioner

may designate a person to represent this state on the commission, as necessary, to fulfill the duties of being a member of the commission.

Section 2. Interstate Insurance Product Regulation Compact.—The Interstate Insurance Product Regulation Compact is hereby enacted into law and entered into by this state with all states legally joining therein in the form substantially as follows:

Interstate Insurance Product Regulation Compact

Preamble

This compact is intended to help states join together to establish an interstate compact to regulate designated insurance products. Pursuant to the terms and conditions of this compact, this state seeks to join with other states and establish the Interstate Insurance Product Regulation Compact and thus become a member of the Interstate Insurance Product Regulation Commission.

Article I

PURPOSES.—The purposes of this compact are, through means of joint and cooperative action among the compacting states, to:

(1) Promote and protect the interest of consumers of individual and group annuity, life insurance, disability income, and long-term care insurance products.

(2) Develop uniform standards for insurance products covered under the compact.

(3) Establish a central clearinghouse to receive and provide prompt review of insurance products covered under the compact and, in certain cases, advertisements related thereto, submitted by insurers authorized to do business in one or more compacting states.

(4) Give appropriate regulatory approval to those product filings and advertisements satisfying the applicable uniform standard.

(5) Improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of uniform standards and review of insurance products covered under the compact.

(6) Create the Interstate Insurance Product Regulation Commission.

(7) Perform these and such other related functions as may be consistent with the state regulation of the business of insurance.

Article II

DEFINITIONS.—For purposes of this compact:

(1) "Advertisement" means any material designed to create public interest in a product, or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace, or retain a policy, as more specifically defined in the rules and operating procedures of the commission adopted as of March 1,

2013, and subsequent amendments thereto if the methodology remains substantially consistent.

(2) "Bylaws" means those bylaws adopted by the commission as of March 1, 2013, for its governance or for directing or controlling the commission's actions or conduct.

(3) "Compacting state" means any state which has enacted this compact legislation and has not withdrawn pursuant to subsection (1) of Article XIV of this compact or been terminated pursuant to subsection (2) of Article XIV of this compact.

(4) "Commission" means the "Interstate Insurance Product Regulation Commission" established by this compact.

(5) "Commissioner" means the chief insurance regulatory official of a state, including, but not limited to, the commissioner, superintendent, director, or administrator. For purposes of this compact, the Commissioner of Insurance Regulation is the chief insurance regulatory official of this state.

(6) "Domiciliary state" means the state in which an insurer is incorporated or organized or, in the case of an alien insurer, its state of entry.

(7) "Insurer" means any entity licensed by a state to issue contracts of insurance for any of the lines of insurance covered by this compact.

(8) "Member" means the person chosen by a compacting state as its representative to the commission, or his or her designee.

(9) "Noncompacting state" means any state which is not at the time a compacting state.

(10) "Office" means the Office of Insurance Regulation of

the Financial Services Commission.

(11) "Operating procedures" means procedures adopted by the commission as of March 1, 2013, and subsequent amendments thereto if the methodology remains substantially consistent, implementing a rule, uniform standard, or provision of this compact.

(12) "Product" means the form of a policy or contract, including any application, endorsement, or related form which is attached to and made a part of the policy or contract, and any evidence of coverage or certificate, for an individual or group annuity, life insurance, disability income, or long-term care insurance product that an insurer is authorized to issue.

(13) "Rule" means a statement of general or particular applicability and future effect adopted by the commission as of March 1, 2013, and subsequent amendments thereto if the methodology remains substantially consistent, including a uniform standard developed pursuant to Article VII of this compact, designed to implement, interpret, or prescribe law or policy or describe the organization, procedure, or practice requirements of the commission, which shall have the force and effect of law in the compacting states.

(14) "State" means any state, district, or territory of the United States.

(15) "Third-party filer" means an entity that submits a product filing to the commission on behalf of an insurer.

(16) "Uniform standard" means a standard adopted by the commission as of March 1, 2013, and subsequent amendments thereto if the methodology remains substantially consistent, for

a product line pursuant to Article VII of this compact and shall include all of the product requirements in aggregate; provided, each uniform standard shall be construed, whether express or implied, to prohibit the use of any inconsistent, misleading, or ambiguous provisions in a product and the form of the product made available to the public shall not be unfair, inequitable, or against public policy as determined by the commission.

Article III

COMMISSION; ESTABLISHMENT; VENUE.—

(1) The compacting states hereby create and establish a joint public agency known as the Interstate Insurance Product Regulation Commission. Pursuant to Article IV of this compact, the commission has the power to develop uniform standards for product lines, receive and provide prompt review of products filed with the commission, and give approval to those product filings satisfying applicable uniform standards; provided, it is not intended for the commission to be the exclusive entity for receipt and review of insurance product filings. Nothing in this article shall prohibit any insurer from filing its product in any state in which the insurer is licensed to conduct the business of insurance and any such filing shall be subject to the laws of the state where filed.

(2) The commission is a body corporate and politic and an instrumentality of the compacting states.

(3) The commission is solely responsible for its liabilities, except as otherwise specifically provided in this

compact.

(4) Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located.

(5) The commission is a not-for-profit entity, separate and distinct from the individual compacting states.

Article IV

POWERS.—The commission shall have the following powers to:

(1) Adopt rules, pursuant to Article VII, which shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

(2) Exercise its rulemaking authority and establish reasonable uniform standards for products covered under the compact, and advertisement related thereto, which shall have the force and effect of law and shall be binding in the compacting states, but only for those products filed with the commission; provided a compacting state shall have the right to opt out of such uniform standard pursuant to Article VII to the extent and in the manner provided in this compact and any uniform standard established by the commission for long-term care insurance products may provide the same or greater protections for consumers as, but shall provide at least, those protections set forth in the National Association of Insurance Commissioners' Long-Term Care Insurance Model Act and Long-Term Care Insurance

Model Regulation, respectively, adopted as of 2001. The commission shall consider whether any subsequent amendments to the National Association of Insurance Commissioners' Long-Term Care Insurance Model Act or Long-Term Care Insurance Model Regulation adopted by the National Association of Insurance Commissioners require amending of the uniform standards established by the commission for long-term care insurance products.

(3) Receive and review in an expeditious manner products filed with the commission and rate filings for disability income and long-term care insurance products and give approval of those products and rate filings that satisfy the applicable uniform standard, and such approval shall have the force and effect of law and be binding on the compacting states to the extent and in the manner provided in the compact.

(4) Receive and review in an expeditious manner advertisement relating to long-term care insurance products for which uniform standards have been adopted by the commission, and give approval to all advertisement that satisfies the applicable uniform standard. For any product covered under this compact, other than long-term care insurance products, the commission shall have the authority to require an insurer to submit all or any part of its advertisement with respect to that product for review or approval prior to use, if the commission determines that the nature of the product is such that an advertisement of the product could have the capacity or tendency to mislead the public. The actions of the commission as provided in this subsection shall have the force and effect of law and shall be

binding in the compacting states to the extent and in the manner provided in the compact.

(5) Exercise its rulemaking authority and designate products and advertisement that may be subject to a self-certification process without the need for prior approval by the commission.

(6) Adopt operating procedures, pursuant to Article VII, which shall be binding in the compacting states to the extent and in the manner provided in this compact.

(7) Bring and prosecute legal proceedings or actions in its name as the commission; provided the standing of any state insurance department to sue or be sued under applicable law shall not be affected.

(8) Issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence.

(9) Establish and maintain offices.

(10) Purchase and maintain insurance and bonds.

(11) Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a compacting state. Any action under this subsection concerning employees of this state may only be taken upon the express written consent of the state.

(12) Hire employees, professionals, or specialists; elect or appoint officers and fix their compensation, define their duties, give them appropriate authority to carry out the purposes of the compact, and determine their qualifications; and establish the commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of

compensation, and qualifications of personnel.

(13) Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services and to receive, use, and dispose of the same; provided at all times the commission shall avoid any appearance of impropriety.

(14) Lease, purchase, and accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed; provided at all times the commission shall avoid any appearance of impropriety.

(15) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

(16) Remit filing fees to compacting states as may be set forth in the bylaws, rules, or operating procedures.

(17) Enforce compliance by compacting states with rules, uniform standards, operating procedures, and bylaws.

(18) Provide for dispute resolution among compacting states.

(19) Advise compacting states on issues relating to insurers domiciled or doing business in noncompacting jurisdictions, consistent with the purposes of this compact.

(20) Provide advice and training to those personnel in state insurance departments responsible for product review and to be a resource for state insurance departments.

(21) Establish a budget and make expenditures.

(22) Borrow money, provided that this power does not, in any manner, obligate the financial resources of the State of Florida.

(23) Appoint committees, including advisory committees, comprising members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be designated in the bylaws.

(24) Provide and receive information from and to cooperate with law enforcement agencies.

(25) Adopt and use a corporate seal.

(26) Perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of the business of insurance.

Article V

ORGANIZATION.—

(1) Membership; voting; bylaws.—

(a)1. Each compacting state shall have and be limited to one member. Each member shall be qualified to serve in that capacity pursuant to applicable law of the compacting state. Any member may be removed or suspended from office as provided by the law of the state from which he or she is appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the compacting state in which the vacancy exists. Nothing in this article shall be construed to affect the manner in which a compacting state determines the election or appointment and qualification of its own commissioner. However, the commissioner may designate a person to represent this state on the commission, as necessary, to

fulfill the duties of being a member of the commission.

2. The Commissioner of Insurance Regulation is hereby designated to serve as the representative of this state on the commission. However, the commissioner may designate a person to represent this state on the commission, as necessary, to fulfill the duties of being a member of the commission.

(b) Each member shall be entitled to one vote and shall have an opportunity to participate in the governance of the commission in accordance with the bylaws. Notwithstanding any other provision of this article, no action of the commission with respect to the adoption of a uniform standard shall be effective unless two-thirds of the members vote in favor of such action.

(c) The commission shall, by a majority of the members, prescribe bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the compact, including, but not limited to:

1. Establishing the fiscal year of the commission.

2. Providing reasonable procedures for appointing and electing members, as well as holding meetings, of the management committee.

3. Providing reasonable standards and procedures:

a. For the establishment and meetings of other committees.

b. Governing any general or specific delegation of any authority or function of the commission.

4. Providing reasonable procedures for calling and conducting meetings of the commission that consist of a majority of commission members, ensuring reasonable advance notice of

each such meeting, and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' proprietary information, including, but not limited to, trade secrets. The commission may meet in camera only after a majority of the entire membership votes to close a meeting in total or in part. The commissioner of this state, or the commissioner's designee, may attend, or otherwise participate in, a meeting or executive session that is closed in total or part to the extent such attendance or participation is consistent with Florida law. As soon as practicable, the commission must make public a copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed, and votes taken during such meeting. All notices of commission meetings, including instructions for public participation, provided to the office, the commissioner, or the commissioner's designee shall be published in the Florida Administrative Register.

5. Establishing the titles, duties, and authority and reasonable procedures for the election of the officers of the commission.

6. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the commission.

7. Adopting a code of ethics to address permissible and prohibited activities of commission members and employees. This

code does not supersede or otherwise limit the obligations and duties of this state's commissioner or the commissioner's designee under ethics laws or rules of the State of Florida. To the extent there is any inconsistency between the standards imposed by this code and the standards imposed under this state's ethics laws or rules, the commissioner or the commissioner's designee must adhere to the stricter standard of conduct.

8. Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of the compact after the payment or reserving of all debts and obligations of the commission.

(d) The commission shall publish its bylaws in a convenient form and file a copy of such bylaws and a copy of any amendment to such bylaws, with the appropriate agency or officer in each of the compacting states.

(2) Management committee, officers, and personnel.—

(a) A management committee comprising no more than 14 members shall be established as follows:

1. One member from each of the six compacting states with the largest premium volume for individual and group annuities, life, disability income, and long-term care insurance products, determined from the records of the National Association of Insurance Commissioners for the prior year.

2. Four members from those compacting states with at least 2 percent of the market based on the premium volume described above, other than the six compacting states with the largest

premium volume, selected on a rotating basis as provided in the bylaws.

3. Four members from those compacting states with less than 2 percent of the market, based on the premium volume described above, with one selected from each of the four zone regions of the National Association of Insurance Commissioners as provided in the bylaws.

(b) The management committee shall have such authority and duties as may be set forth in the bylaws, including, but not limited to:

1. Managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission.

2. Establishing and overseeing an organizational structure within, and appropriate procedures for, the commission to provide for the creation of uniform standards and other rules, receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing, and the review of elections made by a compacting state to opt out of a uniform standard; provided a uniform standard shall not be submitted to the compacting states for adoption unless approved by two-thirds of the members of the management committee.

3. Overseeing the offices of the commission.

4. Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations in order to advance the goals of the commission.

(c) The commission shall elect annually officers from the management committee, with each having such authority and duties

as may be specified in the bylaws.

(d) The management committee may, subject to the approval of the commission, appoint or retain an executive director for such period, upon such terms and conditions, and for such compensation as the commission may deem appropriate. The executive director shall serve as secretary to the commission but shall not be a member of the commission. The executive director shall hire and supervise such other staff as may be authorized by the commission.

(3) Legislative and advisory committees.—

(a) A legislative committee comprised of state legislators or their designees shall be established to monitor the operations of and make recommendations to the commission, including the management committee; provided the manner of selection and term of any legislative committee member shall be as set forth in the bylaws. Prior to the adoption by the commission of any uniform standard, revision to the bylaws, annual budget, or other significant matter as may be provided in the bylaws, the management committee shall consult with and report to the legislative committee.

(b) The commission shall establish two advisory committees, one comprising consumer representatives independent of the insurance industry and the other comprising insurance industry representatives.

(c) The commission may establish additional advisory committees as the bylaws may provide for the carrying out of commission functions.

(4) Corporate records of the commission.—The commission

shall maintain its corporate books and records in accordance with the bylaws.

(5) Qualified immunity, defense and indemnification.—

(a) The members, officers, executive director, employees, and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of that person.

(b) The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided nothing in this article shall be construed to prohibit that person from retaining his or her own counsel and the actual or alleged act, error, or omission did not result from that person's intentional or willful and wanton misconduct.

(c) The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided the actual or alleged act, error, or omission did not result from the intentional or willful and wanton misconduct of that person.

Article VI

MEETINGS; ACTS.—

(1) The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.

(2) Each member of the commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the commission. A member shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for members' participation in meetings by telephone or other means of communication.

(3) The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

Article VII

RULES AND OPERATING PROCEDURES; RULEMAKING FUNCTIONS OF THE COMMISSION; OPTING OUT OF UNIFORM STANDARDS.—

(1) Rulemaking authority.—The commission shall adopt reasonable rules, including uniform standards, and operating procedures in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding such requirement, if the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this compact or the powers granted under this compact, such action by the commission shall be invalid and have no force and effect.

(2) Rulemaking procedure.—Rules and operating procedures shall be made pursuant to a rulemaking process that conforms to the Model State Administrative Procedure Act of 1981, as amended, as may be appropriate to the operations of the commission. Before the commission adopts a uniform standard, the commission shall give written notice to the relevant state legislative committees in each compacting state responsible for insurance issues of its intention to adopt the uniform standard. The commission in adopting a uniform standard shall consider fully all submitted materials and issue a concise explanation of its decision.

(3) Effective date and opt out of a uniform standard.—A uniform standard shall become effective 90 days after its adoption by the commission or such later date as the commission may determine; provided a compacting state may opt out of a uniform standard as provided in this act. The term "opt out"

means any action by a compacting state to decline to adopt or participate in an adopted uniform standard. All other rules and operating procedures, and amendments thereto, shall become effective as of the date specified in each rule, operating procedure, or amendment.

(4) Opt out procedure.—

(a) A compacting state may opt out of a uniform standard by legislation or regulation adopted by the compacting state under such state's Administrative Procedure Act. If a compacting state elects to opt out of a uniform standard by regulation, such state must:

1. Give written notice to the commission no later than 10 business days after the uniform standard is adopted, or at the time the state becomes a compacting state.

2. Find that the uniform standard does not provide reasonable protections to the citizens of the state, given the conditions in the state.

(b) The commissioner of a compacting state other than this state shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the state which warrant a departure from the uniform standard and determining that the uniform standard would not reasonably protect the citizens of the state. The commissioner must consider and balance the following factors and find that the conditions in the state and needs of the citizens of the state outweigh:

1. The intent of the Legislature to participate in, and the benefits of, an interstate agreement to establish national

uniform consumer protections for the products subject to this compact.

2. The presumption that a uniform standard adopted by the commission provides reasonable protections to consumers of the relevant product.

Notwithstanding this subsection, a compacting state may, at the time of its enactment of this compact, prospectively opt out of all uniform standards involving long-term care insurance products by expressly providing for such opt out in the enacted compact, and such an opt out shall not be treated as a material variance in the offer or acceptance of any state to participate in this compact. Such an opt out shall be effective at the time of enactment of this compact by the compacting state and shall apply to all existing uniform standards involving long-term care insurance products and those subsequently adopted.

(5) Effect of opting out.—If a compacting state elects to opt out of a uniform standard, the uniform standard shall remain applicable in the compacting state electing to opt out until such time as the opt out legislation is enacted into law or the regulation opting out becomes effective. Once the opt out of a uniform standard by a compacting state becomes effective as provided under the laws of that state, the uniform standard shall have no further force and effect in that state unless and until the legislation or regulation implementing the opt out is repealed or otherwise becomes ineffective under the laws of the state. If a compacting state opts out of a uniform standard after the uniform standard has been made effective in that

state, the opt out shall have the same prospective effect as provided under Article XIV for withdrawals.

(6) Stay of uniform standard.—If a compacting state has formally initiated the process of opting out of a uniform standard by regulation, and while the regulatory opt out is pending, the compacting state may petition the commission, at least 15 days before the effective date of the uniform standard, to stay the effectiveness of the uniform standard in that state. The commission may grant a stay if the commission determines the regulatory opt out is being pursued in a reasonable manner and there is a likelihood of success. If a stay is granted or extended by the commission, the stay or extension thereof may postpone the effective date by up to 90 days, unless affirmatively extended by the commission; provided a stay may not be permitted to remain in effect for more than 1 year unless the compacting state can show extraordinary circumstances which warrant a continuance of the stay, including, but not limited to, the existence of a legal challenge which prevents the compacting state from opting out. A stay may be terminated by the commission upon notice that the rulemaking process has been terminated.

(7) Judicial review.—Within 30 days after a rule or operating procedure is adopted, any person may file a petition for judicial review of the rule or operating procedure; provided the filing of such a petition shall not stay or otherwise prevent the rule or operating procedure from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the

actions of the commission consistent with applicable law and shall not find the rule or operating procedure to be unlawful if the rule or operating procedure represents a reasonable exercise of the commission's authority.

Article VIII

COMMISSION RECORDS AND ENFORCEMENT.—

(1) The commission shall adopt rules establishing conditions and procedures for public inspection and copying of its information and official records, except such information and records involving the privacy of individuals and insurers' trade secrets. The commission may adopt additional rules under which the commission may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure and may enter into agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(2) Except as to privileged records, data, and information, the laws of any compacting state pertaining to confidentiality or nondisclosure shall not relieve any compacting state commissioner of the duty to disclose any relevant records, data, or information to the commission; provided disclosure to the commission shall not be deemed to waive or otherwise affect any confidentiality requirement; and further provided, except as otherwise expressly provided in this compact, the commission shall not be subject to the compacting

state's laws pertaining to confidentiality and nondisclosure with respect to records, data, and information in its possession. Confidential information of the commission shall remain confidential after such information is provided to any commissioner; however, all requests from the public to inspect or copy records, data, or information of the commission, wherever received, by and in the possession of the office, commissioner, or the commissioner's designee shall be subject to chapter 119, Florida Statutes.

(3) The commission shall monitor compacting states for compliance with duly adopted bylaws, rules, uniform standards, and operating procedures. The commission shall notify any noncomplying compacting state in writing of its noncompliance with commission bylaws, rules, or operating procedures. If a noncomplying compacting state fails to remedy its noncompliance within the time specified in the notice of noncompliance, the compacting state shall be deemed to be in default as set forth in Article XIV of this compact.

(4) The commissioner of any state in which an insurer is authorized to do business or is conducting the business of insurance shall continue to exercise his or her authority to oversee the market regulation of the activities of the insurer in accordance with the provisions of the state's law. The commissioner's enforcement of compliance with the compact is governed by the following provisions:

(a) With respect to the commissioner's market regulation of a product or advertisement that is approved or certified to the commission, the content of the product or advertisement

shall not constitute a violation of the provisions, standards, or requirements of the compact except upon a final order of the commission, issued at the request of a commissioner after prior notice to the insurer and an opportunity for hearing before the commission.

(b) Before a commissioner may bring an action for violation of any provision, standard, or requirement of the compact relating to the content of an advertisement not approved or certified to the commission, the commission, or an authorized commission officer or employee, must authorize the action. However, authorization pursuant to this paragraph does not require notice to the insurer, opportunity for hearing, or disclosure of requests for authorization or records of the commission's action on such requests.

Article IX

DISPUTE RESOLUTION.—The commission shall attempt, upon the request of a member, to resolve any disputes or other issues that are subject to this compact and which may arise between two or more compacting states, or between compacting states and noncompacting states, and the commission shall adopt an operating procedure providing for resolution of such disputes.

Article X

PRODUCT FILING AND APPROVAL.—

(1) Insurers and third-party filers seeking to have a

product approved by the commission shall file the product with and pay applicable filing fees to the commission. Nothing in this compact shall be construed to restrict or otherwise prevent an insurer from filing its product with the insurance department in any state in which the insurer is licensed to conduct the business of insurance and such filing shall be subject to the laws of the states where filed.

(2) The commission shall establish appropriate filing and review processes and procedures pursuant to commission rules and operating procedures. Notwithstanding any provision of this article, the commission shall adopt rules to establish conditions and procedures under which the commission will provide public access to product filing information. In establishing such rules, the commission shall consider the interests of the public in having access to such information, as well as protection of personal medical and financial information and trade secrets, that may be contained in a product filing or supporting information.

(3) Any product approved by the commission may be sold or otherwise issued in those compacting states for which the insurer is legally authorized to do business.

Article XI

REVIEW OF COMMISSION DECISIONS REGARDING FILINGS.—

(1) Within 30 days after the commission has given notice of a disapproved product or advertisement filed with the commission, the insurer or third-party filer whose filing was

disapproved may appeal the determination to a review panel appointed by the commission. The commission shall adopt rules to establish procedures for appointing such review panels and provide for notice and hearing. An allegation that the commission, in disapproving a product or advertisement filed with the commission, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with subsection (4) of Article III.

(2) The commission shall have authority to monitor, review, and reconsider products and advertisement subsequent to their filing or approval upon a finding that the product does not meet the relevant uniform standard. Where appropriate, the commission may withdraw or modify its approval after proper notice and hearing, subject to the appeal process in subsection (1).

Article XII

FINANCE.—

(1) The commission shall pay or provide for the payment of the reasonable expenses of the commission's establishment and organization. To fund the cost of the commission's initial operations, the commission may accept contributions and other forms of funding from the National Association of Insurance Commissioners, compacting states, and other sources. Contributions and other forms of funding from other sources shall be of such a nature that the independence of the

commission concerning the performance of commission duties shall not be compromised.

(2) The commission shall collect a filing fee from each insurer and third-party filer filing a product with the commission to cover the cost of the operations and activities of the commission and its staff in a total amount sufficient to cover the commission's annual budget.

(3) The commission's budget for a fiscal year shall not be approved until the budget has been subject to notice and comment as set forth in Article VII.

(4) The commission shall be exempt from all taxation in and by the compacting states.

(5) The commission shall not pledge the credit of any compacting state, except by and with the appropriate legal authority of that compacting state.

(6) The commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements of all funds under its control. The internal financial accounts of the commission shall be subject to the accounting procedures established under its bylaws. The financial accounts and reports including the system of internal controls and procedures of the commission shall be audited annually by an independent certified public accountant. Upon the determination of the commission, but no less frequently than every 3 years, the review of the independent auditor shall include a management and performance audit of the commission. The commission shall make an annual report to the Governor and the presiding officers of the Legislature of the compacting

states, which shall include a report of the independent audit. The commission's internal accounts shall not be confidential and such materials may be shared with the commissioner of any compacting state upon request; provided any work papers related to any internal or independent audit and any information regarding the privacy of individuals and insurers' proprietary information, including trade secrets, shall remain confidential.

(7) No compacting state shall have any claim to or ownership of any property held by or vested in the commission or to any commission funds held pursuant to the provisions of this compact.

Article XIII

COMPACTING STATES, EFFECTIVE DATE, AMENDMENT.—

(1) Any state is eligible to become a compacting state.

(2) The compact shall become effective and binding upon legislative enactment of the compact into law by two compacting states; provided the commission shall become effective for purposes of adopting uniform standards for, reviewing, and giving approval or disapproval of, products filed with the commission that satisfy applicable uniform standards only after 26 states are compacting states or, alternatively, by states representing greater than 40 percent of the premium volume for life insurance, annuity, disability income, and long-term care insurance products, based on records of the National Association of Insurance Commissioners for the prior year. Thereafter, the compact shall become effective and binding as to any other

compacting state upon enactment of the compact into law by that state.

(3) Amendments to the compact may be proposed by the commission for enactment by the compacting states. No amendment shall become effective and binding upon the commission and the compacting states unless and until all compacting states enact the amendment into law.

Article XIV

WITHDRAWAL; DEFAULT; DISSOLUTION.—

(1) Withdrawal.—

(a) Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided a compacting state may withdraw from the compact by enacting a law specifically repealing the law which enacted the compact into law.

(b) The effective date of withdrawal is the effective date of the repealing law. However, the withdrawal shall not apply to any product filings approved or self-certified, or any advertisement of such products, on the date the repealing law becomes effective, except by mutual agreement of the commission and the withdrawing state unless the approval is rescinded by the withdrawing state as provided in paragraph (e).

(c) The commissioner of the withdrawing state shall immediately notify the management committee in writing upon the introduction of legislation repealing this compact in the withdrawing state.

(d) The commission shall notify the other compacting states of the introduction of such legislation within 10 days after the commission's receipt of notice of such legislation.

(e) The withdrawing state is responsible for all obligations, duties, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the commission and the withdrawing state. The commission's approval of products and advertisement prior to the effective date of withdrawal shall continue to be effective and be given full force and effect in the withdrawing state unless formally rescinded by the withdrawing state in the same manner as provided by the laws of the withdrawing state for the prospective disapproval of products or advertisement previously approved under state law.

(f) Reinstatement following withdrawal of any compacting state shall occur upon the effective date of the withdrawing state reenacting the compact.

(2) Default.—

(a) If the commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, the bylaws, or duly adopted rules or operating procedures, after notice and hearing as set forth in the bylaws, all rights, privileges, and benefits conferred by this compact on the defaulting state shall be suspended from the effective date of default as fixed by the commission. The grounds for default include, but are not limited

to, failure of a compacting state to perform its obligations or responsibilities, and any other grounds designated in commission rules. The commission shall immediately notify the defaulting state in writing of the defaulting state's suspension pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination.

(b) Product approvals by the commission or product self-certifications, or any advertisement in connection with such product that are in force on the effective date of termination shall remain in force in the defaulting state in the same manner as if the defaulting state had withdrawn voluntarily pursuant to subsection (1).

(c) Reinstatement following termination of any compacting state requires a reenactment of the compact.

(3) Dissolution of compact.—

(a) The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to a single compacting state.

(b) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect and the business and affairs of the commission shall be concluded and any surplus funds shall be distributed in accordance with the bylaws.

Article XV

SEVERABILITY; CONSTRUCTION.—

(1) The provisions of this compact are severable and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(2) The provisions of this compact shall be liberally construed to effectuate its purposes.

Article XVI

BINDING EFFECT OF COMPACT AND OTHER LAWS.—

(1) Binding effect of this compact.—

(a) All lawful actions of the commission, including all rules and operating procedures adopted by the commission, are binding upon the compacting states.

(b) All agreements between the commission and the compacting states are binding in accordance with their terms.

(c) Upon the request of a party to a conflict over the meaning or interpretation of commission actions, and upon a majority vote of the compacting states, the commission may issue advisory opinions regarding the meaning or interpretation in dispute.

(d) If any provision of this compact exceeds the constitutional limits imposed on the Legislature of any compacting state, the obligations, duties, powers, or

jurisdiction sought to be conferred by that provision upon the commission shall be ineffective as to that compacting state and those obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency of such state to which those obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

(2) Other laws.—

(a) Nothing in this compact prevents the enforcement of any other law of a compacting state, except as provided in paragraph (b).

(b) For any product approved or certified to the commission, the rules, uniform standards, and any other requirements of the commission shall constitute the exclusive provisions applicable to the content, approval, and certification of such products. For advertisement that is subject to the commission's authority, any rule, uniform standard, or other requirement of the commission which governs the content of the advertisement shall constitute the exclusive provision that a commissioner may apply to the content of the advertisement. Notwithstanding this paragraph, no action taken by the commission shall abrogate or restrict:

1. The access of any person to state courts;

2. Remedies available under state law related to breach of contract, tort, or other laws not specifically directed to the content of the product;

3. State law relating to the construction of insurance contracts; or

4. The authority of the attorney general of the state, including, but not limited to, maintaining any actions or proceedings, as authorized by law.

(c) All insurance products filed with individual states shall be subject to the laws of those states.

Section 3. Election to opt out of all uniform standards adopted by the commission involving long-term care insurance products; adoption of existing uniform standards of the commission; procedure for adoption of new or amended uniform standards; notification of new or amended uniform standards.—

(1) Pursuant to Article VII of the compact authorized in this act, the State of Florida prospectively opts out of all uniform standards adopted by the commission involving long-term care insurance products, and such opt out shall not be treated as a material variance in the offer or acceptance of this state to participate in the compact.

(2) Except as provided in subsection (1), all uniform standards adopted by the commission as of March 1, 2013 are adopted by this state.

(3) Notwithstanding subsections (3), (4), (5), and (6) of Article VII, as a participant in this compact, it is the policy of the State of Florida to opt out, and the office shall opt out of any new uniform standard adopted by the commission after March 1, 2013, or amendments to existing uniform standards adopted by the commission after March 1, 2013, where such amendments substantially alter or add to existing uniform standards adopted by this state in subsection (2) until such time as this state enacts legislation to adopt or opt out of new

uniform standards or such amendments to uniform standards adopted by the commission after March 1, 2013.

(4) The Financial Services Commission may adopt rules to implement this act. It is the policy of the State of Florida that this state's participation in new uniform standards or amendments to uniform standards adopted after March 1, 2013, as set out in subsection (3) that have not been legislatively approved by this state may not reasonably protect the citizens of this state based on Article XVI(1)(d) of this act. The Financial Services Commission shall use the rulemaking authority granted in this subsection to opt out of any new uniform standards or amendments to existing uniform standards where such amendments substantially alter or add to existing uniform standards adopted by the State of Florida in subsection (2) until such uniform standards are legislatively approved by this state.

(5) After enactment of this section, if the commission adopts any new uniform standard or amendment to uniform standards as set out in subsection (3), the office shall immediately notify the Legislature of such new uniform standard or amendment to an existing uniform standard. If the office or a court of competent jurisdiction finds that the procedure set out in subsection (3) has not been followed, notice shall be given to the Legislature, and reasonable and prompt measures shall be taken to opt out of a uniform standard that has not been legislatively approved by the State of Florida.

Section 4. Notwithstanding subsection (4) of Article XII, the commission is subject to:

(a) State unemployment or reemployment taxes imposed pursuant to chapter 443, Florida Statutes, in compliance with the Federal Unemployment Tax Act, for any persons employed by the commission who perform services for the commission within this state.

(b) Taxation for any commission business or activity conducted or performed in the State of Florida.

Section 5. (1) Notwithstanding subsections (1) and (2) of Article VIII, subsection (2) of Article X, and subsection (6) of Article XII of this act, a request by a resident of this state for public inspection and copying of information, data, or official records that includes:

(a) An insurer's trade secrets shall be referred to the commissioner who shall respond to the request, with the cooperation and assistance of the commission, in accordance with section 624.4213, Florida Statutes, or

(b) Matters of privacy of individuals shall be referred to the commissioner who shall respond to the request, with the cooperation and assistance of the commission, in accordance with section 119.071, Florida Statutes.

(2) Nothing in this act abrogates a person's right to access information consistent with the State Constitution and laws of the State of Florida.

Section 6. The Financial Services Commission may adopt rules to implement this act. The Financial Services Commission may use the rulemaking authority granted in this section to opt out of any new uniform standards adopted after the effective date of this act, pursuant to Article VII, until such standards

are approved by the Legislature.

Section 7. This act shall take effect October 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 601 Department of Elderly Affairs
SPONSOR(S): Hudson
TIED BILLS: **IDEN./SIM. BILLS:** SB 804

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthy Families Subcommittee	11 Y, 0 N	Poche	Schoolfield
2) Government Operations Subcommittee		Stramski	Williamson
3) Health & Human Services Committee			

SUMMARY ANALYSIS

House Bill 601 directs the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct a review and evaluation of the Department of Elderly Affairs (DOEA) and its offices, divisions, programs, and functions. The bill requires OPPAGA to examine the specific purpose and funding of each office, division, program, and function, then determine whether each entity within DOEA can be organized in a different manner to maximize efficiency and effectiveness. OPPAGA must address the impact on workload of all entities of DOEA as a result of the expiration of Medicaid waivers on October 1, 2013. OPPAGA is also required to determine if any department office, division, program, or function can be performed more effectively and efficiently by another agency in state government and, if so, to recommend restructuring and relocation to the most appropriate agency.

In conducting its review and evaluation, the bill requires OPPAGA to consult with the Department of Agriculture and Consumer Services, the Department of Financial Services, the Agency for Healthcare Administration, the Department of Children and Families, the Department of Health, the Department of Economic Opportunity, the Justice Administrative Commission, and other interested stakeholders to solicit information and input about DOEA.

The bill requires OPPAGA to submit a report including the findings of the review and evaluation and recommendations for the disposition, if any, of department offices, divisions, programs, and functions to the Governor, the presiding legislative officers, the Secretary of DOEA, and the chairs of appropriate substantive and appropriations committees in both the House of Representatives and the Senate by December 31, 2013.

The bill does not appear to have a fiscal impact.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Department of Elderly Affairs

Florida has nearly 4,400,000 residents aged 60 and older.[1] The state is first in the nation in the percentage of citizens who are elders, measuring 23 percent of total population in 2010 and estimated to soar to 35 percent of total population in 2030.[2]

The Department of Elderly Affairs (DOEA or department), established in 1992, serves as the primary agency for administering human services programs for the elderly and developing policy recommendations for long-term care.[3] Section 20.41, F.S., creates DOEA and details some of the roles and responsibilities of the department.[4] For example, the department is statutorily required[5] to administer the State Long-Term Care Ombudsman Council[6] and the local long-term care ombudsman councils,[7] which provide advocacy on behalf of residents of long-term care facilities by identifying, investigating, and resolving complaints made by or on behalf of residents.

DOEA is designated as the State Unit on Aging, as defined in the Older Americans Act of 1965 (OAA).[8] Under the OAA, DOEA is responsible for organizing, coordinating, and providing community-based services and opportunities for older Floridians and their families, including the oversight of services to help elders age in place with dignity and independence and to preserve the rights of the most vulnerable.[9]

DOEA contracts with an Area Agency on Aging (AAA) in each of 11 Planning and Service Areas (PSAs) to provide coordinated and integrated long-term care services and prevention and early intervention services to the elderly population of Florida.[10] Each of the AAAs then contract with community care lead agencies to provide actual services to the elderly in each PSA.[11]

DOEA is authorized to administer certain trust funds, in conjunction with federal funds provided to the state, to operate programs and provide services for the elderly.[12] The programs and services include:

Older Americans Act Programs and Services

The federal Older Americans Act (OAA)[13] provides assistance in the development of programs to help older persons by awarding grants to the states for community planning and services. OAA Title III, Title

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[1] Florida Office of Economic and Demographic Research, *2010 Census Summary File 1 Profiles-Detailed Age by Race/Hispanic Origin by Gender*, available at http://edr.state.fl.us/Content/population-demographics/2010-census/data/index.cfm (last viewed March 19, 2013).
[2] Florida Department of Elderly Affairs, *Summary of Programs and Services 2013*, page 9, available at http://elderaffairs.state.fl.us/doea/pubs/pubs/sops2013/2013%20SOPS.pdf (last viewed March 19, 2013).
[3] Section 430.03(1), F.S.
[4] Art. IV, s. 12 of the Florida Constitution permits the creation of the Department of Elderly Affairs. The number of executive branch agencies is capped at twenty-five, exclusive of agencies specifically mentioned in the constitution.
[5] Section 20.41(4), F.S.
[6] Section 400.0067, F.S.
[7] Section 400.0069, F.S.
[8] Section 20.41(5), F.S.
[9] Section 430.04, F.S.
[10] Section 20.41(6), F.S.
[11] Id.
[12] Section 20.415, F.S.
[13] 42 U.S.C. s. 3021, *et seq.*

V, and Title VII allotments to the states are calculated by using a statutory formula based on a state's population and prior funding history.[14]

Florida's OAA Title III funds are allocated by formula to the 11 Area Agencies on Aging, which in turn contract with local service providers to deliver services to eligible individuals age 60 and older and their caregivers. Total funding for fiscal year 2012-13 was $86,721,590, which allowed the state to serve 74,439 residents in various programs[15], including:

- Title III B, which provides supportive services to boost the well-being of elders and to help them live independently in their home environment and the community. Services include transportation, outreach, information and referral assistance, case management, homemaker, home health aide, telephone reassurance, chore, legal services, escort, residential repair and renovation, and health support.[16] In fiscal year 2012-13, federal funding for supportive services totaled $26,054,949, which served 35,020 residents.[17]
- Title III C1, which provides congregate meals and nutrition education in strategically located centers such as schools, churches, community centers, senior centers, and other public or private facilities where persons may receive other social and rehabilitative services.[18] In fiscal year 2012-13, federal funding totaled $31,278,922, which served 32,582 clients.[19]
- Title III C2, which provides home-delivered meals and nutrition education to homebound individuals.[20] Federal funding in fiscal year 2012-2013 totaled $15,812,575, which served 20,169 clients.[21]
- Title III D, which provides disease prevention and health promotion evidence-based services. These services are designed to help elders age 60 and older through education and implementation activities that support healthy lifestyles and promote healthy behaviors.[22] In fiscal year 2012-13, federal funding for this program amounted to $1,527,137.[23]
- Title III E, which provides services through the National Family Caregiver Support Program to assist families caring for frail older members and to assist grandparents or older relatives who are caregivers for children 18 and younger or for children of any age who have disabilities.[24] Federal funding for fiscal year 2012-13 totaled $12,023,622, and 20,452 clients were served.[25]

The Senior Community Service Employment Program (SCSEP), funded under Title V of the OAA, provides unemployed, low-income persons aged 55 and older with work experience through participation in a community service assignment, training, and assistance with finding unsubsidized employment.[26] Services provided by the program include outreach and recruitment, eligibility determination, assessments, preparation of an individual employment plan, program orientation, supportive services, annual free physical examinations, job training, personal and employment-related counseling, part-time paid work experience in community-service assignments, job development, job referrals, placement in unsubsidized employment, and follow-up activities.[27] In fiscal year 2012-13, Florida was allotted 540 slots in the SCSEP, out of 2,111 slots available nationally, and received a federal allocation of $5,235,172.[28]

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[14] See supra, FN 2 at page 57.
[15] Id. at page 60.
[16] Id. at page 61.
[17] Id.
[18] Id. at page 65.
[19] Id.
[20] Id. at page 66.
[21] Id.
[22] Id. at page 69.
[23] Id.
[24] Id. at page 71.
[25] Id.
[26] Id. at page 72.
[27] Id.
[28] Id. at page 73.

OAA Title VII funding supports programs and services to protect elders from abuse and provides public education, training, and information regarding elder abuse prevention.[29] The Elder Abuse Prevention program is designed to increase awareness of the problem of elder abuse, neglect, and exploitation. The program includes training and dissemination of elder abuse prevention materials and funds special projects to provide training and prevention activities.[30] DOEA administers the program through contracts with Area Agencies on Aging and local service providers. In fiscal year 2012-13, the state received $359,354 in federal funds to support the prevention program.[31]

Medicaid Waivers[32]

Medicaid waiver programs allow states to cover services generally not covered by Medicaid. Long-term care is currently provided to elderly recipients though nursing home placement and through home and community based services (HCBS). These services are provided in a community setting, instead of a nursing home or other institution. DOEA administers Medicaid waiver programs to deliver HCBS, health services, and social services designed to meet the long-term care needs of elder Floridians and to delay or avoid institutional placement. The HCBS are provided through six Medicaid waiver programs administered by DOEA, in partnership with AHCA. These waiver programs are administered through contracts with the 11 Aging Resource Centers[33] and local service providers, and provide alternative, less restrictive long-term care options for elders who qualify for skilled nursing home care. These waivers are described below:

- Aged and Disabled Adult: Provides HCBS based on a comprehensive assessment of an individual's needs, which must be at a nursing home level of care.[34] The goal is to help elder Floridians remain in the community longer as they age. In fiscal year 2012-13, the program was funded with $106,651,856, of which 55 percent came from the federal government and 45 percent was contributed by the state.[35] An estimated 11,346 persons received services during this time period.[36]
- Assisted Living: Provides individuals aged 60 and over, at risk for nursing home placement and needing additional support, with services in assisted living and case management and incontinence supplies, including attendant care, behavior management, medication management, occupational therapy, physical therapy, speech therapy, and therapeutic and recreational services.[37] In fiscal year 2012-13, the program was funded with $37,257,303, of which 55 percent came from the federal government and 45 percent was contributed by the state.[38] An estimated 4,878 persons received services from the program in that time period.[39]

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[29] Id. at page 75.
[30] Id.
[31] Id. at page 76.
[32] The Medicaid waiver programs will expire on October 1, 2013, when statewide Medicaid managed care for the long-term care population is implemented, pursuant to s. 409.978, F.S. On February 1, 2013, AHCA received approval of its waiver application from Center for Medicare and Medicaid Services to operate the "Florida Long-Term Care Managed Care" program. *See* Letter from Centers for Medicare and Medicaid Services, Center for Medicaid & CHIP Services, Disabled & Elderly Health Programs Group, Ralph F. Lollar and Nancy Klimon, to Justin Senior, Deputy Secretary for Medicaid, Florida Agency for Health Care Administration, February 1, 2013 (on file with Healthy Families subcommittee staff).
[33] The 2004 Legislature created the Aging Resource Center initiative to reduce fragmentation in the elder services system. To provide easier access to elder services, the Legislature directed DOEA to establish a process to help the eleven area agencies on aging transition to Aging Resource Centers. The legislation required each area agency to transition to an Aging Resource Center by taking on additional responsibilities, while at the same time maintaining its identity as a local area agency on aging. All eleven area agencies on aging are now functioning as Aging Resource Centers. The Aging Resource Centers are intended to perform eight primary functions that are intended to improve the elder services system: increase access to elder services; provide more centralized and uniform information and referral; increase screening of elders for services; improve triaging and prioritizing of elders for services; streamline Medicaid eligibility determination; improve long-term care options counseling; enhance fiscal control and management of programs; and increase quality assurance.
[34] Office of Program Policy Analysis and Government Accountability, *Profile of Florida's Medicaid Home and Community-Based Services Waivers*, Report No. 12-03, January 2012, page 1; *see also* Florida Department of Elderly Affairs, *Summary of Programs and Services 2013*, page 116, available at http://elderaffairs.state.fl.us/doea/pubs/pubs/sops2013/2013%20SOPS.pdf (last viewed March 19, 2013).
[35] Id.
[36] Id.
[37] Id., *Profile* at page 4; *Summary of Programs and Services* at page 118.
[38] Id., *Summary of Programs and Services* at page 119.

- Channeling: Provides, manages, and coordinates long-term care needs, including health care, counseling, training, financial education, therapy services, meals, skilled nursing services, and medical supplies.[40] In fiscal year 2012-13, the program was funded with $8,740,761, and allowed an estimated 1,600 persons to receive services.[41]
- Long-Term Care Diversion Pilot Project: Provides community based alternatives for individuals otherwise qualified for Medicaid nursing home placement. Individuals receive long-term care and acute services in a managed care delivery setting.[42] The Program for All Inclusive Care for the Elderly (PACE), operating in Charlotte, Collier, Hardee, Highlands, Hillsborough, Lee, Miami-Dade, Palm Beach and Pinellas counties, which provides these services through a single provider, is funded through this project as well.[43] In fiscal year 2012-13, the diversion pilot project received federal and state funds in the amount of $359,036,110, which provided services to 23,657 persons.[44] The PACE program received federal and state funds in the amount of $26,578,951, which provided services to approximately 1,300 persons.[45]

Comprehensive Assessment and Review for Long-Term Care Services Program

The Comprehensive Assessment and Review for Long-Term Care Services (CARES) program is Florida's federally mandated pre-admission screening program for individuals seeking Medicaid long-term care either in a nursing home or through one of the long-term care waivers.[46] CARES is operated by ACHA through an inter-agency agreement with DOEA.[47]

A CARES assessor or a registered nurse assesses an applicant's physical and mental capabilities and limitations, health care needs, and social support systems. A consulting physician then reviews the assessment with CARES staff and makes a level of care determination about the applicant's medical eligibility for Medicaid. Only individuals requiring a nursing facility level of care are eligible to receive services.[48]

If the individual meets the level of care standard for Medicaid, CARES staff makes a recommendation for the least restrictive placement that will meet the applicant's service needs.[49] The recommendation may be to place the client in a nursing home, an assisted living facility, an adult family care home, or to provide needed services in the client's own home or the home of a caregiver.[50] An emphasis is placed on enabling people to remain in their homes with the provision of in-home services or with alternative community placement such as an assisted living facility. Additionally, CARES staff conducts reviews of nursing home residents to ensure that they continue to meet the level of care criteria.[51]

In fiscal year 2012-13, the program was funded with $17,183,815, of which 75 percent was contributed by the federal government and 25% was contributed by the state.[52] An estimated 120,000 persons were screened through CARES in that time period, and an estimated 30 percent of those persons were diverted from nursing home care to home and community based services.[53]

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[39] Id.
[40] Id., *Profile* at page 5; *Summary of Programs and Services* at page 120.
[41] Id.
[42] Id., *Profile* at pages 6-7; *Summary of Programs and Services* at page 126.
[43] Id., *Summary of Programs and Services* at page 128.
[44] Id. at page 127.
[45] Id. at pages 128-29.
[46] Section 409.912(15), F.S.
[47] Id.
[48] Section 409.912(15)(a), F.S.
[49] See supra, FN 2 at page 121.
[50] Id.
[51] Id.
[52] See supra, FN 2 at page 123.
[53] Id.

State General Revenue Funded Programs

Alzheimer's Disease and Related Disorders (ADRD) Training Providers and Curricula Approval
This program reviews and approves training providers and curricula for employees of facilities which provide services to individuals with Alzheimer's disease or related dementia disorders.[54] The ADRD training providers and curricula approval program has two major components with respect to the approval process for:

- Alzheimer's disease and related disorder training providers, and curricula for assisted living facilities that advertise that they provide special care for persons with Alzheimer's disease and related disorders; and
- Alzheimer's disease and related disorder training providers and training curricula for all licensed nursing homes, hospices, adult day care centers, and home health agencies in Florida.[55]

In addition, the program is required to maintain a website informing the public of all approved Alzheimer's disease training providers in the state.[56]

In fiscal year 2012-13, the state funded this program with $73,935. This funding level has remained constant over the last four fiscal years.[57]

Alzheimer's Disease Initiative
This initiative is comprised of four distinct programs to address the impact of Alzheimer's disease on Floridians:

- Support services, including counseling and respite for caregivers.[58] In fiscal year 2012-13, the state provided $9,554,262 to this element of the initiative, allowing an estimated 3,401 persons to receive services.[59]
- Memory disorder clinics. In fiscal year 2012-13, the state allocated $2,968,081 to the clinics, which provided services to an estimated 6,722 persons.[60]
- Model day care program. In fiscal year 2012-13, the state allocated $340,065 to this program to facilitate research into new techniques and approaches to adult day care, which served 113 persons.[61]
- Research database and brain bank. In fiscal year 2012-13, the state allocated $117,535 to operation of the database and brain bank.[62] In the same time period, 130 individuals registered to participate in the database and brain bank and 120 autopsies were conducted for use in the database and brain bank.[63]

Community Care for the Elderly (CCE)
This program provides community based services along a continuum of care to allow impaired elders to live in the least restrictive and most cost effective environment that addresses their long-term care needs. Services include adult day care, supplies, transportation, and other assistance. In fiscal year 2012-13, $41,479,617 was allocated to this program. An estimated 13,790 persons were served in that time period.

Home Care for the Elderly (HCE)
This program provides support and maintenance for elderly Floridians aged 60 and above who are currently living in a private home as an alternative to institutional care.[64] A basic subsidy of $106 is

[54] Id. at page 84.
[55] Id.
[56] Id.
[57] Id. at page 90.
[58] Id. at page 91.
[59] Id. at page 95.
[60] Id. at page 96.
[61] Id. at pages 92-93.
[62] Id. at page 97.
[63] Id.
[64] Id. at page 99.

provided for support and maintenance of the elder, including some medical costs. A special subsidy may also be provided for services and/or supplies.[65] In fiscal year 2012-13, the state allocated $7,903,357 to this program, which served an estimated 2,628 persons.[66]

Local Services Program
This program provides additional funding for an array of services to help elder Floridians age at home and delay, or avoid, nursing home placement.[67] In fiscal year 2012-13, the state allocated $7,465,811 to this program, which served and estimated 6,306 persons.[68]

Respite for Elders Living in Everyday Families (RELIEF)
This program provides respite services to caregivers of frail elders and those with Alzheimer's Disease and related dementia. Services are provided primarily during evenings and weekends, times that are not usually covered by other respite programs. Volunteers may spend up to four hours per visit providing companionship to a frail homebound elder, giving the caregiver an opportunity to take a much-needed break.[69] Activities may include conversation, reading together, playing board games, or preparing a light snack.[70] In fiscal year 2012-13, the state provided $909,034 to fund this program, which served an estimated 400 elders and caregivers.[71] Services were provided by approximately 350 volunteers for a total of 130,000 service hours.[72]

Consumer Assistance Programs

DOEA is responsible for operating the following consumer assistance programs:

- Long-Term Care Ombudsman Program: Provides advocacy on behalf of residents of long-term care facilities through a statewide system of 17 district councils comprised of volunteer ombudsmen.[73] Ombudsmen identify, investigate, and resolve complaints made by or on behalf of residents of nursing homes, assisted living facilities adult family-care homes, and continuing care retirement communities.[74] In fiscal year 2012-13, the program received $1,821,163 from the federal government and $1,305,344 from the state, for a total allocation of $3,126,507.[75] The program performed assessments at 4,074 facilities and investigated an estimated 8,000 complaints.[76]
- Statewide Public Guardianship Office (SPGO): Established in 1999, the SPGO is responsible for designating public guardians through contracts with 13 local Offices of Public Guardian throughout Florida, as directed by statute, to provide guardianship services to persons who do not have adequate income or assets to afford a private guardian and there is no willing family or friend to serve.[77] In fiscal year 2012-13, the SPGO received $2,592,051 from the state and served an estimated 2,500 persons.[78]
- Serving Health Insurance Needs of Elders (SHINE) Program: Provides free educational materials and Medicare and Medicaid counseling to eligible beneficiaries and their caregivers to help elders understand and receive the health insurance coverage they need through Medicare, Medicaid, Prescription Assistance, Long-Term Care Planning & Insurance, and other sources of assistance.[79] In fiscal year 2012-13, SHINE received $3,001,141 from the federal government

[65] Id.
[66] Id. at page 100.
[67] Id. at page 105.
[68] Id. at page 106.
[69] Id. at page 108.
[70] Id.
[71] Id. at page 109.
[72] Id.
[73] Id. at page 77; *see also* s. 400.0065, F.S.
[74] Id.
[75] Id. at page 78.
[76] Id. at page 79.
[77] Id. at page 110-111; *see also* s. 744.7021, F.S.
[78] Id. at page 111.
[79] Id. at page 145.

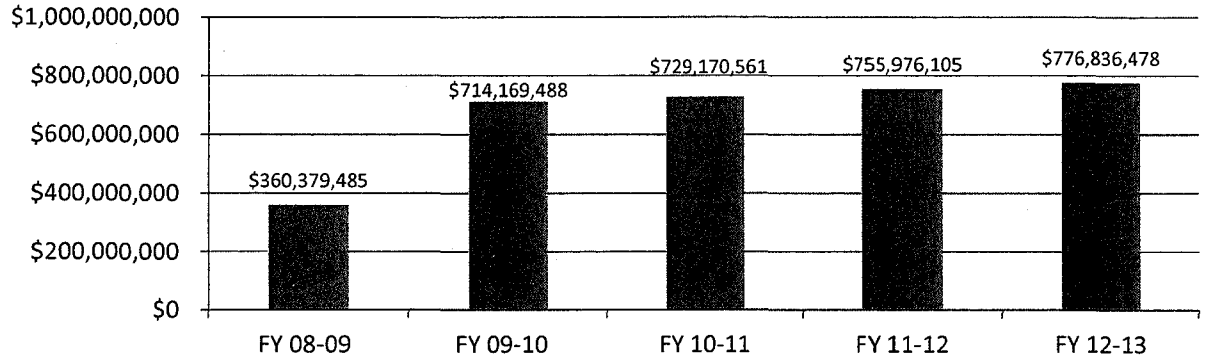
and, through approximately 500 volunteers, processed an estimated 116,660 contacts from Floridians.[80]

DOEA also operates the Elder Helpline, Long-Term Care Resident Complaint line, and the Elder Abuse Hotline.

DOEA Budget

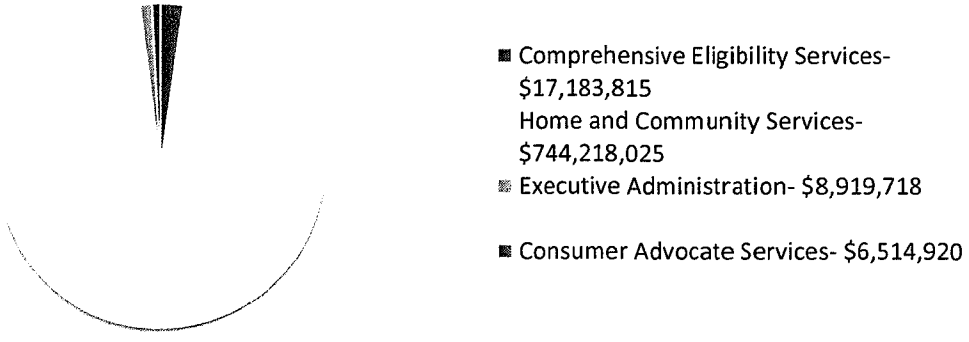
The following chart tracks the growth of DOEA's budget, beginning in fiscal year 2008-2009. The budget nearly doubled in fiscal year 2009-2010 when the Legislature transferred responsibility for administration of the Medicaid waiver budgets from the Agency for Health Care Administration to DOEA. Following expiration of the Medicaid waivers on October 1, 2013, it is anticipated that the DOEA budget will more closely resemble the fiscal year 2008-2009 budget.

Department of Elder Affairs (DOEA) Budget Summary FY 2012-13[81]

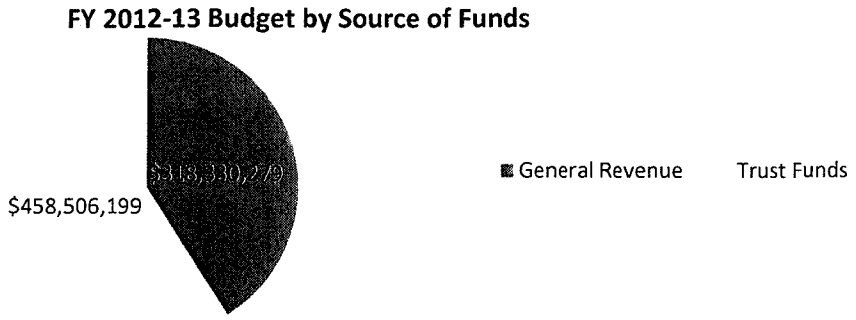


The next two charts illustrate the current DOEA budget by program area and by source of funds, respectively.[82] Nearly 96 percent of the department's budget is dedicated to funding HCBS, many of which are provided under Medicaid waivers, which will expire later in 2013. Also, 59 percent of the DOEA budget comes from state and federal trust funds, while 41 percent of the budget is funded by General Revenue.

FY 2012-13 Budget by Program Area



[80] Id. at page 146.
[81] Id. at page 155.
[82] Id. at page 154.



The Office of Program Policy Analysis and Government Accountability

The Office of Program Policy Analysis and Government Accountability (OPPAGA) is an office of the Legislature created in 1994 with the purpose of helping improve the performance and accountability of state government. OPPAGA provides data, evaluative research, and objective analyses to assist legislative budget and policy deliberations. OPPAGA conducts research as directed by state law, the presiding legislative officers, or the Joint Legislative Auditing Committee. One of the research services provided by OPPAGA is performance evaluation and policy review of state government agencies and programs.

Effect of Proposed Changes

The bill directs OPPAGA to conduct a review and evaluation of DOEA in its entirety. The evaluation of the department must identify the purpose of and funding for each office, division, program, and function of the department. The evaluation must address the impact on the workload of each office, division, program and function within the department of the expiration of the Medicaid waiver programs on October 1, 2013. The expiration of these programs will significantly decrease the department's budget.

The review and evaluation of DOEA must determine if the department can be organized in a more efficient and effective manner. The bill also requires OPPAGA to determine if the goals and functions of the offices, divisions, programs, and functions of DOEA need to be revised to more accurately reflect the more effective and efficient mission of those entities. Also, the bill requires OPPAGA to determine if any office, division, program, or function may be operated more efficiently and effectively housed in another government agency. OPPAGA must include in its report recommendations for restructuring and relocating department offices, divisions, programs, and functions.

In completing its review and evaluation, OPPAGA is required to consult with the Department of Agriculture and Consumer Services, the Department of Financial Services, the Agency for Health Care Administration, the Department of Children and Families, the Department of Health, the Department of Economic Opportunity, and the Justice Administrative Commission. All other state agencies are requested to assist OPPAGA in its review. In addition, OPPAGA must consult with interested stakeholders to solicit information and input regarding the review and evaluation of DOEA and the recommended disposition, if any, of its offices, divisions, programs, and functions.

By December 31, 2013, OPPAGA must provide a report detailing its review and evaluation of DOEA, including specific recommendations as detailed above, to the Governor, the presiding legislative officers, the Secretary of DOEA, and the chairs of the appropriations and appropriate substantive committees in both the Senate and the House of Representatives.

B. SECTION DIRECTORY:

Section 1: Creates an unnumbered section of law directing OPPAGA to conduct a review and evaluation of the functions of the Department of Elderly Affairs, requiring the office to

consult with and obtain the assistance of certain state agencies and to consult with certain stakeholders regarding the review and evaluation, and requiring OPPAGA to submit the report to the Governor, the Legislature, and the Secretary of Elder Affairs by a certain date.

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:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

OPPAGA has determined that it can complete the review and evaluation of DOEA, as required by the bill, with existing resources.[83]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable. Rule-making authority is not required by the bill.

[83] E-mail correspondence from OPPAGA staff dated February 27, 2013 (on file with Healthy Families subcommittee staff).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to the Department of Elderly Affairs; directing the Office of Program Policy Analysis and Government Accountability to conduct a review and evaluation of the functions of the Department of Elderly Affairs; requiring the office to consult with and obtain the assistance of certain state agencies and to consult with certain stakeholders regarding the review and evaluation; requiring the office to submit a report to the Governor, the Legislature, and the Secretary of Elderly Affairs by a specified date; providing an effective date.

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

Section 1. Review and evaluation of the Department of Elderly Affairs.—

(1) The Office of Program Policy Analysis and Government Accountability shall conduct a review and evaluation of the Department of Elderly Affairs established under s. 20.41, Florida Statutes. The review and evaluation shall be comprehensive in its scope and, at a minimum, must:

(a) Identify the specific purpose of each office, division, program, and function within the department.

(b) Identify funding for and the funding sources of each office, division, program, and function within the department.

(c) Determine the impact on the workload of each office, division, program, and function within the department of the

expiration on October 1, 2013, of certain Medicaid waiver programs.

(d) Determine whether the department may be organized more efficiently and effectively to avoid duplication of activities and ensure that activities are well coordinated, including whether each office, division, program, and its respective functions, mission, goals, and objectives should be revised.

(e) Determine whether any department offices, divisions, programs, or functions may be performed more efficiently or effectively by another unit of government.

(f) Provide recommendations for the restructuring and relocation of department offices, divisions, programs, and functions.

(2) The office shall consult with the Department of Elderly Affairs, the Department of Agriculture and Consumer Services, the Department of Financial Services, the Agency for Health Care Administration, the Department of Children and Families, the Department of Health, the Department of Economic Opportunity, and the Justice Administrative Commission. All executive branch agencies are instructed, and all other state agencies are requested, to assist the office in accomplishing the purposes set forth in this section.

(3) The office shall consult with interested stakeholders to solicit information and input regarding the review and evaluation of the Department of Elderly Affairs. Consultation with stakeholders may be accomplished through interviews, surveys, or any other manner deemed appropriate by the office.

(4) By December 31, 2013, the office shall submit a report

of its findings and recommendations to the Governor, the President of the Senate, the Speaker of the House of Representatives, the chairs of the appropriations committees and of the appropriate substantive committees of the Senate and the House of Representatives, the Legislative Auditing Committee, and the Secretary of Elderly Affairs.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 687 Local Bids and Contracts for Public Construction Works
SPONSOR(S): McBurney and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 602

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Harrington	Williamson
2) Local & Federal Affairs Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Counties, municipalities, special districts, or other political subdivisions seeking to construct or improve a public building must competitively bid the project if the projected cost is in excess of $300,000. For electrical work, local governments must competitively bid projects estimated to cost more than $75,000. An exemption from the requirement to competitively award these projects exists when the local government determines that it is in the public's best interest to use the local government's own services, employees, and equipment.

The bill eliminates the exemption from competitive solicitation for a local government when the governing body deems it in the public's best interest to use the local government's own services, employees, and equipment.

The bill may have an indeterminate fiscal impact on local governments. *See* Fiscal Comments section for further discussion.

This bill may be a county or municipal mandate. *See* Section III.A.1. of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Procurement of Construction Services

Chapter 255, F.S., specifies the procedures to be followed in the procurement of construction services for public property and publicly owned buildings. The Department of Management Services is responsible for establishing by rule the following:[1]

- Procedures for determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of bids for building construction contracts;
- Procedures for awarding each state agency construction project to the lowest qualified bidder;
- Procedures to govern negotiations for construction contracts and contract modifications when such negotiations are determined to be in the best interest of the state; and
- Procedures for entering into performance-based contracts for the development of public facilities when those contracts are determined to be in the best interest of the state.

Counties, municipalities, special districts, or other political subdivisions seeking to construct or improve a public building must competitively award the project if the projected cost is in excess of $300,000.[2] For electrical work, local governments must competitively award projects estimated to cost more than $75,000. Section 255.20(1), F.S., provides that "competitively award" means to award contracts based on the submission of sealed bids, proposals submitted in response to a request for proposal, proposals submitted in response to a request for qualifications, or proposals submitted for competitive negotiation.

Exemption from Competitive Solicitation for Local Governments Performing Work

If the governing board of the local government conducts a public meeting and finds by majority vote that it is in the public's best interest to perform the project using its own services, employees, and equipment, then the local government is exempt from the requirement to competitively award the contract.[3] The meeting of the governing board must have been publicly noticed at least 21 days before the date of the public meeting at which the governing board takes final action. The notice must identify the project, the components and scope of the project, and the estimated cost of the project using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the project, including employee compensation and benefits, equipment cost and maintenance, insurance costs, and materials. The notice must state that the purpose of the meeting is to consider whether it is in the best interest of the public to perform the project using the local government's own services, employees, and equipment.[4]

At the public meeting, the governing board must allow any qualified contractor or vendor who could have been awarded the project had the project been competitively bid to present evidence regarding the project and the accuracy of the local government's estimated cost of the project. The governing board must consider the estimated cost of the project and the accuracy of the estimated cost in light of any other information that may be presented at the public meeting and whether the project requires an increase in the number of government employees or an increase in capital expenditures for public facilities, equipment, or other capital assets. The governing body may further consider the impact on local economic development, the impact on small and minority business owners, the impact on state and local tax revenues, whether the private sector contractors provide health insurance and other

[1] Section 255.29, F.S.
[2] Section 255.20(1), F.S.
[3] Section 255.20(1)(c)9., F.S.
[4] *Id.*

benefits equivalent to those provided by the local government, and any other factor relevant to what is in the public's best interest.[5]

Effect of the Bill

The bill eliminates a local government exemption to the requirement to competitively award contracts. Specifically, the bill eliminates the exemption from competitive solicitation for a local government when the governing body deems it in the public's best interest to use the local government's own services, employees, and equipment.

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

B. SECTION DIRECTORY:

Section 1. amends s. 255.20, F.S., eliminating specified conditions under which a local government is exempt from the requirement to competitively award contracts.

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.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill eliminates an exemption to the competitive solicitation process for local governments, which may result in local governments competitively awarding more contracts to the private sector.

D. FISCAL COMMENTS:

The bill has an indeterminate fiscal impact on local governments. The bill may result in requiring local governments to competitively procure more contracts for construction projects and prevent those bodies from completing the projects; however, the impact of the bill may result in a net savings to local governments as a result of the competitive process.

[5] *Id.*

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision of Art. VII, s. 18 of the State Constitution may apply because this bill requires cities and counties to spend money or take an action that requires the expenditure of money; however, an exemption may apply if the bill results in an insignificant fiscal impact to county or municipal governments. The bill may result in requiring local governments to competitively procure more contracts for construction projects; however, the impact of the bill may result in a net savings to local governments as a result of the competitive process. The exceptions to the mandates provision of Art. VII, s. 18 of the State Constitution do not apply.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to local bids and contracts for public construction works; amending s. 255.20, F.S.; eliminating specified conditions under which a local government is exempt from the requirement to competitively award contracts; providing an effective date.

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

Section 1. Paragraph (c) of subsection (1) of section 255.20, Florida Statutes, is amended to read:

255.20 Local bids and contracts for public construction works; specification of state-produced lumber.—

(1) A county, municipality, special district as defined in chapter 189, or other political subdivision of the state seeking to construct or improve a public building, structure, or other public construction works must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to cost more than $300,000. For electrical work, the local government must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to cost more than $75,000. As used in this section, the term "competitively award" means to award contracts based on the submission of sealed bids, proposals submitted in response to a request for proposal, proposals submitted in response to a request for qualifications,

or proposals submitted for competitive negotiation. This subsection expressly allows contracts for construction management services, design/build contracts, continuation contracts based on unit prices, and any other contract arrangement with a private sector contractor permitted by any applicable municipal or county ordinance, by district resolution, or by state law. For purposes of this section, cost includes the cost of all labor, except inmate labor, and the cost of equipment and materials to be used in the construction of the project. Subject to the provisions of subsection (3), the county, municipality, special district, or other political subdivision may establish, by municipal or county ordinance or special district resolution, procedures for conducting the bidding process.

(c) The provisions of this subsection do not apply:

1. If the project is undertaken to replace, reconstruct, or repair an existing public building, structure, or other public construction works damaged or destroyed by a sudden unexpected turn of events such as an act of God, riot, fire, flood, accident, or other urgent circumstances, and such damage or destruction creates:

a. An immediate danger to the public health or safety;

b. Other loss to public or private property which requires emergency government action; or

c. An interruption of an essential governmental service.

2. If, after notice by publication in accordance with the applicable ordinance or resolution, the governmental entity does not receive any responsive bids or proposals.

3. To construction, remodeling, repair, or improvement to a public electric or gas utility system if such work on the public utility system is performed by personnel of the system.

4. To construction, remodeling, repair, or improvement by a utility commission whose major contracts are to construct and operate a public electric utility system.

5. If the project is undertaken as repair or maintenance of an existing public facility. For the purposes of this paragraph, the term "repair" means a corrective action to restore an existing public facility to a safe and functional condition and the term "maintenance" means a preventive or corrective action to maintain an existing public facility in an operational state or to preserve the facility from failure or decline. Repair or maintenance includes activities that are necessarily incidental to repairing or maintaining the facility. Repair or maintenance does not include the construction of any new building, structure, or other public construction works or any substantial addition, extension, or upgrade to an existing public facility. Such additions, extensions, or upgrades shall be considered substantial if the estimated cost of the additions, extensions, or upgrades included as part of the repair or maintenance project exceeds the threshold amount in subsection (1) and exceeds 20 percent of the estimated total cost of the repair or maintenance project using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the work, including employee compensation and benefits, equipment cost and maintenance, insurance costs, and materials. An addition,

extension, or upgrade shall not be considered substantial if it is undertaken pursuant to the conditions specified in subparagraph 1. Repair and maintenance projects and any related additions, extensions, or upgrades may not be divided into multiple projects for the purpose of evading the requirements of this subparagraph.

6. If the project is undertaken exclusively as part of a public educational program.

7. If the funding source of the project will be diminished or lost because the time required to competitively award the project after the funds become available exceeds the time within which the funding source must be spent.

8. If the local government competitively awarded a project to a private sector contractor and the contractor abandoned the project before completion or the local government terminated the contract.

~~9. If the governing board of the local government complies with all of the requirements of this subparagraph, conducts a public meeting under s. 286.011 after public notice, and finds by majority vote of the governing board that it is in the public's best interest to perform the project using its own services, employees, and equipment. The public notice must be published at least 21 days before the date of the public meeting at which the governing board takes final action. The notice must identify the project, the components and scope of the work, and the estimated cost of the project using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the work, including~~

~~employee compensation and benefits, equipment cost and maintenance, insurance costs, and materials. The notice must specify that the purpose for the public meeting is to consider whether it is in the public's best interest to perform the project using the local government's own services, employees, and equipment. Upon publication of the public notice and for 21 days thereafter, the local government shall make available for public inspection, during normal business hours and at a location specified in the public notice, a detailed itemization of each component of the estimated cost of the project and documentation explaining the methodology used to arrive at the estimated cost. At the public meeting, any qualified contractor or vendor who could have been awarded the project had the project been competitively bid shall be provided with a reasonable opportunity to present evidence to the governing board regarding the project and the accuracy of the local government's estimated cost of the project. In deciding whether it is in the public's best interest for the local government to perform a project using its own services, employees, and equipment, the governing board must consider the estimated cost of the project and the accuracy of the estimated cost in light of any other information that may be presented at the public meeting and whether the project requires an increase in the number of government employees or an increase in capital expenditures for public facilities, equipment, or other capital assets. The local government may further consider the impact on local economic development, the impact on small and minority business owners, the impact on state and local tax revenues,~~

~~whether the private sector contractors provide health insurance and other benefits equivalent to those provided by the local government, and any other factor relevant to what is in the public's best interest.~~

9.~~10.~~ If the governing board of the local government determines upon consideration of specific substantive criteria that it is in the best interest of the local government to award the project to an appropriately licensed private sector contractor pursuant to administrative procedures established by and expressly set forth in a charter, ordinance, or resolution of the local government adopted before July 1, 1994. The criteria and procedures must be set out in the charter, ordinance, or resolution and must be applied uniformly by the local government to avoid awarding a project in an arbitrary or capricious manner. This exception applies only if all of the following occur:

a. The governing board of the local government, after public notice, conducts a public meeting under s. 286.011 and finds by a two-thirds vote of the governing board that it is in the public's best interest to award the project according to the criteria and procedures established by charter, ordinance, or resolution. The public notice must be published at least 14 days before the date of the public meeting at which the governing board takes final action. The notice must identify the project, the estimated cost of the project, and specify that the purpose for the public meeting is to consider whether it is in the public's best interest to award the project using the criteria and procedures permitted by the preexisting charter, ordinance,

or resolution.

b. The project is to be awarded by any method other than a competitive selection process, and the governing board finds evidence that:

(I) There is one appropriately licensed contractor who is uniquely qualified to undertake the project because that contractor is currently under contract to perform work that is affiliated with the project; or

(II) The time to competitively award the project will jeopardize the funding for the project, materially increase the cost of the project, or create an undue hardship on the public health, safety, or welfare.

c. The project is to be awarded by any method other than a competitive selection process, and the published notice clearly specifies the ordinance or resolution by which the private sector contractor will be selected and the criteria to be considered.

d. The project is to be awarded by a method other than a competitive selection process, and the architect or engineer of record has provided a written recommendation that the project be awarded to the private sector contractor without competitive selection, and the consideration by, and the justification of, the government body are documented, in writing, in the project file and are presented to the governing board prior to the approval required in this paragraph.

10.~~11.~~ To projects subject to chapter 336.

Section 2. 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	____

Committee/Subcommittee hearing bill: Government Operations Subcommittee

Representative Cummings offered the following:

Amendment (with title amendment)

Remove lines 101-194 and insert:

9. To an independent special district if the governing board of the independent special district ~~local government~~ complies with all of the requirements of this subparagraph, conducts a public meeting under s. 286.011 after public notice, and finds by majority vote of the governing board that it is in the public's best interest to perform the project using its own services, employees, and equipment. The public notice must be published at least 21 days before the date of the public meeting at which the governing board takes final action. The notice must identify the project, the components and scope of the work, and the estimated cost of the project using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the work, including employee compensation and benefits, equipment cost and

maintenance, insurance costs, and materials. The notice must specify that the purpose for the public meeting is to consider whether it is in the public's best interest to perform the project using the independent special district's ~~local government's~~ own services, employees, and equipment. Upon publication of the public notice and for 21 days thereafter, the independent special district ~~local government~~ shall make available for public inspection, during normal business hours and at a location specified in the public notice, a detailed itemization of each component of the estimated cost of the project and documentation explaining the methodology used to arrive at the estimated cost. At the public meeting, any qualified contractor or vendor who could have been awarded the project had the project been competitively bid shall be provided with a reasonable opportunity to present evidence to the governing board regarding the project and the accuracy of the independent special district's ~~local government's~~ estimated cost of the project. In deciding whether it is in the public's best interest for the independent special district ~~local government~~ to perform a project using its own services, employees, and equipment, the governing board must consider the estimated cost of the project and the accuracy of the estimated cost in light of any other information that may be presented at the public meeting and whether the project requires an increase in the number of district ~~government~~ employees or an increase in capital expenditures for public facilities, equipment, or other capital assets. The independent special district ~~local government~~ may further consider the impact on local economic

development, the impact on small and minority business owners, the impact on state and local tax revenues, whether the private sector contractors provide health insurance and other benefits equivalent to those provided by the independent special district ~~local government~~, and any other factor relevant to what is in the public's best interest.

10. If the governing board of the local government determines upon consideration of specific substantive criteria that it is in the best interest of the local government to award the project to an appropriately licensed private sector contractor pursuant to administrative procedures established by and expressly set forth in a charter, ordinance, or resolution of the local government adopted before July 1, 1994. The criteria and procedures must be set out in the charter, ordinance, or resolution and must be applied uniformly by the local government to avoid awarding a project in an arbitrary or capricious manner. This exception applies only if all of the following occur:

a. The governing board of the local government, after public notice, conducts a public meeting under s. 286.011 and finds by a two-thirds vote of the governing board that it is in the public's best interest to award the project according to the criteria and procedures established by charter, ordinance, or resolution. The public notice must be published at least 14 days before the date of the public meeting at which the governing board takes final action. The notice must identify the project, the estimated cost of the project, and specify that the purpose for the public meeting is to consider whether it is in the

public's best interest to award the project using the criteria and procedures permitted by the preexisting charter, ordinance, or resolution.

b. The project is to be awarded by any method other than a competitive selection process, and the governing board finds evidence that:

(I) There is one appropriately licensed contractor who is uniquely qualified to undertake the project because that contractor is currently under contract to perform work that is affiliated with the project; or

(II) The time to competitively award the project will jeopardize the funding for the project, materially increase the cost of the project, or create an undue hardship on the public health, safety, or welfare.

c. The project is to be awarded by any method other than a competitive selection process, and the published notice clearly specifies the ordinance or resolution by which the private sector contractor will be selected and the criteria to be considered.

d. The project is to be awarded by a method other than a competitive selection process, and the architect or engineer of record has provided a written recommendation that the project be awarded to the private sector contractor without competitive selection, and the consideration by, and the justification of, the government body are documented, in writing, in the project file and are presented to the governing board prior to the approval required in this paragraph.

11. To projects subject to chapter 36.

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

Remove lines 4-6 and insert:

removing an exemption for certain local government entities from the requirement to competitively award certain contracts for public construction works; providing an effective

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 725 Public Records and Public Meetings Exemptions
SPONSOR(S): Harrell
TIED BILLS: **IDEN./SIM. BILLS:** SB 1680

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthy Families Subcommittee	8 Y, 4 N	Guzzo	Schoolfield
2) Government Operations Subcommittee		Williamson	Williamson
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Current law establishes the State Child Abuse Death Review Committee (CADR) and local child abuse death review committees within the Department of Health. The CADR is tasked with reviewing the facts and circumstances of the deaths of children whose deaths have been investigated by the Department of Children and Families and closed with a "verified" finding of child abuse or neglect.

Current law provides a public record exemption for any information that reveals the identity of the surviving siblings, family members, or others living in the home of a deceased child who is the subject of review by and which information is held by the CADR or a local committee. It also provides that portions of meetings of the CADR or a local committee at which confidential or exempt information is discussed are exempt from public meeting requirements. The closed portion of a meeting must be recorded, and no portion of a closed meeting may be off the record. The recording, which is exempt from public record requirements, must be maintained by the CADR or local committee.

The bill removes the requirement that closed portions of meetings of the CADR or local committees be recorded, as well as the requirement that no portion of a closed meeting be off the record. The bill also removes the requirement that the CADR or local committee maintain the recording of the closed portion of the meeting.

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.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records and Open Meetings

State Constitution
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.

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.

The Legislature, however, may provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24(a) and (b) 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]

Florida Statutes: Public Records Law
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.

Florida Statutes: Public Meetings 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.[2] The board or commission must provide reasonable notice of all public meetings.[3] 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.[4] Minutes of a public meeting must be promptly recorded and be open to public inspection.[5]

Open Government Sunset Review Act
The Open Government Sunset Review Act[6] 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.

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[1] Section 24(c), Art. I of the State Constitution.
[2] Section 286.011(1), F.S.
[3] *Id.*
[4] Section 286.011(6), F.S.
[5] Section 286.011(2), F.S.
[6] *See* s. 119.15, F.S.

- 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.

Child Abuse Death Review Committee

Current law establishes the State Child Abuse Death Review Committee (CADR) and local child abuse death review committees within the Department of Health (DOH).[7] The purpose of the CADR is prevention.

The CADR is tasked with reviewing the facts and circumstances of the deaths of children whose deaths have been investigated by the Department of Children and Families and closed with a "verified" finding of child abuse or neglect. The purpose of the child death review is to:[8]

- Develop a community based approach to address child abuse deaths and contributing factors;
- Achieve a greater understanding of the causes and contributing factors of deaths resulting from child abuse or neglect;
- Identify gaps, deficiencies or problems in service delivery to children and families by public and private agencies that may be related to child abuse deaths; and
- Develop and implement data-driven recommendations for reducing child abuse and neglect deaths.

The state committee must prepare an annual statistical report to be presented to the Governor and the Legislature containing recommendations to reduce preventable child deaths.[9] The CADR is composed of 18 members, including experts from the medical, law enforcement, social services, and advocacy professions who convene every other month to examine the circumstances leading to child deaths.[10]

Local child abuse death review committees also conduct reviews of the verified deaths of children in their respective communities to develop prevention campaigns and prepare recommendations for improving local practices in child protection and support services to families. There are 23 local committees that provide coverage for Florida's 67 counties.[11]

Public Record and Public Meeting Exemptions for CADR

Current law provides a public record exemption for any information that reveals the identity of the surviving siblings, family members, or others living in the home of a deceased child who is the subject of review by and which information is held by the CADR or a local committee.[12] It also provides that portions of meetings of the CADR or a local committee at which confidential or exempt information is discussed are exempt from public meeting requirements.[13]

In 2010, the law was amended to require that the closed portion of a meeting of the CADR or local committee be recorded. In addition, a public record exemption was created to protect the release of such recording. No portion of the meeting may be off the record, and the recording must be maintained by the CADR or local committee.[14]

The CADR has indicated that the recording requirement is hindering its ability to effectively accomplish its purpose, which necessitates the members being able to speak candidly about the individual cases in

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[7] Section 383.402(1), F.S.
[8] *Id.*
[9] Section 383.402(3)(c), F.S.
[10] Section 383.402(2)(a) and (b), F.S.
[11] Child Abuse Death Review Committee, Annual Report December 2012, available at www.flcadr.org/reports.html (last viewed March 6, 2013).
[12] Section 383.412(2)(a), F.S.
[13] Section 383.412(3)(a), F.S.
[14] Chapter 2010-40, L.O.F.

order to make prevention recommendations.[15] The recording requirement has impacted local committees in some areas due to the reluctance of some law enforcement, state attorney offices and other agencies to openly discuss confidential information that is being recorded.[16]

Effect of Proposed Changes

The bill removes the requirement that closed portions of meetings of the CADR or local committees be recorded, as well as the requirement that no portion of a closed meeting be off the record. The bill also removes the requirement that the CADR or local committee must maintain the recording of the closed portion of the meeting.

B. SECTION DIRECTORY:

Section 1: Amends s. 383.412, F.S., relating to public record and public meeting exemptions.

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.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

[15] E-mail from Special Agent Terry Thomas, Chairperson, State Child Abuse Death Review Committee (March 6, 2013) (On file with subcommittee staff).

[16] *Id.*

counties or municipalities; and does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No additional rule-making authority is necessary to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill removes the requirement for the CADR or the local committee to record closed portions of meetings and to maintain such recording. As such, it is unclear why the public record exemption for the recording of a closed portion of a meeting is necessary. If a recording is not being made and maintained then the public record exemption for such recording is superfluous.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to public records and public meetings exemptions; amending s. 383.412, F.S.; eliminating requirements that the closed portion of a meeting of the State Child Abuse Death Review Committee or a local committee at which specified identifying information is discussed be recorded, that no portion of such closed meeting be off the record, and that the recording be maintained by the state committee or a local committee; providing an effective date.

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

Section 1. Subsection (3) of section 383.412, Florida Statutes, is amended to read:

383.412 Public records and public meetings exemptions.—

(2)(a) Any information that reveals the identity of the surviving siblings, family members, or others living in the home of a deceased child who is the subject of review by and which information is held by the State Child Abuse Death Review Committee or a local committee is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Information made confidential or exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution that is obtained by the State Child Abuse Death Review Committee or a local committee shall retain its confidential or exempt status.

(3)(a) Portions of meetings of the State Child Abuse Death Review Committee or a local committee at which information made

confidential and exempt pursuant to subsection (2) is discussed are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. ~~The closed portion of a meeting must be recorded, and no portion of the closed meeting may be off the record. The recording shall be maintained by the State Child Abuse Death Review Committee or a local committee.~~

(b) A ~~The~~ recording of a closed portion of a meeting is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 731 Pub. Rec./Spouses & Children of Law Enforcement Personnel
SPONSOR(S): Criminal Justice Subcommittee; Kerner and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 376

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Cox	Cunningham
2) Government Operations Subcommittee		Stramski	Williamson
3) Judiciary Committee			

SUMMARY ANALYSIS

Current law provides a public records exemption for certain identification and location information of active or former sworn or civilian law enforcement personnel ("law enforcement personnel") and their spouses and children. The following information is exempt from public records requirements:

- Home addresses, telephone numbers, social security numbers, dates of birth, and photographs of law enforcement personnel;
- Home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of law enforcement personnel; and
- Names and locations of schools and day care facilities attended by the children of such personnel.

Notably, the *names* of spouses and children of law enforcement personnel are not exempt from public records requirements.

The bill creates a public records exemption for the names of spouses and children of active or former sworn or civilian law enforcement personnel.

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 an effective date of October 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 Act[2] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

Public Record Exemption for Identification and Location Information

Currently, s. 119.071(4)(d)2.a., F.S., provides a public records exemption for certain identification and location information of active or former sworn or civilian law enforcement personnel ("law enforcement personnel")[3] and their spouses and children. The following information is exempt from public records requirements:

- Home addresses, telephone numbers,[4] social security numbers, dates of birth, and photographs of law enforcement personnel;
- Home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of law enforcement personnel; and
- Names and locations of schools and day care facilities attended by the children of such personnel.

Notably, the *names* of spouses and children of law enforcement personnel are not exempt from public record requirements. This is in contrast to the names of spouses and children of former or current

[1] Section 24(c), Art. I of the State Constitution.
[2] *See* s. 119.15, F.S.
[3] Section 119.071(4)(d)2.a., F.S, specifies that active or former sworn or civilian law enforcement personnel includes correctional and correctional probation officers; personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities; personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect; and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement.
[4] Section 119.071(4)(d)1., F.S., states the term "telephone numbers" includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

human resource or labor relations agency personnel,[5] code enforcement officers,[6] guardians ad litem,[7] juvenile justice officers,[8] investigators or inspectors of the Department of Business and Professional Regulation,[9] and county tax collectors.[10]

Effect of the Bill

The bill amends s. 119.071(4)(d)2.a., F.S., to provide that the names of spouses and children of active or former sworn or civilian law enforcement personnel are exempt[11] from s. 119.07(1), F.S., and Article I, section 24(a) of the Florida Constitution.

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.[12]

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

B. SECTION DIRECTORY:

Section 1 amends 119.071, F.S., creating an exemption from public records requirements for the names of the spouses and children of active or former sworn or civilian law enforcement personnel of selected agencies.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of October 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:

   See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

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[5] Section 119.071(4)(d)2.f., F.S.
[6] Section 119.071(4)(d)2.g., F.S.
[7] Section 119.071(4)(d)2.h., F.S.
[8] Section 119.071(4)(d)2.i., F.S.
[9] Section 119.071(4)(d)2.k., F.S.
[10] Section 119.071(4)(d)2.l., F.S.
[11] 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).
[12] Article I, Sec. 24(c), FLA. CONST.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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 agency.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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 for the names of spouses and children of sworn and civilian law enforcement personnel of specified agencies; 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 for the names of spouses and children of sworn and civilian law enforcement personnel of specified agencies; 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 limited to the names of spouses and children of sworn and civilian law enforcement personnel of specified agencies. 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:

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 March 19, 2013, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment added language to clarify that this public records exemption also applies to the other agency personnel mentioned in s. 119.071(4)(d)2.a., F.S.

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

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; creating an exemption from public records requirements for the names of the spouses and children of active or former sworn or civilian law enforcement personnel, including children and spouses of correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; 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. Paragraph (d) of subsection (4) of section 119.071, Florida Statutes, is amended to read:

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

(4) AGENCY PERSONNEL INFORMATION.—

(d)1. For purposes of this paragraph, the term "telephone

numbers" includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

2.a.(I) The home addresses, telephone numbers, social security numbers, dates of birth, and photographs of active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Children and Families ~~Family Services~~ whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1).

(II) The names of the spouses and children of active or former sworn or civilian law enforcement personnel and the other specified agency personnel identified in sub-sub-subparagraph a.(I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(III) Sub-sub-subparagraph a.(II) 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.

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

c. The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of current or former justices and judges are exempt from s. 119.07(1).

d. The home addresses, telephone numbers, social security numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or

former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

e. The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer provides a written statement that the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer has made reasonable efforts to protect such information from being accessible through other means available to the public.

f. The home addresses, telephone numbers, dates of birth,

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

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

h. The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former guardians ad litem, as defined in s. 39.820; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, if the guardian ad litem provides a written statement that the guardian ad litem

has made reasonable efforts to protect such information from being accessible through other means available to the public.

i. The home addresses, telephone numbers, dates of birth, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

j. The home addresses, telephone numbers, dates of birth, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such defenders or counsel; and the names and locations of schools and day care facilities attended by the children of such defenders or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State

Constitution.

k. The home addresses, telephone numbers, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such current or former investigators and inspectors; and the names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the investigator or inspector has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

l. The home addresses and telephone numbers of county tax collectors; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such tax collectors; and the names and locations of schools and day care facilities attended by the children of such tax collectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the county tax collector has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through

reenactment by the Legislature.

3. An agency that is the custodian of the information specified in subparagraph 2. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 2. shall maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency.

4. The exemptions in this paragraph apply to information held by an agency before, on, or after the effective date of the exemption.

5. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the names of the spouses and children of active or former sworn or civilian law enforcement personnel be exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Sworn and civilian law enforcement personnel in this state perform a variety of important duties that ensure public safety and welfare and encourage safe and civil communities. Correctional and correctional probation officers work with felons, many of whom have committed violent crimes. Personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, and

personnel of the Department of Health, work with individuals who may be a danger to their own children and families, as well as the children of others. Personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement investigate and bring enforcement actions against individuals who have failed to pay their lawful taxes or failed to pay to support their children. As a result of their duties, these sworn and civilian law enforcement personnel often come in close contact with individuals who not only may be a threat to these personnel, but who might seek to take revenge against them by harming their spouses and children. Permitting access to the names of spouses and children of active or former sworn or civilian law enforcement personnel provides a means by which individuals who have been investigated, arrested, interrogated, or incarcerated can identify and cause physical or emotional harm to these spouses and children. The Legislature therefore finds that the harm that may result from the release of the names of spouses and children of such law enforcement personnel outweighs any public benefit that may be derived from the disclosure of the information.

Section 3. This act shall take effect October 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 745 Pub. Rec./Fracturing Chemical Usage Disclosure Act
SPONSOR(S): Rodrigues
TIED BILLS: CS/HB 743 **IDEN./SIM. BILLS:** SB 1028

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N	Renner	Blalock
2) Government Operations Subcommittee		Stramski	Williamson
3) State Affairs Committee			

SUMMARY ANALYSIS

CS/HB 743 directs the Department of Environmental Protection (DEP) to establish and maintain an online hydraulic fracturing chemical registry for all wells on which hydraulic fracturing treatments are performed. The registry and the information provided must be accessible to the public through DEP's website. The owner or operator of a well on which a hydraulic fracturing treatment is performed must report information as required by DEP and notify DEP of any chemical ingredients not previously reported that are intentionally included and used for the purpose of creating a hydraulic fracturing treatment for the well.

The bill, which is linked to the passage of CS/HB 743, creates a public records exemption for trade secrets contained within information relating to hydraulic fracturing treatments obtained by the Division of Resource Management (Division) of DEP in connection with the online hydraulic fracturing chemical registry.

The person submitting trade secret information to the Division must request that it be kept confidential and exempt and provide a basis to the Division for the claim of trade secret. Subject to notice and opportunity for hearing, the Division must determine if the information is a trade secret.

Confidential and exempt trade secrets may be disclosed to authorized representatives of the Division or, pursuant to request, to other governmental entities in order for those entities to properly perform their duties. In addition, such trade secrets may be disclosed, when relevant, in any proceeding relating to hydraulic fracturing treatments.

The bill provides that the public records exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill may have a negative fiscal impact on DEP. *See* FISCAL COMMENTS section for further discussion.

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 of public meeting exemption. The bill creates a public records 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. 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 Act[2] 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.

House Bill 743, Hydraulic Fracturing Chemical Registry

CS/HB 743 (2013) directs the Department of Environmental Protection (DEP) to establish and maintain an online hydraulic fracturing chemical registry for all wells on which hydraulic fracturing treatments are performed.

The registry must include, at a minimum, the total volume of water used in the hydraulic fracturing treatment and each chemical ingredient that is subject to 29 C.F.R. s. 1910.1200(g)(2),[3] for each well on which hydraulic fracturing treatments are performed, as provided by a service company or chemical supplier, or by the well owner or operator if the owner or operator provides such chemical ingredients. DEP may not require chemical ingredients to be identified by concentration or based on the additive in which they are found. The registry and the information provided must be accessible to the public through DEP's website, and must include a link to FracFocus,[4] the national hydraulic fracturing chemical registry website.

The owner or operator of a well on which a hydraulic fracturing treatment is performed must report information as required by DEP and notify DEP of any chemical ingredients not previously reported that are intentionally included and used for the purpose of creating a hydraulic fracturing treatment for the well.

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

[2] *See* s. 119.15, F.S.

[3] 29 C.F.R. s. 1910.1200(g)(2) provides that material safety data sheets are required for each hazardous chemical in the workplace and that the sheets be in English and contain specific information.

[4] Available at: www.fracfocus.org.

Service companies that perform hydraulic fracturing treatments on a well or a supplier of an additive used in a hydraulic fracturing treatment on a well must disclose the chemical ingredients used to perform the treatment to the owner or operator of the well.

The reporting and disclosure requirements in the bill do not apply to ingredients that:

- Were not purposefully added to the hydraulic fracturing treatment.
- Occur incidentally or are otherwise unintentionally present in the treatment.
- Are not disclosed to the well owner or operator by a service company or supplier.

Effect of Proposed Changes

The bill, which is linked to the passage of CS/HB 743, creates a public records exemption for trade secrets[5] contained within information relating to hydraulic fracturing treatments obtained by the Division of Resource Management (Division) of DEP in connection with the online hydraulic fracturing chemical registry. The bill provides that such trade secrets are confidential and exempt[6] from public records requirements.

The person submitting trade secret information to the Division must request that it be kept confidential and exempt and provide a basis to the Division for the claim of trade secret. Subject to notice and opportunity for hearing, the Division must determine if the information is a trade secret; however, the bill does not provide a process for such determination.

Confidential and exempt trade secrets may be disclosed to authorized representatives of the Division or, pursuant to request, to other governmental entities in order for those entities to properly perform their duties. In addition, such trade secrets may be disclosed, when relevant, in any proceeding relating to hydraulic fracturing treatments. Authorized representatives and other governmental entities receiving such trade secrets must maintain the confidentiality of such information. This includes those involved in any proceeding relating to hydraulic fracturing treatments, including an administrative law judge, a hearing officer, or a judge or justice; however, it is unclear how the confidentiality of information will be maintained at such proceedings, as such proceedings tend to be public.

The bill provides that the public records exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

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[5] The bill provides that the public records exemption applies to trade secrets as defined in s. 812.081(1)(c), F.S. That paragraph defines the term "trade secret" to mean the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. "Trade secret" includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 377.45, F.S., providing an exemption from public record requirements for trade secrets contained within information relating to hydraulic fracturing treatments obtained by the Division of DEP in connection with the Division's online hydraulic fracturing chemical registry; providing procedures and requirements with respect to the granting of confidential and exempt status; providing for disclosure under specified circumstances; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act.

Section 2: Provides a statement of public necessity.

Section 3: Provides a contingent effective date to match the effective date of HB 743 or similar legislation, if such legislation is adopted in the same legislative session and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could result in a fiscal impact to DEP by requiring the department to determine if information submitted pursuant to HB 743 is a trade secret. The bill provides that a determination of a trade secret by DEP requires notice and the opportunity for hearing. Given that the issues surrounding such a determination are inherently factual, DEP may be forced to participate in a formal administrative proceeding if it determines that information submitted to it pursuant to the bill is not a trade secret.[7]

Such hearing can be costly to the state. For example, the prorated cost for formal hearings conducted by DEP at the Division of Administrative Hearings (DOAH) for FY 2011-2012 was approximately $2,000 per hour of DOAH time.[8] This cost does not include all resources that might have to be expended by the agency during such litigation, such as conducting discovery, and preparing and responding to motions.

[7] Sections 120.569 and 120.57(1), F.S.

[8] State of Florida, Division of Administrative Hearings, *Thirty-Ninth Annual Report*, (2013) appendix 1, available at http://www.doah.state.fl.us/ALJ/reports/39thAnnualReport.pdf (last visited March 19, 2013).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county of municipal governments.

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 records 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 records 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 limited to information submitted to DEP that is a trade secret. 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:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

   Other Comments: Retroactive Application
   The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied as such.[9] The bill does not contain a provision requiring retroactive application. As such, the public records exemption would apply prospectively.

   Other Comments: Determination of Trade Secret
   The bill requires the Division of Resource Management of DEP to determine, subject to notice and opportunity for hearing, if information submitted pursuant to HB 743 is a trade secret. The bill does not provide a process for such determination. The bill does not specify how information that is potentially a trade secret could be kept confidential and exempt during any hearing to determine the status of that information as a trade secret. The bill does not specify who would have to be afforded notice and an opportunity for a hearing during a determination of a trade secret under the bill.

   Drafting Issues: Division of Resource Management
   While the bill references the Division of Resource Management of DEP, such division does not exist. It is recommended that references to the Division be revised to refer to DEP, as has been done to CS/HB 743.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[9] *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001)

A bill to be entitled

An act relating to public records; amending s. 377.45, F.S.; providing an exemption from public records requirements for trade secrets contained within information relating to hydraulic fracturing treatments obtained by the Division of Resource Management of the Department of Environmental Protection in connection with the division's online hydraulic fracturing chemical registry; providing procedures and requirements with respect to the granting of confidential and exempt status; providing for disclosure under specified circumstances; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; 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 (4) of section 377.45, Florida Statutes, as created by HB 743, 2013 Regular Session, is renumbered as subsection (5), and a new subsection (4) is added to that section, to read:

377.45 Hydraulic fracturing chemical registry.—

(4)(a) Information obtained from any person under this section, except as otherwise provided by law, shall be available to the public, except upon a showing satisfactory to the division by the person from whom the information is obtained

that such information, or a particular part thereof, contains trade secrets as defined in s. 812.081(1)(c).

(b)1. Trade secrets, as defined in s. 812.081(1)(c), contained within information relating to hydraulic fracturing treatments obtained by the division in connection with the online hydraulic fracturing chemical registry are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. The person submitting such trade secret information to the division must request that it be kept confidential and exempt and must inform the division of the basis for the claim of trade secret. The department shall, subject to notice and opportunity for hearing, determine whether the information, or any portion thereof, claimed to be a trade secret is or is not a trade secret.

3. Such trade secrets may be disclosed to authorized representatives of the division or, pursuant to request, to other governmental entities in order for them to properly perform their duties, or when relevant in any proceeding under this part. Authorized representatives and other governmental entities receiving such trade secret information shall maintain the confidentiality of such information. Those involved in any proceeding under this section, including an administrative law judge, a hearing officer, or a judge or justice, shall maintain the confidentiality of any trade secret information revealed at such proceeding.

4. 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.

Section 2. The Legislature finds that it is a public necessity that trade secrets contained within information relating to hydraulic fracturing treatments obtained by the Division of Resource Management of the Department of Environmental Protection in connection with the division's online hydraulic fracturing chemical registry be made confidential and exempt from public records requirements. Trade secrets must be held confidential and exempt from public records requirements because the disclosure of such information would create an unfair competitive advantage for persons receiving such information, which would adversely impact the service company, chemical supplier, or well owner or operator that provides chemical ingredients for a well or wells on which hydraulic fracturing treatments are performed. If such confidential and exempt information regarding trade secrets were released pursuant to a public records request, others would be allowed to take the benefit of the trade secrets without compensation or reimbursement to the service company or chemical supplier or well owner or operator.

Section 3. This act shall take effect on the same date that HB 743 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 745 (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	_____

Committee/Subcommittee hearing bill: Government Operations Subcommittee

Representative Rodrigues, R. offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (4) of section 377.45, Florida Statutes, as created by HB 743, 2013 Regular Session, is renumbered as subsection (5), and a new subsection (4) is added to that section, to read:

377.45 Hydraulic fracturing chemical registry.—

(4)(a) Trade secrets, as defined in s. 812.081(1)(c), relating to hydraulic fracturing treatments held by the department in connection with the online hydraulic fracturing chemical registry, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the person submitting such trade secret to the department:

1. Requests that the trade secret be kept confidential and exempt;

2. Informs the department of the basis for the claim of trade secret; and

3. Clearly marks each page of a document or specific portion of a document containing information claimed to be a trade secret as "trade secret."

(b) If the department receives a public records request for a document that is marked trade secret under this section, the department must promptly notify the person who submitted the information as a trade secret. The notice must inform such person that the person has 30 days following receipt of such notice to file an action in circuit court seeking a determination whether the document in question contains trade secrets and an order barring public disclosure of the document. If the person files an action within 30 days after receipt of notice of the public records request, the department may not release the documents pending the outcome of the legal action. The failure to file an action within 30 days constitutes a waiver of any claim of confidentiality, and the department shall release the document as requested.

(c) Confidential and exempt trade secrets may be disclosed:

1. To another governmental entity in order for such entity to properly perform its statutory duties and responsibilities; or

2. When relevant in any proceeding under this part. Those involved in any proceeding under this section, including, but not limited to, an administrative law judge, a hearing officer,

or a judge or justice, must maintain the confidentiality of any trade secret revealed at such proceeding.

(d) This subsection 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.

Section 2. The Legislature finds that it is a public necessity that trade secrets, as defined in s. 812.081(1)(c), Florida Statutes, relating to hydraulic fracturing treatments held by the Department of Environmental Protection in connection with the online hydraulic fracturing chemical registry be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State Constitution. Trade secrets must be held confidential and exempt from public records requirements because the disclosure of such information would create an unfair competitive advantage for persons receiving such information, which would adversely impact the service company, chemical supplier, or well owner or operator that provides chemical ingredients for a well or wells on which hydraulic fracturing treatments are performed. If such confidential and exempt information regarding trade secrets were released pursuant to a public records request, others would be allowed to take the benefit of the trade secrets without compensation or reimbursement to the service company or chemical supplier or well owner or operator.

Section 3. This act shall take effect on the same date that HB 743 or similar legislation takes effect, if such

legislation is adopted in the same legislative session or an extension thereof and becomes law.

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

Remove everything before the enacting clause and insert:
An act relating to public records; amending s. 377.45, F.S.; providing an exemption from public records requirements for trade secrets relating to hydraulic fracturing treatments held by the Department of Environmental Protection in connection with the department's online hydraulic fracturing chemical registry; providing procedures and requirements with respect to maintaining the confidentiality of trade secrets; providing for disclosure under specified circumstances; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing a contingent effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 823 Pub. Rec./Insurer Solvency
SPONSOR(S): Insurance and Banking; Ingram
TIED BILLS: HB 821 **IDEN./SIM. BILLS:** SB 834

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Bauer	Cooper
2) Government Operations Subcommittee		Williamson	Williamson
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

House Bill 823, which is linked to House Bill 821, incorporates the necessary confidentiality elements for the Office of Insurance Regulation to meet the National Association of Insurance Commissioners accreditation standards.

The bill provides that proprietary business information held by OIR is confidential and exempt from public records requirements. OIR may disclose the confidential and exempt proprietary business information in certain circumstances. The bill also defines "proprietary information" for purposes of the public record exemption.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

The State of Florida has a long history of providing public access to governmental records and meetings. The Florida Legislature enacted the first public records law in 1892.[1] One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.[2] Article I, s. 24, of the State Constitution, provides that:

> (a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,[3] which pre-dates the State Constitution's public records provisions, specifies conditions under which public access must be provided to records of an agency.[4] Section 119.07(1)(a), F.S., states:

> Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined to mean:

> all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.[5]

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or

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[1] Section 1390, 1391 F.S. (Rev. 1892).
[2] Fla. Const. art. I, s. 24.
[3] Chapter 119, F.S.
[4] The word "agency" is defined in s. 119.011(2), F.S., 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." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the State Constitution. *See supra* fn. 3.
[5] Section 119.011(12), F.S.

formalize knowledge.[6] All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.[7]

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.[8] If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.[9]

Only the Legislature is authorized to create exemptions to open government requirements.[10] Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.[11] A bill enacting an exemption[12] may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[13]

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)[14] provides for the systematic review, through a 5-year cycle ending October 2 of the fifth year following enactment, of an exemption from the Public Records Act or the Public Meetings Law.

The Act states that an exemption may be created, revised, or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.[15] An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- 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 under this provision.
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.[16]

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act are only statutory, as opposed to constitutional. Accordingly, the standards do not limit the Legislature because one session of the Legislature cannot bind another.[17] The Legislature is only limited in its review process by constitutional requirements.

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[6] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).
[7] *Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979).
[8] Florida Attorney General Opinion 85-62.
[9] *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So. 2d 289 (Fla. 1991).
[10] *Supra* fn. 1.
[11] *Memorial Hospital-West Volusia v. News-Journal Corporation*, 784 So. 2d 438 (Fla. 2001); *Halifax Hospital Medical Center v. News-Journal Corp.*, 724 So. 2d 567, 569 (Fla. 1999).
[12] Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.
[13] *Supra* fn. 1.
[14] Section 119.15, F.S.
[15] Section 119.15(6)(b), F.S.
[16] *Id.*
[17] *Straughn v. Camp*, 293 So. 2d 689, 694 (Fla. 1974).

Public Records Exemptions and the Insurance Code

The Insurance Code currently provides a number of public records exemptions relating to insurance-related information, including:

- Trade secret documents;[18]
- Risk-based capital information;[19]
- Information related to orders of supervision;[20] and
- Personal consumer and personal financial information.[21]

Section 624.319, F.S., makes OIR's examination and investigation reports and workpapers confidential during the pendency of an examination or investigation. This provision allows the OIR to share this information with other governmental entities (if disclosure is necessary for the receiving entity to perform its duties and responsibilities) and with the NAIC.

While there is no generic exemption for information claimed to be proprietary business information in the Florida Statutes, the Legislature has created a number of exemptions from ch. 119, F.S. for proprietary business information held by certain agencies. This term is generally defined by the statute creating the exemption, and frequently includes trade secrets.

Currently, the Insurance Code has a specific exemption relating to "proprietary business information" held by the OIR, but relates only to such information provided by a title insurance agency or insurer.[22]

House Bill 821 (2013): Insurer Solvency

The Office of Insurance Regulation (OIR) is a member of the National Association of Insurance Commissioners (NAIC), an organization consisting of state insurance regulators. As a member of the NAIC, the OIR is required to participate in the organization's accreditation program. NAIC accreditation is a certification that legal, regulatory, and organizational oversight standards and practices are being fulfilled by a state insurance department. Once accredited, a member state is subject to a full accreditation review every five years. The OIR is slated for its accreditation review during the fall of 2013.

The NAIC also periodically reviews its solvency standards as set forth in its model acts, and revises accreditation requirements to adapt to evolving industry standards. The OIR has identified several model act components not found in the current Insurance Code, and which must be implemented in order for the OIR to maintain its accreditation this fall.

Among other NAIC model act components, House Bill 821 implements the following NAIC confidentiality requirements:

- *NAIC Property and Casualty Actuarial Opinion Model Law*
  Current law requires insurers (except those providing life insurance and title insurance) to provide to OIR a statement of opinion on loss and loss adjustment expense reserves prepared by an actuary or a qualified loss reserve specialists, and supporting workpapers. Current law treats these documents as public.[23]

  The NAIC model law provides that states must require insurers to provide *actuarial opinion summaries* and that the regulators must keep these summaries confidential. House Bill 821

[18] Section 624.4213, F.S. Even in the absence of a statutory exemption for particular trade secrets, s. 815.045, F.S., "should be read to exempt from disclosure as public records *all* trade secrets [as defined in s. 812.081(1)(c), F.S.]." *Sepro Corp. v. Florida Dep't of Environmental Protection*, 911 So.2d 792 (Fla. 1st DCA 2003), *review denied sub nom.*
[19] Section 624.40851, F.S.
[20] Section 624.82, F.S.
[21] Section 624.23, F.S.
[22] Section 626.94195, F.S.
[23] Section 624.424, F.S.

adopts this requirement and states that "proprietary business information" contained in these summaries are confidential and exempt from public records disclosure.

- *Model Holding Company Act & Regulations*
  In response to the recent financial crisis, a NAIC workgroup focused on group supervision issues in the context of large insurers and their affiliates in their respective holding companies. The workgroup noted the corresponding regulatory need to enhance insurance regulators' ability to obtain and evaluate financial information from affiliates, especially regarding "enterprise risk."[24]

  In adopting the NAIC model act, House Bill 821 will require persons seeking a controlling interest in an insurer or controlling company to file an annual enterprise risk report to OIR. The bill requires insurers agree to have the ultimate controlling person and all its affiliates to provide information regarding enterprise risk to the OIR, and provides that the enterprise risk report is confidential and exempt from public disclosure.

House Bill 821 also provides that a controlling person of a domestic insurer may divest its controlling interest by providing notice to the OIR. House Bill 821 provides that this notice is confidential and exempt until the divestiture transaction is completed, unless the OIR, in its discretion, determines that confidential treatment interferes with enforcement of this section.

The NAIC also made establishment and participation in supervisory colleges an accreditation standard. Supervisory colleges are essentially interstate meetings for insurance regulators to focus on large insurers that write significant amounts of insurance in multiple jurisdictions. House Bill 821 provides for the OIR's participation in a supervisory college with other insurance regulators. This bill creates a public records exemption for proprietary business information as it may be found in information obtained by OIR pursuant to its participation in a supervisory college.

Effect of the Bill

House Bill 823, which is linked to House Bill 821, incorporates the necessary confidentiality elements for OIR to meet NAIC accreditation standards.[25] The bill provides that proprietary business information held by OIR is confidential and exempt from public records requirements. OIR may disclose the confidential and exempt proprietary business information:

- If the insurer to which it pertains gives prior written consent;
- Pursuant to a court order;
- To the American Academy of Actuaries upon a request stating the information is for the purpose of professional disciplinary proceedings and specifying procedures satisfactory to OIR for preserving the confidentiality of the information;
- To other states, federal and international agencies, NAIC, and state, federal, and international law enforcement authorities, including members of a supervisory college, if the recipient agrees in writing to maintain the confidential and exempt status of the document, material, or other information and has verified in writing its legal authority to maintain such confidentiality; or
- For the purpose of aggregating information on an industry wide basis and disclosing the information to the public only if the specific identities of the insurers, or persons or affiliated persons, are not revealed.

[24] Enterprise risk is "any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedies promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer of its insurance company as a whole, including, but not limited to, anything that would cause the insurer's risk-based capital as set forth in [state statutory requirement] or would cause the insurer to be in a hazardous financial condition." Section 1(F) of the NAIC Model Insurance Holding Company System Regulatory Act.

[25] Bill analysis from the OIR (received March 9, 2013), on file with the Insurance & Banking Subcommittee staff.

The bill defines "proprietary business information" to mean information, regardless of form or characteristics, that is owned or controlled by an insurer, or a person or affiliated person who seeks acquisition of controlling stock in a domestic stock insurer or controlling company, and that:

- Is intended to be and is treated by the insurer or the person as private in that the disclosure of the information would cause harm to the insurer, the person, or the company's business operations and has not been disclosed unless disclosed pursuant to a statutory requirement, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public;
- Is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as requested by the office; and
- Includes, but is not limited to:
    - Trade secret documents that comply with s. 624.4213, F.S.
    - Information relating to competitive interests the disclosure of which would impair the competitive business of the provider of the information.
    - The source, nature, and amount of the consideration used or to be used in carrying out a merger or other acquisition of control in the ordinary course of business, including the identity of the lender, if the person filing a statement regarding consideration so requests.
    - Information relating to bids or other contractual data the disclosure of which would impair the efforts of the insurer or its affiliates to contract for goods or services on favorable terms.
    - Internal auditing controls and reports of internal auditors.
    - The actuarial opinion summary required under s. 624.424(1)(b), F.S., and the documents, materials, and other information related thereto.
    - A notice filed with OIR by the person or affiliated person who seeks to divest controlling stock in an insurer pursuant to s. 628.461, F.S.
    - The filings required by s. 628.801, F.S., and all documents, materials, and other information related thereto.
    - The enterprise risk report required by ss. 628.461(3) and 628.801, F.S., and the documents, materials, and other information related to the enterprise risk report.
    - Information provided to or obtained by OIR pursuant to participation in a supervisory college established under s. 628.805, F.S.
    - Information received from another governmental entity or NAIC that is confidential or exempt if held by that entity for use by OIR in the performance of its duties.

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

As indicated in the bill's statement of public necessity, public disclosure of proprietary business information would disadvantage insurers' competitive interests, particularly in proposed acquisitions, and in turn could lead to some insurers providing inaccurate or biased information to the OIR and an overall loss of confidence in the marketplace. Without this public records exemption, release of this information could impair the economic value of such information and result in financial loss to the proprietor.

B. SECTION DIRECTORY:

Section 1 creates s. 624.4212, F.S., to create an exemption from public records requirements for proprietary business information submitted to OIR; defines the term "proprietary business information"; provides exceptions; provides for future legislative review and repeal.

Section 2 provides a statement of public necessity as required by the State Constitution.

Section 3 provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See FISCAL COMMENTS section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This public records exemption bill will have an indeterminate positive impact on the private sector by protecting insurers' proprietary business information.

D. FISCAL COMMENTS:

The bill likely could create a minimal fiscal impact on OIR, because staff responsible for complying with public record requests could require training related to creation of the new public records exemption. In addition, OIR 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 office.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   Vote Requirement and Public Necessity Statement for Public Records Bills

   In order to pass a newly-created or expanded public records or public meetings exemption, Article I, s. 24 of the State Constitution requires 1) a two-thirds vote of each house of the legislature and 2) a public necessity statement. The bill contains a public necessity statement and will require a two-thirds vote for passage.

B. RULE-MAKING AUTHORITY:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On line 95, reference to "1995" should be removed as the Open Government Sunset Review Act of 1995 no longer exists. It was replaced in law by the Open Government Sunset Review Act.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2013, the Insurance and Banking Subcommittee considered and adopted two amendments and reported the bill favorably as a committee substitute. One amendment clarified that proprietary business information include trade secret documents which comply with the procedures set forth in s. 624.4213, F.S. The second amendment provided clarifying changes to the list of documents considered to be proprietary business information, and provided that documents related to the enterprise risk report, actuarial opinion summary, and holding company filings are confidential and exempt.

This analysis is drafted to the committee substitute as passed by the Insurance and Banking Subcommittee.

A bill to be entitled

An act relating to public records; creating s. 624.4212, F.S.; creating an exemption from public records requirements for proprietary business information submitted to the Office of Insurance Regulation; defining the term "proprietary business information"; providing exceptions; providing for future legislative review and repeal; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 624.4212, Florida Statutes, is created to read:

624.4212 Confidentiality of proprietary business information.—Proprietary business information held by the Office of Insurance Regulation in accordance with its statutory duties with respect to insurer solvency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(1) As used in this section, the term "proprietary business information" means information, regardless of form or characteristics, that is owned or controlled by an insurer, or a person or affiliated person who seeks acquisition of controlling stock in a domestic stock insurer or controlling company, and that:

(a) Is intended to be and is treated by the insurer or the person as private in that the disclosure of the information

would cause harm to the insurer, the person, or the company's business operations and has not been disclosed unless disclosed pursuant to a statutory requirement, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public;

(b) Is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as requested by the office; and

(c) Includes, but is not limited to:

1. Trade secret documents that comply with s. 624.4213.

2. Information relating to competitive interests the disclosure of which would impair the competitive business of the provider of the information.

3. The source, nature, and amount of the consideration used or to be used in carrying out a merger or other acquisition of control in the ordinary course of business, including the identity of the lender, if the person filing a statement regarding consideration so requests.

4. Information relating to bids or other contractual data the disclosure of which would impair the efforts of the insurer or its affiliates to contract for goods or services on favorable terms.

5. Internal auditing controls and reports of internal auditors.

6. The actuarial opinion summary required under s. 624.424(1)(b) and the documents, materials, and other information related thereto.

7. A notice filed with the office by the person or

affiliated person who seeks to divest controlling stock in an insurer pursuant to s. 628.461.

8. The filings required by s. 628.801 and all documents, materials, and other information related thereto.

9. The enterprise risk report required by ss. 628.461(3) and 628.801 and the documents, materials, and other information related to the enterprise risk report.

10. Information provided to or obtained by the office pursuant to participation in a supervisory college established under s. 628.805.

11. Information received from another governmental entity or the National Association of Insurance Commissioners that is confidential or exempt if held by that entity for use by the office in the performance of its duties.

(2) The office may disclose confidential and exempt proprietary business information:

(a) If the insurer to which it pertains gives prior written consent;

(b) Pursuant to a court order;

(c) To the American Academy of Actuaries upon a request stating that the information is for the purpose of professional disciplinary proceedings and specifying procedures satisfactory to the office for preserving the confidentiality of the information;

(d) To other states, federal and international agencies, the National Association of Insurance Commissioners and its affiliates and subsidiaries, and state, federal, and international law enforcement authorities, including members of

a supervisory college described in s. 628.805, if the recipient agrees in writing to maintain the confidential and exempt status of the document, material, or other information and has verified in writing its legal authority to maintain such confidentiality; or

(e) For the purpose of aggregating information on an industrywide basis and disclosing the information to the public only if the specific identities of the insurers, or persons or affiliated persons, are not revealed.

(3) This section is subject to the Open Government Sunset Review Act of 1995 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.

Section 2. The Legislature finds that it is a public necessity that proprietary business information that is provided to the Office of Insurance Regulation by an insurer or acquiring party pursuant to the requirements of the Florida Insurance Code or the Holding Company System Regulatory Act of the National Association of Insurance Commissioners in order for the office to conduct its regulatory duties with respect to insurer solvency be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The disclosure of such information could injure an insurer in the marketplace by providing its competitors with detailed insight into the financial status and strategic plans of the insurer, thereby diminishing the advantage that the insurer maintains over competitors that do not possess such information. Without this exemption, an insurer or acquiring

party might refrain from providing accurate and unbiased data, thus impairing the office's ability to accurately evaluate the propriety of proposed acquisitions in the state and the financial condition of insurers and their affiliates. Proprietary business information derives actual or potential independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can derive economic value from its disclosure or use. The office, in performing its duties and responsibilities, may need to obtain proprietary business information from insurers and regulated entities. Without an exemption from public records requirements for proprietary business information provided to the office, such information becomes a public record when received and must be divulged upon request. Divulgence of proprietary business information under the public records law would destroy the value of that property to the proprietor, causing a financial loss not only to the proprietor but also to the residents of this state due to the loss of reliable financial data necessary for the accurate evaluation of proposed acquisitions. Release of proprietary business information would give business competitors an unfair advantage and weaken the position in the marketplace of the proprietor who owns or controls the business information. The harm to insurers in the marketplace and to the effective administration of acquisitions caused by the public disclosure of such information far outweighs the public benefits derived from its release.

Section 3. This act shall take effect October 1, 2013, if HB 821 or similar legislation is adopted in the same legislative

session or an extension thereof and becomes law.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 823 (2013)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

Committee/Subcommittee hearing bill: Government Operations Subcommittee

Representative Ingram offered the following:

Amendment

Remove line 38 and insert:

1. Trade secrets as defined in s. 688.002, and that comply with s. 624.4213.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 823 (2013)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION		
ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

Committee/Subcommittee hearing bill: Government Operations Subcommittee

Representative Ingram offered the following:

Amendment

Remove line 95 and insert:

Review Act in accordance with s. 119.15 and shall stand

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 943 Public Records Exemption
SPONSOR(S): Schwartz
TIED BILLS: HB 941 **IDEN./SIM. BILLS:** SB 610

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

SUMMARY ANALYSIS

Litigation settlement agreements in guardianship cases routinely include a provision that the terms will be held in confidence by all parties. Because an adult may settle a lawsuit without court approval, those confidentiality clauses are effective and enforceable. However, a minor cannot settle a case valued in excess of $15,000 without court approval. The court approval process requires a petition setting forth the terms of the settlement. An order is eventually entered that also may contain the terms of settlement, or may refer to the petition. The petition and the order are part of a court file, and therefore, are a matter of public record and open for inspection under current law.

The bill amends the guardianship law to provide that the petition requesting permission for settlement of a claim, the order on the petition, and any document associated with the settlement, are confidential and exempt from public records requirements. The court may order partial or full disclosure of the confidential and exempt record upon a showing of good cause.

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 941 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 expands the current public record exemption for certain information related to guardianship; 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 Act[2] 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.

As to this bill, the Open Government Sunset Review Act is, by its terms, advisory only, as the Act does not apply to court records.[3]

Court Records

Florida courts have consistently held that the judiciary is not an "agency" for purposes of Ch. 119, F.S.[4] However, the Florida Supreme Court found that "both civil and criminal proceedings in Florida are public events" and that the court will "adhere to the well-established common law right of access to court proceedings and records."[5] There is a Florida constitutional guarantee of access to judicial records.[6] The constitutional provision provides for public access to judicial records, except for those records expressly exempted by the State Constitution, Florida law in effect on July 1, 1993, court rules in effect on November 3, 1992, or by future acts of the legislature in accordance with the Constitution.[7]

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.[8] If the legislature has determined the information

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[1] Art I., s. 24(c), Fla. Const.
[2] *See* s. 119.15, F.S.
[3] Section 119.15(2)(b), F.S.
[4] *See* e.g., *Times Publishing Company v. Ake*, 660 So. 2d 255 (Fla. 1995).
[5] *Barron v. Florida Freedom Newspapers*, 531 so. 2d 113, 116 (Fla. 1988).
[6] Fla. Const. art. I, s. 24(a).
[7] Fla. Const. art. I, ss. 24(c) and (d).
[8] *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).

to be confidential then the information is not subject to inspection by the public.[9] Also, if the information is deemed to be confidential it may only be released to those person and entities designated in the statute.[10] However, the agency is not prohibited from disclosing the records in all circumstances where the records are only exempt.[11]

Settlements in Guardianship Cases
Litigation settlement agreements routinely include a provision that the terms will be held in confidence by all parties. Because an adult may settle a lawsuit without court approval, those confidentiality clauses are effective and enforceable. However, a minor cannot settle a case valued in excess of $15,000 without court approval.[12] The court approval process requires a petition setting forth the terms of the settlement.[13] An order is eventually entered that also may contain the terms of settlement, or may refer to the petition.[14] The petition and the order are part of a court file, and therefore, are a matter of public record and open for inspection under current law.

Effect of the Bill

The bill amends s. 744.3701, F.S., to provide that any court record relating to the settlement of a ward's or minor's claim, including a petition for approval of a settlement on behalf of a ward or minor, a report of a guardian ad litem relating to a pending settlement, or an order approving a settlement on behalf of a ward or minor, is confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution and may not be disclosed except as specifically authorized.

Because the record is made confidential and exempt, it may not be disclosed except as provided in law. Current law allows the court, the clerk of court, the guardian and the guardian's attorney to review the guardianship court file. The bill amends s. 744.3701, F.S., to provide that record of a settlement may also be disclosed to the guardian ad litem (if any) related to the settlement, to the ward (the minor) if he or she is 14 years of age or older and has not been declared incompetent, and to the attorney for the ward. The record may also be disclosed as ordered by the court.

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. 744.3701, F.S., regarding confidentiality.

Section 2 provides a public necessity statement.

Section 3 provides for an effective date to coincide with passage of House Bill 941, if adopted in the same legislative session.

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.

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[9] *Id.*
[10] *Id.*
[11] *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA), *review denied*, 589 So. 2d 289 (Fla. 1991).
[12] *See* s. 744.301(2), F.S.
[13] Section 744.387, F.S.
[14] *Id.*

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 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 court and clerk offices 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 court system and clerks.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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 expands a public record exemption related to guardianships; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption related to guardianships; 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 guardianships. 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:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Compliance with the Open Government Sunset Review Act
It is unclear why the bill complies with the Open Government Sunset Review Act, as the Act does not apply to court records.[15] The repeal in 2018 not only repeals the amendments made by this bill but also repeals existing public records exemptions that would not otherwise generally be subject to the Open Government Sunset Review Act[16] if such Act applied to court records.

The Open Government Sunset Review Act places several requirements on many bills that would create or expand a public records 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.

Other Comments: Chapter 119, F.S.
The bill provides that certain guardianship records are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution; however, court records are not subject to chapter 119, F.S. As such, reference to s. 119.07(1), F.S., appears unnecessary, unless the exemption also applies to official records in addition to court records.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[15] Section 119.15(2)(b), F.S.
[16] *See* s. 119.15, F.S.

A bill to be entitled

An act relating to public records; amending s. 744.3701, F.S.; creating an exemption from public records requirements for records relating to the settlement of a claim on behalf of a minor or ward; authorizing a guardian ad litem, a ward, a minor, and a minor's attorney to inspect guardianship reports and court records relating to the settlement of a claim on behalf of a minor or ward, upon a showing of good cause; authorizing the court to direct disclosure and recording of an amendment to a report or court records relating to the settlement of a claim on behalf of a ward or minor, in connection with real property or for other purposes; providing for future review and repeal of the public records exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 744.3701, Florida Statutes, is amended to read:

744.3701 Confidentiality ~~Inspection of report~~.—

(1) Unless otherwise ordered by the court, upon a showing of good cause, any initial, annual, or final guardianship report or amendment thereto, or any court record relating to the settlement of a claim, is subject to inspection only by the

court, the clerk or the clerk's representative, the guardian and the guardian's attorney, the guardian ad litem with regard to the settlement of the claim, ~~and~~ the ward if he or she is at least 14 years of age and has not~~, unless he or she is a minor or has~~ been determined to be totally incapacitated, ~~and~~ the ward's attorney, the minor if he or she is at least 14 years of age, or the attorney representing the minor with regard to the minor's claim, or as otherwise provided by this chapter.

(2) The court may direct disclosure and recording of parts of an initial, annual, or final report or amendment thereto, or a court record relating to the settlement of a claim, including a petition for approval of a settlement on behalf of a ward or minor, a report of a guardian ad litem relating to a pending settlement, or an order approving a settlement on behalf of a ward or minor, in connection with any real property transaction or for such other purpose as the court allows~~, in its discretion~~.

(3) Any court record relating to the settlement of a ward's or minor's claim, including a petition for approval of a settlement on behalf of a ward or minor, a report of a guardian ad litem relating to a pending settlement, or an order approving a settlement on behalf of a ward or minor, is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and may not be disclosed except as specifically authorized.

(4) This section 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.

Section 2. The Legislature finds that it is a public necessity to keep confidential and exempt from public disclosure information contained in a settlement record which could be used to identify a minor or ward. The information contained in these records is of a sensitive, personal nature and its disclosure could jeopardize the physical safety and financial security of the minor or ward. In order to protect minors, wards, and others who could be at risk upon disclosure of a settlement, it is necessary to ensure that only those interested persons who are involved in settlement proceedings or the administration of the guardianship have access to reports and records. The Legislature finds that the court retaining discretion to direct disclosure of these records is a fair alternative to public access.

Section 3. This act shall take effect on the same date that HB 941 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 991 Pub. Rec./School District After-Drill Report
SPONSOR(S): Rodrigues
TIED BILLS: HB 989 **IDEN./SIM. BILLS:** SB 800

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-12 Subcommittee	10 Y, 0 N	Beagle	Ahearn
2) Government Operations Subcommittee		Stramski	Williamson
3) Education Committee			

SUMMARY ANALYSIS

A security system plan or portion thereof for any property owned by or leased to the state or any of its political subdivisions, or for any privately owned or leased property held by an agency, is confidential and exempt from Art. I, s. 24(a), of the State Constitution. A security system plan includes threat assessments conducted by any agency, threat response plans, emergency evacuation plans, and sheltering arrangements.

Under Florida law, each district school board is required to formulate policies and procedures for emergency response drills and actual emergencies. House Bill 989 requires each public school to submit to the district school board an after-drill report detailing each emergency evacuation drill or lockdown drill conducted by the school. The after-drill reports may include recommendations for improving lockdown procedures made by law enforcement and fire department personnel.

The bill creates a public record exemption for after-drill reports and recommendations made by law enforcement and fire department personnel.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. The bill provides a statement of public necessity as required by the State Constitution. It also provides an effective date that is contingent upon the passage of House Bill 989, or similar legislation, if adopted during the same legislative session and if such legislation becomes law.

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

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a 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 Act[2] 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 -- Security System Plans

A security system plan or portion thereof for any property owned by or leased to the state or any of its political subdivisions, or for any privately owned or leased property held by an agency,[3] is confidential and exempt[4] from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.[5]

The term "security system plan" includes all:

- Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;
- Threat assessments conducted by any agency or any private entity;
- Threat response plans;

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

[2] *See* s. 119.15, F.S.

[3] 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.

[4] 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).

[5] Section 119.071(3)(a)2., F.S.

- Emergency evacuation plans;
- Sheltering arrangements; or
- Manuals for security personnel, emergency equipment, or security training.[6]

School District Emergency Response Drills

Florida law requires each district school board to formulate policies and procedures for emergency response drills and actual emergencies. These policies must include procedures for responding to various emergencies, such as fires, natural disasters, and bomb threats. Commonly used alarm system responses for specific types of emergencies must be incorporated into such policies.[7]

House Bill 989

House Bill 989 requires each public school to conduct emergency lock-down drills with the same frequency as emergency evacuation drills, and requires each school to submit to the district school board an after-drill report detailing each emergency evacuation drill or lockdown drill conducted by the school. The after-drill reports may include recommendations for improving lockdown procedures made by law enforcement and fire department personnel.

Effect of Proposed Changes

The bill creates a public record exemption for after-drill reports of public school emergency evacuation and lockdown drills and recommendations made by participating law enforcement and fire department personnel.

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.[8]

The bill provides an effective date that is contingent upon the passage of House Bill 989, or similar legislation, if adopted during the same legislative session and if such legislation becomes law.

B. SECTION DIRECTORY:

Section 1 amends s. 1006.07, F.S., creating a public record exemption for a school district's after-drill report.

Section 2 provides a public necessity statement.

Section 3 provides an effective date that is contingent upon the passage of House Bill 989, or similar legislation, if adopted during the same legislative session and if such legislation becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

[6] Section 119.071(3)(a)1., F.S

[7] Section 1006.07(4)(a), F.S. Additionally, district school boards must establish model emergency management and preparedness procedures for weapon-use and hostage situations; hazardous materials or toxic chemical spills; weather emergencies, including hurricanes, tornadoes, and severe storms; and exposure resulting from manmade emergencies. Section 1006.07(4)(b), F.S.

[8] Article 1, Sec. 24(c), FLA. CONST.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a minimal fiscal impact on school districts, because staff responsible for complying with public record requests could require training related to creation of the public record exemption. In addition, those school districts could incur costs associated with redacting the 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 school district.

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:

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

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

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 for after-drill reports of public school emergency evacuation and lockdown drills and recommendations made by law enforcement and fire department personnel. 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:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Current law provides a public record exemption for a security system plan or portion thereof for any property owned by or leased to the state or any of its political subdivisions, or for any privately owned or leased property held by an agency. Security system plans include, in part, threat assessments

conducted by any agency or any private entity, threat response plans, and emergency evacuation plans. It would appear that the public record exemption provided in current law would also protect a school district's after-drill report and recommendations from participating law enforcement officers or fire officials. As such, the exemption created by this bill could appear redundant and unnecessary.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to public records; amending s. 1006.07, F.S.; exempting from public records requirements a school district's after-drill report that summarizes the emergency drills of each school in the district and the recommendations from participating law enforcement officers or fire officials; providing for future repeal and legislative review of the exemption under the Open Government Sunset Review Act; 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 (7) is added to section 1006.07, Florida Statutes, to read:

1006.07 District school board duties relating to student discipline and school safety.—The district school board shall provide for the proper accounting for all students, for the attendance and control of students at school, and for proper attention to health, safety, and other matters relating to the welfare of students, including:

(7) AFTER-DRILL REPORTS.—A school district's after-drill report and the recommendations from participating law enforcement officers or fire officials are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October

CODING: Words stricken are deletions; words underlined are additions.

2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that information contained in a school district's after-drill report and the recommendations from participating law enforcement officers or fire officials be made exempt from public records requirements. While educating students is a school district's primary focus, each school district must also protect its students along with its employees and faculty members at each school. In light of the tragic events at Sandy Hook Elementary School in Newtown, Connecticut, where 20 students and six adults were killed on December 14, 2012, and at Columbine High School in Columbine, Colorado, where 12 students and one teacher were murdered and an additional 21 students were injured on April 20, 1999, school districts in this state are keenly aware that the safety and security of students, employees, and faculty members is of paramount concern. The information contained in an after-drill report and the recommendations from participating law enforcement officers or fire officials regarding a school's conducted emergency drills and the school's strengths and weaknesses in conducting those drills is information that could be used by a person who intends harm, possibly deadly harm, against the school's students, employees, and faculty members. Failing to exempt this information from public records requirements could expose a school's safety measures to a person who means ill will or is mentally unstable and could hamper the school's efforts to keep its students, employees, and faculty members safe and secure.

Accordingly, the Legislature finds that the harm to a school's students, employees, and faculty members which would result from the release of the school district's after-drill report and the recommendations from participating law enforcement officers or fire officials substantially outweighs any public benefit derived from disclosure to the public.

Section 3. This act shall take effect on the same date that HB 989 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1017 State Procurement
SPONSOR(S): Fresen
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

Current law requires each state agency, university, college, school district, or other political subdivision of this state to award a preference to Florida-based businesses for the purchase of personal property and services, including printing services, through competitive solicitation, when the lowest responsible and responsive bid, proposal, or reply is by a vendor whose principal place of business is another state, or political subdivision of that state. However, uniform in-state preferences are not provided for all state purchasing.

The bill creates a uniform local business preference for state procurement for goods or contractual services, including construction services. The bill defines "local business" for purposes of evaluating state procurements and awarding in-state preferences to local businesses. The bill creates a preference procedure that permits both the out-of-state and in-state vendors to submit their best and final bid.

The bill provides that the preference does not apply if such preference is prohibited by law, the procurement is designated for small business; it is an emergency, or it is a sole source procurement.

The bill may have an indeterminate fiscal impact on state government. *See* Fiscal Comments section for further discussion.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Procurement of Commodities and Services

Chapter 287, F.S., regulates state agency[1] procurement of personal property and services. The Department of Management Services (DMS) is responsible for overseeing state purchasing activity, including professional and construction services, as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.[2] DMS establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.[3]

Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which include:[4]

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

For contracts for commodities or services in excess of $35,000, agencies must utilize a competitive solicitation process.[5] Section 287.012(6), F.S., provides that competitive solicitation means "the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement."

Local governmental units are not subject to the provisions of chapter 287, F.S.

Florida In-state Preference

State agencies, universities, colleges, school districts, and other political subdivisions are required to grant a preference in the award for contracts for the purchase of personal property, when competitive solicitation is required and when the lowest responsible and responsive bid, proposal, or reply is by a vendor whose principal place of business is in another state, or political subdivision of that state.[6] The preference is mandatory and is utilized by the procuring entity to award a preference to the lowest responsible and responsive vendor having a principal place of business in this state. The preference awarded is the same preference provided by the out-of-state bidder's home state.

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[1] Section 287.012(1), F.S., defines agency as "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. 'Agency' does not include the university and college boards of trustees or the state universities and colleges."

[2] *See* ss. 287.032 and 287.042, F.S.

[3] *Id.*

[4] *See ss.* 287.012(6) and 287.057, F.S.

[5] Section 287.057(1), F.S., requires all projects that exceed the Category Two ($35,000) threshold contained in s. 287.017, F.S., to be competitively bid.

[6] Section 287.084(1)(a), F.S.

If the lowest responsible and responsive bid, proposal, or reply is by a vendor whose principal place of business is another state, or political subdivision of that state, and that state does not award a preference for in-state vendors, state agencies, universities, colleges, school districts, and other political subdivisions must award a 5 percent preference to Florida based vendors.[7]

A vendor whose principal place of business is outside of this state must submit with the bid, proposal, or reply documents a written opinion of an attorney at law licensed to practice law in that foreign state as to the preferences, if any, granted by the law of that state to a business entity whose principal place of business is in that foreign state.[8]

Florida's preference law does not apply to transportation projects for which federal aid funds are available,[9] or to counties or cities.[10] It also does not apply in the award of contracts for the purchase of construction services.

Procurement of Construction Services

Chapter 255, F.S., specifies the procedures to be followed in the procurement of construction services for public property and publicly-owned buildings. DMS is responsible for establishing by rule the following:[11]

- Procedures for determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of bids for building construction contracts;
- Procedures for awarding each state agency construction project to the lowest qualified bidder;
- Procedures to govern negotiations for construction contracts and contract modifications when such negotiations are determined to be in the best interest of the state; and
- Procedures for entering into performance-based contracts for the development of public facilities those contracts are determined to be in the best interest of the state.

State contracts for construction projects that are projected to cost in excess of $200,000 must be competitively bid.[12] Counties, municipalities, special districts, or other political subdivisions seeking to construct or improve a public building must competitively bid the project if the projected cost is in excess of $300,000.[13]

Section 255.0525, F.S., requires the solicitation of competitive bids or proposals for any state construction project that is projected to cost more than $200,000 to be publicly advertised in the Florida Administrative Weekly[14] at least 21 days prior to the established bid opening. If the construction project is projected to exceed $500,000, the advertisement must be published at least 30 days prior to the bid opening in the Florida Administrative Weekly, and at least once 30 days prior to the bid opening in a newspaper of general circulation in the county where the project is located.[15]

Florida Preference to State Residents

Florida law provides a preference for the employment of state residents in construction contracts funded by money appropriated with state funds. Such contracts must contain a provision requiring the contractor to give preference to the employment of state residents in the performance of the work if

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[7] *Id.*
[8] Section 287.084(2), F.S.
[9] Section 287.084(1)(b), F.S.
[10] Section 287.084(1)(c), F.S.
[11] Section 255.29, F.S.
[12] *See* chapters 60D-5.002 and 60D-5.0073, F.A.C.; *see also* s. 255.0525, F.S.
[13] *See* s. 255.20(1), F.S. For electrical work, local governments must competitively bid projects estimated to cost more than $75,000.
[14] The Florida Administrative Weekly was renamed the Florida Administrative Register during the 2012 Session. Chapter 2012-63, L.O.F.
[15] For counties, municipalities, and political subdivisions, similar publishing provisions apply. Section 255.0525(2), F.S.

state residents have substantially equal qualifications[16] to those of non-residents.[17] If a construction contract is funded by local funds, the contract may contain such a provision.[18] In addition, the contractor required to employ state residents must contact the Department of Economic Opportunity to post the contractor's employment needs in the state's job bank system.[19]

Florida Department of Transportation

The Florida Department of Transportation (FDOT) Central Procurement Office is responsible for acquiring professional consulting services, contractual services, and commodities related to the state highway systems. FDOT procures road and bridge construction materials and services, and other products or services related to the maintenance of roads, bridges or other transportation facilities, as well as supplies and services that support FDOT. FDOT purchasing is governed by chapters 283 and 287, F.S., and the rules adopted by DMS. However, the FDOT may purchase parts and repairs valued at up to the threshold amount provided for Category Two ($35,000) for the repair of mobile road maintenance equipment, marine vessels, permanent vehicle scales, and mechanical and electrical equipment for movable bridges, toll facilities including the Florida Turnpike, and up to the threshold amount for Category Three ($65,000) for treatment plans and lift stations for water and sewage and major heating and cooling systems without receiving competitive solicitations.

If FDOT determines that an emergency exists in regard to the purchase of materials, machinery, tools, equipment, or supplies, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interests of the state, the provisions for competitive bidding do not apply and FDOT may authorize or purchase such materials, machinery, tools, equipment, or supplies without giving opportunity for competitive bidding thereon. Within 10 days after such determination and purchase, FDOT must notify DMS as to the conditions and circumstances constituting such emergency.[20] When FDOT advertises for bids for supplies, materials, equipment, or other items needed by FDOT, specifications must be drafted in such manner as will afford adequate protection to the state as to quality and performance, but specifications must not be drafted in any manner that will preclude competition in bidding.[21]

Chapter 337, F.S., contains other requirements and provisions specifically related to FDOT contracting, which includes efforts to encourage awarding contracts to disadvantaged business enterprises[22] and requirements for prequalification and certification in specified circumstances.[23]

Public Printing

Chapter 283, F.S., governs public printing and applies to all agencies. Section 283.33, F.S., provides that publications may be printed in-house or may be purchased on bid, whichever is more economical or practicable. All printing of publications purchased by agencies that cost in excess of the threshold for Category Two ($35,000) must be competitively procured and the agency must award the contract to the vendor that submits the lowest responsive bid and that will furnish all materials used in printing.

Florida Preference

Current law provides that when agencies award a contract to have materials printed, the agency, university, college, school district, or other political subdivision of this state must grant a preference to the lowest responsible and responsive vendor having a principal place of business within this state. The preference must be 5 percent if the lowest bid is submitted by a vendor whose principal place of

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[16] Section 255.099(1)(a), F.S., defines substantially equal qualifications as the "qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are better suited for the position than the qualifications held by the other person or persons."

[17] Section 255.099(1), F.S.

[18] *Id.*

[19] Section 255.099(1)(b), F.S.

[20] Section 337.02(2), F.S.

[21] Section 337.02(3), F.S.

[22] Section 337.139, F.S.

[23] Section 337.14, F.S.

business is outside the state and if the printing can be performed in this state at a level of quality comparable to that obtainable from the vendor submitting the lowest bid outside the state. This preference does not apply to counties or municipalities.[24]

Effect of the Bill

The bill creates a uniform local business preference for state procurement for goods or contractual services, including construction services.

The bill defines the term "local business" to mean a business entity of which:

- At least 60 percent of the individuals who collectively own the business reside in the state.
- The business's principal place of business has been located in the state for at least one year. Principal place of business means a fully operational office at which the majority of the business's employees and principals are located.
- At least 60 percent of the business's employees reside in the state at the time of contract award.

The bill requires the state to evaluate each procurement before advertisement to determine whether a local preference is appropriate. The entity must evaluate the availability of local businesses to provide the goods or contractual services, including construction services. When the state makes an evaluation and identifies an opportunity to utilize a local preference, the state must give preference as follows:

- In a low bid procurement, when a business that is not a local business is the lowest responsive bidder and the bid of the local business is not more than 10 percent above the lowest bid or, in the alternative the actual dollar bid is not more than the established dollar threshold for that particular procurement above the lowest bid, preference must be given to the local business by offering the local business and the nonlocal business that was the lowest responsive bidder an opportunity to submit a best and final bid equal to or lower than the amount of the lowest bid.
- The contract award must be made to the bidder submitting the lowest best and final bid. In the case of a tie, the contract must be awarded to the local business.
- A business that intentionally misrepresents its qualifications as a local business in a proposal or bid loses the privilege to claim local preference status for a period of two years.

The bill provides that the preference does not apply if such preference is prohibited by law, the procurement is designated for small business, it is an emergency, or it is a sole source procurement.

B. SECTION DIRECTORY:

Section 1. creates an unnumbered section of law that defines the term "local business"; provides preference for local businesses in state contracting for goods and contractual services, including construction services; provides for applicability.

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:

   See Fiscal Comments.

[24] Section 283.35, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill could result in more business being awarded to in-state vendors as a result of the state preference.

D. FISCAL COMMENTS:

The bill may have an unknown fiscal impact on the state government. The bill may have a positive effect as the state government may experience decreased expenditures with the possibility of vendors submitting best and final offers that are at or below the low bid.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

Equal Protection Clause
The United States Constitution provides that "[n]o State shall...deny to any person within its jurisdiction the equal protection of the laws." The expansion of the in-state preference provisions in this bill may constitute an equal protection violation. If such legislation is challenged, the court would use a rational basis test to determine the constitutionality of the alleged discriminatory treatment. Under the rational basis test, a court must uphold a state statute so long as the classification bears a rational relationship to a legitimate state interest.

Commerce Clause
The United States Constitution provides that Congress shall have the power to "regulate commerce...among the states." The Commerce Clause acts not only as a positive grant of powers to Congress, but also as a negative constraint upon the states. When a state or local government is acting as a "market participant" rather than a "market regulator," it is not subject to the limitations of the Commerce Clause. A state is considered to be a "market participant" when it is acting as an economic actor such as a purchaser of goods and services.

B. RULE-MAKING AUTHORITY:

The bill does not provide for rulemaking; however, rulemaking may be necessary for purposes of implementing the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Conflicting Preference Provisions
The bill creates a new standardized local business preference in an unnumbered section of law. It appears that the preference must be applied to all competitive solicitation procedures. However,

current law already provides for mandatory in-state preferences in certain circumstances. The bill does not repeal the current preferences and could create confusion regarding applicability.

Drafting Issues

On line 34 of the bill, "businesses" should be singular.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to state procurement; defining the term "local business"; providing preference for local businesses in state contracting for goods and contractual services, including construction services; providing for applicability; providing an effective date.

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

Section 1. (1) As used in this section, the term "local business" means a business entity of which:

(a) At least 60 percent of the individuals who collectively own the business reside in the state.

(b) The business's principal place of business has been located in the state for at least 1 year. For purposes of this subsection, the term "principal place of business" means a fully operational office at which the majority of the business's employees and principals are located.

(c) At least 60 percent of the business's employees reside in the state at the time of contract award.

(2)(a) Every state procurement shall be evaluated before advertisement to determine whether a local preference is appropriate. The factors to be considered in such evaluation include, but are not limited to, the availability of local businesses to provide the goods or contractual services, including construction services.

(b) When the state makes a procurement for goods or

contractual services, including construction services, and identifies an opportunity to afford a local preference, the state shall give preference to a local business as follows:

1. In a low bid procurement, when a business that is not a local business is the lowest responsive bidder and the bid of a local businesses is no more than 10 percent above the lowest bid or, in the alternative the actual dollar bid is no more than the established dollar threshold for that particular procurement above the lowest bid, preference shall be given to the local business by offering the local business and the nonlocal business that was the lowest responsive bidder an opportunity to submit a best and final bid equal to or lower than the amount of the lowest bid.

2. The contract award shall be made to the bidder submitting the lowest best and final bid. In the case of a tie in the best and final bid between the local business and the nonlocal business, the contract award shall be made to the local business.

(3) A business that intentionally misrepresents its qualifications as a local business in a proposal or bid submitted to the state shall lose the privilege to claim local preference status for a period of 2 years.

(4) This section does not apply to a procurement if:

(a) Such preference is prohibited by law.

(b) The procurement is designated for small business.

(c) It is an emergency procurement.

(d) It is a sole source procurement.

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1017 (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	_____

Committee/Subcommittee hearing bill: Government Operations Subcommittee

Representative Fresen offered the following:

Amendment

Remove line 34 and insert:

local business is no more than 10 percent above the lowest bid

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1115 Pub. Rec./Dental Workforce Surveys
SPONSOR(S): Williams
TIED BILLS: **IDEN./SIM. BILLS:** SB 1066

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	12 Y, 0 N	Holt	O'Callaghan
2) Government Operations Subcommittee		JS Stramski	Williamson
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill creates a public record exemption for all personal identifying information contained in records provided by dentists or dental hygienists in response to dental workforce surveys and held by the Department of Health. Such information must be disclosed:

- With the express written consent of the individual, to whom the information pertains, or the individual's legally authorized representative.
- By court order upon a showing of good cause.
- To a research entity, provided certain requirements are met.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution, and provides an effective date of upon becoming a 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 public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

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

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[2] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

Workforce Surveys

In 2009, the Department of Health (DOH) developed a workforce survey for dentists and dental hygienists to complete on a voluntary basis in conjunction with the biennial renewal of dental licenses.[3] Of the 11,272 dentists who renewed an active license by June 23, 2010, 89 percent responded to the voluntary survey.[4]

Responses to the survey are self-reported. The survey was designed to obtain information unavailable elsewhere on key workforce characteristics in order to better inform and shape public healthcare policy. Specifically, the survey consists of 25 core questions on demographics, education and training, practice characteristics and status, specialties, retention, and access to oral healthcare in Florida.[5]

Unlike dentists and dental hygienists, physicians are statutorily required to respond to physician workforce surveys as a condition of license renewal.[6] All personal identifying information contained in records provided by physicians in response to these workforce surveys is confidential and exempt under s. 458.3193, F.S., concerning allopathic physicians, and s. 459.0083, F.S., concerning osteopathic physicians.

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[1] Section 24(c), Art. I of the State Constitution.
[2] Section 119.15, F.S.
[3] Section 466.013(2), F.S., authorizes DOH to adopt rules for the biennial renewal of licenses.
[4] Florida Department of Health , *Report on the 2009-2010 Workforce Survey of Dentists*, March 2011, at 11, http://www.doh.state.fl.us/Family/dental/OralHealthcareWorkforce/2009_2010_Workforce_Survey_Dentists_Report.pdf (last visited March 15, 2013).
[5] *Id.*
[6] Section 381.4018, F.S. Language requiring the submission of physician workforce surveys for license renewal can be found in s. 458.3191, F.S., for allopathic physicians, and s. 459.0081, F.S., for osteopathic physicians.

Effect of the Bill

The bill provides that all personal identifying information contained in records provided by dentists or dental hygienists licensed under ch. 466, F.S., in response to dental workforce surveys and held by DOH is confidential and exempt[7] from public records requirements. Such information must be disclosed:

- With the express written consent of the individual, to whom the information pertains, or the individual's legally authorized representative;
- By court order upon a showing of good cause; or
- To a research entity, if the entity seeks the record or data pursuant to a research protocol approved by DOH.

The research entity must maintain the records or data in accordance with the approved research protocol, and enter into a purchase and data-use agreement with DOH. The agreement must restrict the release of information that would identify individuals, limit the use of records or data to the approved research protocol, and prohibit any other use of the records or data. Copies of records or data remain the property of DOH.

DOH is authorized to deny a research entity's request if the protocol provides for intrusive follow-back contacts, does not plan for the destruction of confidential records after the research is concluded, is administratively burdensome, or does not have scientific merit.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.[8]

B. SECTION DIRECTORY:

Section 1 creates an unnumbered section of law that creates a public record exemption for personal identifying information of dentists or dental hygienists contained in a response to a dental workforce survey.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

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

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

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a minimal fiscal impact on DOH, because staff responsible for complying with public record requests could require training related to expansion of the public record exemption. In addition, DOH 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 affect county or municipal governments.

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 limited to the personal identifying information of dentists and dental hygienists who respond to dental workforce surveys. 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:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Voluntary Survey

The Department of Health developed a workforce survey for dentists and dental hygienists to complete on a voluntary basis in conjunction with the biennial renewal of dental licenses. However, it is unclear if there is any statutory authority for the creation of such survey.

Other Comments: Retroactive Application

The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively.[9] The bill does not contain a provision requiring retroactive application. As such, the public record exemption would only apply prospectively.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[9] *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

A bill to be entitled

An act relating to public records; providing an exemption from public records requirements for information contained in dental workforce surveys submitted by dentists or dental hygienists to the Department of Health; providing exceptions to the exemption; providing for future legislative 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. Confidentiality of certain information contained in dental workforce surveys.—

(1) All personal identifying information contained in records provided by dentists or dental hygienists licensed under chapter 466, Florida Statutes, in response to dental workforce surveys and held by the Department of Health is confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution, except such information shall be disclosed:

(a) With the express written consent of the individual to whom the information pertains or the individual's legally authorized representative.

(b) By court order upon a showing of good cause.

(c) To a research entity, if the entity seeks the records or data pursuant to a research protocol approved by the

Department of Health, maintains the records or data in accordance with the approved protocol, and enters into a purchase and data-use agreement with the department, the fee provisions of which are consistent with s. 119.07(4), Florida Statutes. The department may deny a request for records or data if the protocol provides for intrusive follow-back contacts, does not plan for the destruction of confidential records after the research is concluded, is administratively burdensome, or does not have scientific merit. The agreement must restrict the release of information that would identify individuals, limit the use of records or data to the approved research protocol, and prohibit any other use of the records or data. Copies of records or data issued pursuant to this paragraph remain the property of the department.

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

Section 2. The Legislature finds that it is a public necessity that personal identifying information concerning a dentist or dental hygienist licensed under chapter 466, Florida Statutes, who responds to a dental workforce survey be made confidential and exempt from disclosure. Candid and honest responses by licensed dentists or dental hygienists to the workforce survey will ensure that timely and accurate information is available to the Department of Health. The Legislature finds that the failure to maintain the confidentiality of such personal identifying information would

prevent the resolution of important state interests to ensure the availability of dentists or dental hygienists in this state.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1145 State-Owned or State-Leased Space
SPONSOR(S): La Rosa
TIED BILLS: **IDEN./SIM. BILLS:** SB 1074

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

SUMMARY ANALYSIS

The bill addresses various inventory, sales, lease, and reporting requirements applicable to state-owned and state-leased property. The bill:

- Revises reporting requirements applicable to the annual inventory of state-owned facilities.
- Requires the Division of State Lands in the Department of Environmental Protection (DEP) to consider a comparable sales analysis or a broker's opinion of value, as opposed to an appraisal, when determining the sale price of lands determined to be surplus if such property has an estimated value of $500,000 or less.
- Provides and revises various reporting and notice requirements applicable to surplus property.
- Requires state agencies, state universities, and Florida colleges to submit a business plan for the proposed use of a building or parcel determined to be surplus.
- Defines terms.
- Modifies requirements applicable to notices relating to the occupation of state-owned and state-leased facilities.
- Authorizes the Department of Management Services (DMS) to direct a state agency to occupy or relocate to space in any state-owned office building.
- Permits DMS to implement renovations or construction that more efficiently use state-owned buildings, if authorized by law.
- Requires DMS to include the strategic leasing plan in the annual master leasing report, and directs DMS to submit the report by October 1 of each year.
- Requires the leasing report to contain recommendations for using capital improvement funds to implement the consolidation of state agencies into state-owned office buildings.
- Requires DMS to procure services of tenant brokers, and provides when a state agency may or must use the services of a tenant broker.
- Decreases the size of a lease that triggers a competitive bid requirement from 5,000 square feet to 2,000 square feet.
- Revises the size threshold for the applicability of certain notice and procedural requirements for state leases from 5,000 square feet to 2,000 square feet.
- Subjects the Department of Transportation to DMS' leasing procedures as established by rule.
- Removes the authorization for an agency to negotiate a replacement lease with the lessor if that agency determines that it is in its best interest to remain in the space it currently occupies.
- Authorizes DMS to approve emergency acquisition of space without competitive bids under certain conditions.
- Revises energy performance analysis requirements.
- Authorizes DMS to charge fees directly to state employees for the use of parking facilities.

The bill may have an indeterminate fiscal impact on state agencies.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Inventory of Facilities and Real Property

Background

State-owned and State-leased Facilities
Current law requires the Department of Management Services (DMS) to develop and maintain an automated inventory of all facilities[1] owned, leased, rented, or otherwise occupied or maintained by any agency of the state, the judicial branch, or the water management districts. DMS must use the data for determining maintenance needs and conducting strategic analyses.[2]

For assessing needed repairs and renovations of facilities, DMS must update its inventory with condition information for facilities of 3,000 square feet or more, and the inventories must record acquisitions of new facilities and significant changes in existing facilities as they occur. DMS must provide each agency and the judicial branch with the most recent inventory applicable to that agency or to the judicial branch.[3]

Each agency and the judicial branch must report significant changes in the inventory as they occur. Items relating to the condition and life-cycle cost of a facility must be updated at least every five years.[4] DMS must publish a complete report detailing this inventory every three years, and must publish an annual update of the report.[5]

State-owned Real Property
In 2010, the Legislature required the Department of Environmental Protection (DEP) to create, administer, and maintain a comprehensive system for all state lands and real property leased, owned, rented, and otherwise occupied or maintained by any state agency, by the judicial branch, and by any water management district.[6] The comprehensive state-owned real property system must allow the Board of Trustees of the Internal Improvement Trust Fund to perform its statutory responsibilities and the Division of State Lands in DEP to conduct strategic analyses and prepare annual valuation and disposition analyses and recommendations for all state real property assets.[7]

The division must annually submit a report that lists the state-owned real property recommended for disposition, including a report by DMS of surplus buildings recommended for disposition. The report must include specific information that documents the valuation and analysis process used to identify the specific state-owned real property recommended for disposition.[8]

DEP and DMS are implementing the Florida State Owned Lands and Records Information System, designed with two main components:

- Facility Information Tracking System (FITS); and
- Lands Information Tracking System (LITS).

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[1] Section 216.0152(1), F.S., defines the term "facility" to mean buildings, structures, and building systems, but does not include transportations facilities of the state transportation system.
[2] Section 216.0152(1), F.S.
[3] Section 216.0152(2), F.S.
[4] *Id.*
[5] Section 216.0152(3), F.S.
[6] Chapter 2010-280, L.O.F.; codified as s. 216.0153, F.S.
[7] Section 216.0153(1), F.S.
[8] Section 216.0153(3), F.S.

The FITS component is now operational and is designed to give agencies an online interface to record data on state-owned facilities, as well as provide the mechanism for agencies' annual identification and reporting of properties that are candidates for disposition.[9]

Effect of the Bill
The bill revises s. 216.0152, F.S., to require:

- By July 1 of each year, the Department of Transportation to provide its inventory of the transportation facilities of the state transportation system to DMS and DEP.
- By July 1 of each year, the Board of Governors of the State University System and DEP to provide to DMS an inventory of all state university and community college facilities.
- By October 1 of each year, DMS and DEP to publish a complete report of the inventory of all state-owned facilities, including the inventories of the Board of Governors, the Department of Education, and the Department of Transportation, excluding the transportation facilities of the state transportation system. The report must include the report on state-owned real property recommended for disposition.

The bill clarifies that deeds may be signed by agents of the Board of Trustees of the Internal Improvement Trust Fund.

Surplus of State-Owned Lands

Background
The Board of Trustees of the Internal Improvement Trust Fund (board) is authorized and directed to administer all state-owned lands. The board is responsible for the creation of an overall and comprehensive plan of development concerning the acquisition, management, and disposition of state-owned lands so as to ensure maximum benefit and use.[10]

The board must determine which lands, the title to which is vested in the board, may be surplused.[11] The sale price of land determined to be surplus must be determined by DEP's Division of State Lands (division) and must take into consideration an appraisal if the property if the estimated value is over $100,000. At the discretion of the division, a second appraisal may be required if the value is determined to be equal or greater than $1 million. All property less than $100,000 may be valued by a comparable sales analysis or a broker's opinion of value.[12]

Before a building or parcel of land is offered for lease, sublease, or sale to a local or federal unit of government or a private party, it must first be offered for lease to state agencies, state universities, and community colleges, with a priority consideration given to state universities and community colleges. Once a state agency, county, or local government has requested the use of surplus property, it has six months to secure the property under lease.[13]

Effect of the Bill
The bill requires the division to consider a comparable sales analysis or a broker's opinion of value, as opposed to an appraisal, when determining the sale price of lands determined to be surplus if such

[9] Information available at: http://www.dms.myflorida.com/business_operations/real_estate_development_management/facilities_management/facilities_inventory_tracking_system_fits (last visited March 23, 2013).
[10] Section 253.03(7)(a), F.S.
[11] For conservation lands, the board must make a determination that the lands are no longer needed for conservation purposes and may dispose of them by an affirmative vote of at least three members. In the case of a land exchange involving the disposition of conservation lands, the board must determine by an affirmative vote of at least three members that the exchange will result in a net positive conservation benefit. For all other lands, the board must make a determination that the lands are no longer needed and may dispose of them by an affirmative vote of at least three members. Section 253.034(6), F.S.
[12] Section 253.034(6)(g), F.S.
[13] Section 253.03(15), F.S.

property has an estimated value of $500,000 or less, instead of $100,000 or less. It permits the division to obtain a second appraisal regardless of the value of the surplus property.

The bill requires parcels with a market value of over $500,000 to initially be offered for sale by competitive bid. Parcels that are not sold by competitive bid, and parcels with a market value of $500,000 or less, may be sold by any reasonable means, including through real estate services, auction, negotiated direct sales, or other appropriate services.

The bill decreases the time a state agency, county, or local government has to secure surplus property under lease from six months to 90 days after being notified that it may use such property.

Before a building or parcel of land is offered for lease, sublease, or sale to a local or federal unit of government or a private party, it must first be offered for lease to state agencies, state universities, and Florida colleges. The bill makes the offer for lease contingent upon the submission of a business plan, within 60 days after the offer, for the proposed use of the building or parcel. The business plan must, at a minimum, include the proposed use, the cost of renovation, the replacement cost for a new building for the same proposed use, a capital improvement plan for the building, evidence that the building or parcel meets an existing need that cannot be otherwise met, and other criteria developed by DEP rule. The business plan must be submitted for review and approval by the board or its designee regarding the intended use of the building or parcel of land before approval of a lease. The board or its designee must compare the appraised value of the building or parcel to any submitted business plan for proposed use of the building or parcel to determine if the transfer or sale is in the best interest of the state.

State Agency Leasing

Background

Leasing and DMS Authority
Current law provides the statutory authority for DMS to manage and operate the Florida Facilities Pool and specifies the oversight role DMS has in the leasing of privately owned space.[14]

A state agency may not lease a building unless prior approval of the lease conditions and the need is provided by DMS.[15] For a lease of less than 5,000 square feet, a state agency must notify DMS at least 30 days before the execution of the lease. DMS must review the lease and determine whether suitable space is available in a state-owned building located in the same geographic region.[16]

Except for emergency space needs,[17] no state agency may enter into a lease as lessee for the use of 5,000 square feet or more of space in a privately owned building except upon advertisement for and receipt of competitive solicitations.[18] While DMS is responsible for prior approval of lease terms for leases over 5,000 square feet, the lease is executed between the landlord and the agency.

Current law requires DMS to promulgate rules to provide procedures for: soliciting and accepting competitive proposals for leased space of 5,000 square feet or more in privately owned buildings; evaluating the proposals received; exempting from competitive bidding requirements any lease for

[14] *See* ss. 255.248-255.25, F.S.
[15] Section 255.25(2)(a), F.S.
[16] Section 255.25(2)(b), F.S.
[17] Section 255.25(10), F.S., provides that DMS may approve emergency acquisition of space without competitive bids if existing state-owned or state-leased space is destroyed or rendered uninhabitable by an act of God, fire, malicious destruction, or structural failure, or by legal action, if the chief administrator of the state agency or designated representative certifies that no other agency-controlled space is available to meet this emergency need, but in no case shall the lease for such space exceed 11 months.
[18] Section 255.25(3)(a), F.S. The size at which a leased space must be competitively bid was raised in 1990 from 2,000 square feet to 3,000 square feet by s. 3, chapter 90-224, L.O.F., and raised in 1999 to 5,000 square feet by s. 22, chapter 99-399, L.O.F.

which the purpose is the provision of care and living space for persons or emergency space needs as; and securing at least three documented quotes for a lease that is not required to be competitively bid.[19]

In 2007, the Legislature granted DMS the authority to contract for a tenant broker or real estate consultant to assist with carrying out its responsibilities and required DMS to submit an annual master leasing report to the Legislature. The report must contain analyses and other information on the status of state-owned facilities and private sector leased space. To assist DMS in preparing the report, state agencies must provide projected requirements for leased space based on active and planned full-time employee data, lease-expiration schedules for each geographic region of the state, and opportunities for consolidating operations, as well as costs relating to occupancy and relocation.[20]

Legislative Direction on Leased Space

In 2009, the Legislature directed DMS to compile a list of all state-owned surplus real property that has a value greater than $1,000 in order to determine potential cost savings and revenue opportunities from the sale or lease of assets, identify current contracts for leased office space in which the leased space is not fully used or occupied, and include a plan for contract renegotiation or subletting unoccupied space.[21] DMS subsequently reported[22] the following regarding space leased by state agencies:

- There are 566 private leases with 1.3 million square feet in potential excess space.
- More than 500,000 square feet of potential excess space is in Leon County.
- There are 276 leases with potential excess space with terms of 24 months or less.
- Eighty percent of the leases have less than 2,500 square feet of potential excess space.

In 2011, DMS was directed to use the services of a tenant broker to renegotiate all leases over 150,000 square feet,[23] and report to the Legislative Budget Commission the projected savings, implementation costs, and recommendations for leases to terminate.

In 2012, DMS and other agencies were directed to use tenant broker services to renegotiate or reprocure all private lease agreements expiring between July 1, 2013, and June 30, 2015, in order to achieve a reduction in costs in future years.[24] DMS incorporated this initiative into its 2012 Master Leasing Report and used tenant broker services to explore the possibilities of co-location, to review the space needs of each agency, and to review the length and terms of potential renewals or renegotiations. DMS was directed to provide a report by March 1, 2013, which lists each lease contract for private office or storage space, the status of renegotiations, and the savings achieved. According to the Lease Renegotiation Stats Report released by DMS,[25] renegotiations since July 1, 2011, have resulted in a projected reduction in lease costs of $25.1 million and a net reduction of 709,296 square feet for fiscal years 2011-12 and 2012-13.

Energy Performance and Reporting

The "Florida Energy Conservation and Sustainable Buildings Act"[26] creates duties for agencies and DMS with regards to energy efficiency in buildings leased and owned by the state.

Section 255.252(4), F.S., encourages agencies to consider shared savings financing of energy-efficiency and conservation projects, using contracts that split the resulting savings for a specified period of time between the state and the vendor. Such energy contracts may be funded from the operating budget.

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[19] Section 255.249(4), F.S.
[20] Section 255.249(3), F.S.
[21] Chapter 2009-15, L.O.F.
[22] DMS' Interim Report to the Legislature, *State of Florida Surplus Real Estate and Private Lease Renegotiation Plan*, March 3, 2009.
[23] Section 76, Chapter 2011-47, L.O.F.
[24] Section 23, Chapter 2012-119, L.O.F.
[25] *Supra.* at Fn. 9.
[26] Sections 255.251-255.2575, F.S.

Section 255.254, F.S., requires DMS to evaluate life-cycle costs based on sustainable building ratings for all leased or newly constructed facilities. Agencies must perform an energy performance analysis for all leased facilities larger than 5,000 square feet. The energy performance analysis must project forward through the term of the proposed lease the annual energy consumption and cost of the major energy-consuming systems and the analysis must be based on actual expenses. Potential leases may only be made where there is a showing that the energy costs incurred by the state are minimal compared to available like facilities. A lease agreement for any building leased by the state from a private sector entity must include provisions for monthly energy use data to be collected and submitted monthly to DMS by the owner of the building.

Section 255.257, F.S., requires all agencies to collect energy consumption and cost data for all state-owned and metered state-leased facilities of 5,000 square feet and larger, and report all such data to DMS.

Consultants' Competitive Negotiation Act

The Consultants' Competitive Negotiation Act (CCNA)[27] is used by public entities for the acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services in construction, rehabilitation, or renovation activities. The CCNA must be used when professional services on a project for which the basic cost of construction, as estimated by the agency, will exceed $325,000, or for planning or study activity where compensation exceeds $35,000. The CCNA process generally involves a competitive selection process, in which compensation is not considered, followed by a competitive negotiation process, during which compensation is determined.

Effect of the Bill

As used in ss. 255.248-255.25, F.S., the bill defines the terms:

- "Managing agency" as an agency that serves as the title entity or that leases property from the Board of Trustees of the Internal Improvement Trust Fund for the operation and maintenance of a state-owned office building; and
- "Tenant broker" as a private real estate broker or brokerage firm licensed to do business in this state and under contract with the department to provide real estate transaction, portfolio management, and strategic planning services for state agencies.

The bill requires an agency that intends to terminate a lease of privately owned space before the expiration of its base term to notify DMS 90 days before termination.

DMS may direct a state agency to occupy or relocate to space in any state-owned office building, including all state-owned space identified in the Florida State-Owned Lands and Records Information System managed by DEP.

The bill authorizes DMS to implement renovations or construction that more efficiently use state-owned buildings, if expressly authorized by the General Appropriations Act and if such renovations or construction are in the best interest of the state. Such use of tenant-improvement funds applies only to state-owned buildings, and all expenditures must be reported by DMS in the master leasing report.

The bill requires DMS to include the strategic leasing plan in the annual master leasing report, and directs DMS to submit the report to the Executive Office of the Governor and the Legislature by October 1 of each year instead of September 15. DMS must include in the leasing report recommendations for using capital improvement funds to consolidate state agencies into state-owned office buildings.

For purposes of complying with the annual reporting requirements in current law, the bill allows a state agency to use the services of a tenant broker when preparing information that must be furnished to DMS such as agency programs that affect the need for or use of space by that agency, reviews of

[27] Section 287.055, F.S.

lease-expiration schedules for each geographic area, active and planned full-time equivalent data, and business case analyses related to consolidation plans by an agency.

The bill also requires a title entity or managing agency to report to DMS any vacant or underutilized space for all state-owned office buildings and any restrictions that apply to any other agency occupying the vacant or underutilized space. The title entity or managing agency must notify DMS of any significant changes to its occupancy for the coming fiscal year.

The bill revises DMS' rulemaking authority to allow it to provide for procedures for soliciting and accepting competitive solicitations for leased space of 2,000 square feet or more, address state agency use of space identified in the Florida State-Owned Lands and Records Information System, develop a method of certification that all criteria for the leasing of property of less than 2,000 square feet have been complied with, and establish procedures for the effective and efficient administration of s. 255.249, F.S.

A state agency must notify DMS at least 90 days before the execution of a lease for less than 2,000 square feet of space, including space leased for nominal or no consideration. Previously, a state agency had to provide such notice 30 days in advance for leases of less than 5,000 square feet. DMS must determine if suitable space is available in a state-owned or state-leased building in the same geographic region. If DMS determines that the lease is not in the best interests of the state, it must notify in writing the agency proposing the lease, the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The bill subjects the Department of Transportation to DMS's leasing procedures as established by rule.

The bill decreases the size of a state agency lease that triggers a competitive bid requirement from 5,000 square feet to 2,000 square feet, and revises the size threshold for the applicability of certain notice and procedural requirements for state leases from 5,000 square feet to 2,000 square feet.

The bill decreases the size of a lease DMS can approve for a period of more than 12 months from 5,000 square feet to 2,000 square feet. The bill authorizes DMS to approve an extension of no more than 11 months for an existing lease of 2,000 square feet or more if such an extension is determined to be in the best interest of the state.

In leases of 2,000 square feet or more (a change from 5,000 square feet), agencies and lessors must agree to the cost of tenant improvements before the effective date of the lease.

The bill removes the authorization for an agency to negotiate a replacement lease with the lessor if that agency determines that it is in its best interest to remain in the space it currently occupies.

The bill requires DMS to procure term contracts for tenant broker services. DMS may contract with multiple tenant brokers for such services. In addition, agencies must use the services of a tenant broker to assist with a lease action undertaken by the agency, with the exception of leases between governmental entities.

The bill requires a lessor to provide DMS with documentation that a facility meets all uniform firesafety standards of the State Fire Marshall, and prohibits the state from taking occupancy without the Division of the State Fire Marshall's final approval.

The bill provides that s. 255.25, F.S., applies to leases for nominal or no consideration.

The bill authorizes DMS to approve emergency acquisition of space without competitive bids if an agency head certifies in writing that there is an immediate danger to the public health, safety, or welfare, or if other substantial loss to the state requires emergency action, and if the chief administrator of the state agency or the chief administrator's designated representative certifies in writing that no

other agency-controlled space is available to meet this emergency need. Such lease may not exceed 11 months.

The bill provides that a vendor for an energy contract may be selected in accordance with s. 287.055, F.S., which is the Consultants' Competitive Negotiation Act.

The bill requires that an energy performance analysis that calculates the total annual energy consumption and energy costs be performed for leased facilities larger than 2,000 square feet. The analysis must also compare the energy performance of the proposed lease to similar facilities. A lease may not be finalized until the energy performance analysis has been approved by DMS. The bill removes the requirement of a showing that that the energy costs incurred by the state are minimal compared to available like facilities. The bill repeals the requirement that a lease agreement for any building leased by the state from a private sector entity must include provisions for monthly energy use data to be collected and submitted monthly to DMS by the owner of the building.

The bill requires each state agency to collect data on energy consumption and cost for each state-owned and state-leased facility.

The bill authorizes DMS to charge fees directly to state employees for the use of parking facilities and to pledge rentals or charges for such facilities for the improvement, repair, maintenance, and operation of such facilities, or to finance the acquisition of facilities pursuant to the provisions of this act.

Effective Date

The bill provides an effective date of July 1, 2013, except as otherwise expressly provided in the bill.

B. SECTION DIRECTORY:

Section 1 amends s. 216.0152, F.S., revising provisions relating to the update of an inventory of certain facilities needing repairs or innovation maintained by DMS and revising provisions relating to a report detailing an inventory of state-owned facilities

Section 2 amends s. 253.031, F.S., clarifying that deeds may be signed by agents of the Board of Trustees of the Internal Improvement Trust Fund.

Section 3 amends s. 253.034, F.S., revising provisions relating to decisions by the board to surplus lands, revising the valuation of lands that are subject to certain requirements and requiring state entities to submit a business plan if a building or parcel is offered for use to the entity.

Section 4 amends s. 255.248, F.S., defining the terms "managing agency" and "tenant broker".

Section 5 amends s. 255.249, F.S., revising the responsibilities of DMS with respect to state-owned buildings, prohibiting a state agency from leasing space in a private building under certain circumstances, requiring an agency to notify DMS of an early termination of a lease within a certain timeframe, authorizing the department to direct state agencies to occupy space in a state-owned building, authorizing DMS to implement renovations in order to more efficiently use state-owned buildings, revising the contents of the master leasing report, authorizing state agencies to use the services of a tenant broker to provide certain information to DMS, requiring the title entity or managing agency to report any vacant or underutilized space to the department, and authorizing DMS to adopt additional rules.

Section 6 amends s. 255.25, F.S., reducing the amount of square feet which an agency may lease without DMS approval, deleting an exemption that allows an agency to negotiate a replacement lease under certain circumstances, and requiring a state agency to use a tenant broker to assist with lease actions.

Section 7 amends s. 255.252, F.S., specifying that a vendor for certain energy efficiency contracts must be selected in accordance with state procurement requirements.

Section 8 amends s. 255.254, F.S., revising provisions relating to requirements for energy performance analysis for certain buildings.

Section 9 amends s. 255.257, F.S., requiring all state-owned facilities to report energy consumption and cost data.

Section 10 amends s. 255.503, F.S., authorizing DMS to charge state employees fees for the use of parking facilities.

Section 11 amends s. 110.171, F.S., conforming cross-references.

Section 12 amends s. 985.682, F.S., conforming cross-references.

Section 13 provides an effective date of July 1, 2013, unless otherwise specified in the bill.

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:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may increase state agency business for tenant brokers.

D. FISCAL COMMENTS:

The bill could create an indeterminate fiscal impact on the state. Greater coordination and efficiency of state agency leasing activities could result in cost savings.

Lowering the size threshold for the requirement that leases be competitively bid from 5,000 square feet to 2,000 square feet may result in cost savings if more economical leases are located. However, agencies could incur increased costs associated with an increase in the number of competitive procurements that would be required as a result in the decrease of the threshold.

In addition, agencies may incur additional costs associated with the requirement to use a tenant broker to assist with a lease action undertaken by 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 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:

The bill provides rulemaking authority to DEP to develop criteria that must be included in the business plan required by s. 253.034(15), F.S.

The bill revises DMS' rulemaking authority under s. 255.249, F.S., to allow it to provide for procedures for soliciting and accepting competitive solicitations for leased space of 2,000 square feet or more, address state agency use of space identified in the Florida State-Owned Lands and Records Information System, develop a method of certification that all criteria for the leasing of property of less than 2,000 square feet have been complied with, and to establish procedures for the effective and efficient administration of s. 255.249, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments:
The bill authorizes DMS to direct a state agency to occupy, or relocate to, space in any state-owned office building, including all state-owned space identified in the Florida State-Owned Lands and Records Information System managed by DEP. It is unclear what standards, if any, would apply to DMS issuing such a direction.

Drafting Issues:
"Lease action" is not defined in the bill. It is therefore unclear precisely when the requirement that an agency use a tenant broker would apply.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to state-owned or state-leased space; amending s. 216.0152, F.S.; revising provisions relating to the update of an inventory of certain facilities needing repairs or innovation maintained by the Department of Management Services; revising provisions relating to a report detailing an inventory of state-owned facilities; amending s. 253.031, F.S.; clarifying that deeds may be signed by agents of the Board of Trustees of the Internal Improvement Trust Fund; amending s. 253.034, F.S.; revising provisions relating to decisions by the board to surplus lands; revising the valuation of lands that are subject to certain requirements; requiring state entities to submit a business plan if a building or parcel is offered for use to the entity; amending s. 255.248, F.S.; defining the terms "managing agency" and "tenant broker"; amending s. 255.249, F.S.; revising the responsibilities of the Department of Management Services with respect to state-owned buildings; prohibiting a state agency from leasing space in a private building under certain circumstances; requiring an agency to notify the department of an early termination of a lease within a certain timeframe; authorizing the department to direct state agencies to occupy space in a state-owned building; authorizing the department to implement renovations in order to more efficiently use state-owned buildings;

revising the contents of the master leasing report; authorizing state agencies to use the services of a tenant broker to provide certain information to the department; requiring the title entity or managing agency to report any vacant or underutilized space to the department; authorizing the department to adopt additional rules; amending s. 255.25, F.S.; reducing the amount of square feet which an agency may lease without department approval; deleting an exemption that allows an agency to negotiate a replacement lease under certain circumstances; requiring a state agency to use a tenant broker to assist with lease actions; amending s. 255.252, F.S.; specifying that a vendor for certain energy efficiency contracts must be selected in accordance with state procurement requirements; amending s. 255.254, F.S.; revising provisions relating to requirements for energy performance analysis for certain buildings; amending 255.257, F.S.; requiring all state-owned facilities to report energy consumption and cost data; amending s. 255.503, F.S.; authorizing the department to charge state employees fees for the use of parking facilities; amending ss. 110.171 and 985.682, F.S.; conforming cross-references; providing effective dates.

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

Section 1. Section 216.0152, Florida Statutes, is amended to read:

216.0152 Inventory of state-owned facilities or state-occupied facilities.—

(1) The Department of Management Services shall develop and maintain an automated inventory of all facilities owned, leased, rented, or otherwise occupied or maintained by a state ~~any~~ agency ~~of the state~~, the judicial branch, or the water management districts. The inventory data shall be provided annually by July 1 by the owning or operating agency in a format prescribed by the department and must ~~shall~~ include the location, occupying agency, ownership, size, condition assessment, valuations, operating costs, maintenance record, age, parking and employee facilities, building uses, full-time equivalent occupancy, known restrictions or historic designations, leases or subleases, associated revenues, and other information as required by ~~in a~~ rule adopted by the department. The department shall use this data for determining maintenance needs, conducting strategic analyses, including, but not limited to, analyzing and identifying candidates for surplus, valuation, and disposition, and life-cycle cost evaluations of the facility. ~~Inventory data shall be provided to the department on or before July 1 of each year by the owning or operating agency in a format prescribed by the department.~~ The inventory need not include a condition assessment or maintenance record of facilities not owned by a state agency, the judicial branch, or a water management district. The term "facility," as used in this section, means buildings, structures, and building

systems, but does not include transportation facilities of the state transportation system.

(a) For reporting purposes, the Department of Transportation shall develop and maintain an inventory of the transportation facilities of the state transportation system and, by July 1 of each year, provide this inventory to the Department of Management Services and the Department of Environmental Protection. The Department of Transportation shall also identify and dispose of surplus property pursuant to ss. 337.25 and 339.04.

(b) The Board of Governors of the State University System and the Department of Education, respectively, shall develop and maintain an inventory, in the manner prescribed by the Department of Management Services, of all state university and community college facilities and, by July 1 of each year, provide this inventory ~~shall make the~~ data ~~available~~ in a format acceptable to the Department of Management Services. ~~By March 15, 2011, the department shall adopt rules pursuant to ss. 120.536 and 120.54 to administer this section.~~

~~(2) For the purpose of assessing needed repairs and renovations of facilities, the Department of Management Services shall update its inventory with condition information for facilities of 3,000 square feet or more and cause to be updated the other inventories required by subsection (1) at least once every 5 years, but the inventories shall record acquisitions of new facilities and significant changes in existing facilities as they occur. The Department of Management Services shall provide each agency and the judicial branch with the most recent~~

~~inventory applicable to that agency or to the judicial branch. Each agency and the judicial branch shall, in the manner prescribed by the Department of Management Services, report significant changes in the inventory as they occur. Items relating to the condition and life-cycle cost of a facility shall be updated at least every 5 years.~~

(2)~~(3)~~ The Department of Management Services and the Department of Environmental Protection shall, by October 1 of each year, ~~every 3 years,~~ publish a complete report detailing the ~~this~~ inventory of all state-owned facilities, including the inventories of the Board of Governors of the State University System, the Department of Education, and the Department of Transportation, excluding the transportation facilities of the state transportation system. The annual report of state-owned real property recommended for disposition required under s. 216.0153 must be included in this report ~~and shall publish an annual update of the report. The department shall furnish the updated report to the Executive Office of the Governor and the Legislature no later than September 15 of each year~~.

(3) The Department of Management Services shall adopt rules to administer this section.

Section 2. Subsection (8) of section 253.031, Florida Statutes, is amended to read:

253.031 Land office; custody of documents concerning land; moneys; plats.—

(8) The board shall keep a suitable seal of office. An impression of this seal shall be made upon the deeds conveying lands sold by the state, by the Board of Education, and by the

Board of Trustees of the Internal Improvement Trust Fund of this state; and all such deeds shall be ~~personally~~ signed by the ~~officers or~~ trustees or their agents as authorized under s. 253.431, making the same and impressed with the ~~said~~ seal and are ~~shall be~~ operative and valid without witnesses to the execution thereof; and the impression of such seal on any such deeds entitles ~~shall entitle~~ the same to record and to be received in evidence in all courts.

Section 3. Subsections (6) and (15) of section 253.034, Florida Statutes, are amended to read:

253.034 State-owned lands; uses.—

(6) The Board of Trustees of the Internal Improvement Trust Fund shall determine which lands, the title to which is vested in the board, may be surplused. For conservation lands, the board shall determine whether ~~make a determination that~~ the lands are no longer needed for conservation purposes and may dispose of them by an affirmative vote of at least three members. In the case of a land exchange involving the disposition of conservation lands, the board must determine by an affirmative vote of at least three members that the exchange will result in a net positive conservation benefit. For all other lands, the board shall determine whether ~~make a determination that~~ the lands are no longer needed and may dispose of them by an affirmative vote of at least three members.

(a) For the purposes of this subsection, all lands acquired by the state before ~~prior to~~ July 1, 1999, using proceeds from ~~the~~ Preservation 2000 bonds, the Conservation and

Recreation Lands Trust Fund, the Water Management Lands Trust Fund, Environmentally Endangered Lands Program, and the Save Our Coast Program and titled to the board~~,~~ which ~~lands~~ are identified as core parcels or within original project boundaries are~~, shall be~~ deemed to have been acquired for conservation purposes.

(b) For any lands purchased by the state on or after July 1, 1999, before ~~a determination shall be made by the board prior to~~ acquisition, the board must determine which ~~as to those~~ parcels must ~~that shall~~ be designated as having been acquired for conservation purposes. ~~No~~ Lands acquired for use by the Department of Corrections, the Department of Management Services for use as state offices, the Department of Transportation, except those specifically managed for conservation or recreation purposes, or the State University System or the Florida Community College System may not ~~shall~~ be designated as having been purchased for conservation purposes.

(c) At least every 10 years, as a component of each land management plan or land use plan and in a form and manner prescribed by rule by the board, each manager shall evaluate and indicate to the board those lands that are not being used for the purpose for which they were originally leased. For conservation lands, the council shall review and ~~shall~~ recommend to the board whether such lands should be retained in public ownership or disposed of by the board. For nonconservation lands, the division shall review such lands and ~~shall~~ recommend to the board whether such lands should be retained in public ownership or disposed of by the board.

(d) Lands owned by the board which are not actively managed by any state agency or for which a land management plan has not been completed pursuant to subsection (5) must ~~shall~~ be reviewed by the council or its successor for its recommendation as to whether such lands should be disposed of by the board.

(e) Before ~~Prior to~~ any decision by the board to surplus lands, the Acquisition and Restoration Council shall review and make recommendations to the board concerning the request for surplusing. The council shall determine whether the request for surplusing is compatible with the resource values of and management objectives for such lands.

(f) In reviewing lands owned by the board, the council shall consider whether such lands would be more appropriately owned or managed by the county or other unit of local government in which the land is located. The council shall recommend to the board whether a sale, lease, or other conveyance to a local government would be in the best interests of the state and local government. The provisions of this paragraph in no way limit the provisions of ss. 253.111 and 253.115. Such lands shall be offered to the state, county, or local government for a period of 45 days. Permittable uses for such surplus lands may include public schools; public libraries; fire or law enforcement substations; governmental, judicial, or recreational centers; and affordable housing meeting the criteria of s. 420.0004(3). County or local government requests for surplus lands shall be expedited throughout the surplusing process. If the county or local government does not elect to purchase such lands in accordance with s. 253.111, ~~then~~ any surplusing determination

involving other governmental agencies shall be made when ~~upon~~ the board decides ~~deciding~~ the best public use of the lands. Surplus properties in which governmental agencies have expressed no interest must ~~shall~~ then be available for sale on the private market.

(g)~~1.~~ The sale price of lands determined to be surplus pursuant to this subsection and s. 253.82 shall be determined by the division, which shall consider ~~and shall take into consideration~~ an appraisal of the property, or, if ~~when~~ the estimated value of the land is $500,000 or less ~~than $100,000~~, a comparable sales analysis or a broker's opinion of value. ~~If the appraisal referenced in this paragraph yields a value equal to or greater than $1 million,~~ The division~~, in its sole discretion,~~ may require a second appraisal. The individual or entity that requests ~~requesting~~ to purchase the surplus parcel shall pay all ~~appraisal~~ costs associated with determining the property's value, if any.

1.~~2.a.~~ A written valuation of land determined to be surplus pursuant to this subsection and s. 253.82, and related documents used to form the valuation or which pertain to the valuation, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

a.~~b.~~ The exemption expires 2 weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the board.

b.~~c.~~ Before ~~Prior to~~ expiration of the exemption, the division may disclose confidential and exempt appraisals, valuations, or valuation information regarding surplus land:

(I) During negotiations for the sale or exchange of the land.

(II) During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land to facilitate closure of such effort or process.

(III) When the passage of time has made the conclusions of value invalid.

(IV) When negotiations or marketing efforts concerning the land are concluded.

2.~~3.~~ A unit of government that acquires title to lands hereunder for less than appraised value may not sell or transfer title to all or any portion of the lands to any private owner for ~~a period of~~ 10 years. Any unit of government seeking to transfer or sell lands pursuant to this paragraph must ~~shall~~ first allow the board of trustees to reacquire such lands for the price at which the board sold such lands.

(h) Parcels with a market value over $500,000 must be initially offered for sale by competitive bid. The division may use agents, as authorized by s. 253.431, for this process. Any parcels unsuccessfully offered for sale by competitive bid, and parcels with a market value of $500,000 or less, may be sold by any reasonable means, including procuring real estate services, open or exclusive listings, competitive bid, auction, negotiated direct sales, or other appropriate services, to facilitate the sale.

(i)~~(h)~~ After reviewing the recommendations of the council, the board shall determine whether lands identified for surplus are to be held for other public purposes or ~~whether such lands~~

are no longer needed. The board may require an agency to release its interest in such lands. A state ~~For an~~ agency, county, or local government that has requested the use of a property that was to be declared as surplus, ~~said agency~~ must secure ~~have~~ the property under lease within 90 days after being notified that it may use such property ~~6 months of the date of expiration of the notice provisions required under this subsection and s. 253.111~~.

(j) ~~(i)~~ Requests for surplusing may be made by any public or private entity or person. All requests shall be submitted to the lead managing agency for review and recommendation to the council or its successor. Lead managing agencies ~~shall~~ have 90 days to review such requests and make recommendations. Any surplusing requests that have not been acted upon within the 90-day time period shall be immediately scheduled for hearing at the next regularly scheduled meeting of the council or its successor. Requests for surplusing pursuant to this paragraph are ~~shall~~ not ~~be~~ required to be offered to local or state governments as provided in paragraph (f).

(k) ~~(j)~~ Proceeds from any sale of surplus lands pursuant to this subsection shall be deposited into the fund from which such lands were acquired. However, if the fund from which the lands were originally acquired no longer exists, such proceeds shall be deposited into an appropriate account to be used for land management by the lead managing agency assigned the lands before ~~prior to~~ the lands were ~~being~~ declared surplus. Funds received from the sale of surplus nonconservation lands, or lands that were acquired by gift, by donation, or for no consideration, shall be deposited into the Internal Improvement Trust Fund.

(l) ~~(k)~~ Notwithstanding ~~the provisions of~~ this subsection, ~~no~~ such disposition of land may not ~~shall~~ be made if it ~~such disposition~~ would have the effect of causing all or any portion of the interest on any revenue bonds issued to lose the exclusion from gross income for federal income tax purposes.

(m) ~~(l)~~ The sale of filled, formerly submerged land that does not exceed 5 acres in area is not subject to review by the council or its successor.

(n) ~~(m)~~ The board may adopt rules to administer ~~implement the provisions of~~ this section~~,~~ which may include procedures for administering surplus land requests and criteria for when the division may approve requests to surplus nonconservation lands on behalf of the board.

(15) Before a building or parcel of land is offered for lease, sublease, or sale to a local or federal unit of government or a private party, it must ~~shall~~ first be offered for lease to state agencies, state universities, and community colleges, contingent upon the submission of a business plan for the proposed use of the building or parcel. Within 60 days after the offer of a surplus building or parcel, a state agency, state university, or Florida College System institution that requests the transfer of a surplus building or parcel must develop and submit a business plan for the proposed use of the building or parcel. The business plan must, at a minimum, include the proposed use, the cost of renovation, the replacement cost for a new building for the same proposed use, a capital improvement plan for the building, evidence that the building or parcel meets an existing need that cannot be otherwise met, and other

criteria developed by rule by the department ~~with priority consideration given to state universities and community colleges~~. A state agency, university, or Florida College System institution shall ~~community college must~~ submit its business ~~a~~ plan for review and approval by the Board of Trustees of the Internal Improvement Trust Fund or its designee regarding the intended use of the building or parcel of land before approval of a lease. The board or its designee shall compare the appraised value of the building or parcel to any submitted business plan for proposed use of the building or parcel to determine if the transfer or sale is in the best interest of the state.

Section 4. Section 255.248, Florida Statutes, is amended to read:

255.248 Definitions~~; ss. 255.249 and 255.25~~.~~—~~As used in this section and ss. 255.249-255.25 ~~255.249 and 255.25~~, the term:

(1) "Best leasing value" means the highest overall value to the state based on objective factors that include, but are not limited to, rental rate, renewal rate, operational and maintenance costs, tenant-improvement allowance, location, lease term, condition of facility, landlord responsibility, amenities, and parking.

(2) "Competitive solicitation" means an invitation to bid, a request for proposals, or an invitation to negotiate.

(3) "Department" means the Department of Management Services.

(4) "Managing agency" means an agency that serves as the

title entity or that leases property from the Board of Trustees of the Internal Improvement Trust Fund for the operation and maintenance of a state-owned office building.

(5) ~~(4)~~ "Privately owned building" means any building not owned by a governmental agency.

(6) ~~(5)~~ "Responsible lessor" means a lessor that ~~who~~ has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance.

(7) ~~(6)~~ "Responsive bid," "responsive proposal," or "responsive reply" means a bid or proposal, or reply submitted by a responsive and responsible lessor, which conforms in all material respects to the solicitation.

(8) ~~(7)~~ "Responsive lessor" means a lessor that has submitted a bid, proposal, or reply that conforms in all material respects to the solicitation.

(9) ~~(8)~~ "State-owned office building" means any building whose title ~~to which~~ is vested in the state and which is used by one or more executive agencies predominantly for administrative direction and support functions. The ~~This~~ term excludes:

(a) District or area offices established for field operations where law enforcement, military, inspections, road operations, or tourist welcoming functions are performed.

(b) All educational facilities and institutions under the supervision of the Department of Education.

(c) All custodial facilities and institutions used primarily for the care, custody, or treatment of wards of the state.

(d) Buildings or spaces used for legislative activities.

(e) Buildings purchased or constructed from agricultural or citrus trust funds.

(10) "Tenant broker" means a private real estate broker or brokerage firm licensed to do business in this state and under contract with the department to provide real estate transaction, portfolio management, and strategic planning services for state agencies.

Section 5. Section 255.249, Florida Statutes, is amended to read:

255.249 Department of Management Services; responsibility; department rules.—

(1) The department shall have responsibility and authority for the operation, custodial care, ~~and~~ preventive maintenance, repair, alteration, modification, and allocation of space for ~~of~~ all buildings in the Florida Facilities Pool and adjacent ~~the~~ grounds ~~located adjacent thereto~~.

(2) A state agency may not lease space in a private building that is to be constructed for state use without first obtaining prior approval of the architectural design and preliminary construction from the department.

(3) ~~(2)~~ The department shall require a ~~any~~ state agency planning to terminate a lease for the purpose of occupying space in a new state-owned office building~~, the funds for which are appropriated after June 30, 2000,~~ to state why the proposed relocation is in the best interest of the state.

(4) ~~(3)(a)~~ An agency that intends to terminate a lease of privately owned space before the expiration of its base term,

must notify the department 90 days before the termination. The department shall, to the extent feasible, coordinate the vacation of privately owned leased space with the expiration of the lease on that space and, when a lease is terminated before expiration of its base term, will make a reasonable effort to place another state agency in the space vacated. A ~~Any~~ state agency may lease the space in any building that was subject to a lease terminated by a state agency for a period of time equal to the remainder of the base term without ~~the requirement of~~ competitive solicitation.

(5) The department may direct a state agency to occupy, or relocate to, space in any state-owned office building, including all state-owned space identified in the Florida State-Owned Lands and Records Information System managed by the Department of Environmental Protection.

(6) If expressly authorized by the General Appropriations Act and in the best interest of the state, the department may implement renovations or construction that more efficiently use state-owned buildings. Such use of tenant-improvement funds applies only to state-owned buildings, and all expenditures must be reported by the department in the master leasing report identified in subsection (8).

(7)~~(b)~~ The department shall develop and implement a strategic leasing plan. The strategic leasing plan must ~~shall~~ forecast space needs for all state agencies and identify opportunities for reducing costs through consolidation, relocation, reconfiguration, capital investment, and the renovation, building, or acquisition of state-owned space.

(8)~~(c)~~ The department shall annually publish a master leasing report that includes the strategic leasing plan created under subsection (7). The department shall annually submit ~~furnish~~ the ~~master~~ leasing report to the Executive Office of the Governor and the Legislature by October 1. The report must provide ~~September 15 of each year which provides the following information~~:

(a)~~1.~~ A list, by agency and by geographic market, of all leases that are due to expire within 24 months.

(b)~~2.~~ Details of each lease, including location, size, cost per leased square foot, lease-expiration date, and a determination of whether sufficient state-owned office space will be available at the expiration of the lease to accommodate affected employees.

(c)~~3.~~ A list of amendments and supplements to and waivers of terms and conditions in lease agreements that have been approved pursuant to s. 255.25(2)~~(a)~~ during the previous 12 months and an associated comprehensive analysis, including financial implications, showing that any amendment, supplement, or waiver is in the state's long-term best interest.

(d)~~4.~~ Financial impacts to the Florida Facilities Pool rental rate due to the sale, removal, acquisition, or construction of pool facilities.

(e)~~5.~~ Changes in occupancy rate, maintenance costs, and efficiency costs of leases in the state portfolio. Changes to occupancy costs in leased space by market and changes to space consumption by agency and by market.

(f)~~6.~~ An analysis of portfolio supply and demand.

(g) ~~7.~~ Cost-benefit analyses of acquisition, build, and consolidation opportunities, recommendations for strategic consolidation, and strategic recommendations for disposition, acquisition, and building.

(h) Recommendations for using capital improvement funds to implement the consolidation of state agencies into state-owned office buildings.

(i) ~~8.~~ The updated plan required by s. 255.25(4)(c).

(9) ~~(d)~~ Annually, by June 30: ~~of each year,~~

(a) Each state agency shall ~~annually~~ provide to the department all information regarding agency programs affecting the need for or use of space by that agency, reviews of lease-expiration schedules for each geographic area, active and planned full-time equivalent data, business case analyses related to consolidation plans by an agency, a telework program under s. 110.171, and current occupancy and relocation costs, inclusive of furnishings, fixtures and equipment, data, and communications. State agencies may use the services of a tenant broker in preparing this information.

(b) The title entity or managing agency shall report to the department any vacant or underutilized space for all state-owned office buildings and any restrictions that apply to any other agency occupying the vacant or underutilized space. The title entity or managing agency shall also notify the department of any significant changes to its occupancy for the coming fiscal year.

(10) ~~(4)~~ The department shall adopt rules ~~pursuant to chapter 120~~ providing:

(a) Methods for accomplishing the duties outlined in subsection (1).

(b) Procedures for soliciting and accepting competitive solicitations for leased space of 2,000 ~~5,000~~ square feet or more in privately owned buildings, for evaluating ~~the~~ proposals received, for exemption from competitive solicitations requirements of any lease for ~~the purpose of which is~~ the provision of care and living space for persons or emergency space needs as provided in s. 255.25(10), and for ~~the~~ securing ~~of~~ at least three documented quotes for a lease that is not required to be competitively solicited.

(c) A standard method for determining square footage or any other measurement used as the basis for lease payments or other charges.

(d) Methods of allocating space in both state-owned office buildings and privately owned buildings leased by the state based on use, personnel, and office equipment.

(e)~~1.~~ Acceptable terms and conditions for inclusion in lease agreements.

~~2.~~ At a minimum, such terms and conditions must ~~shall~~ include~~, at a minimum,~~ the following clauses, which may not be amended, supplemented, or waived:

1.~~a.~~ As provided in s. 255.2502, "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."

2.~~b.~~ "The lessee has ~~shall have~~ the right to terminate this lease, without penalty, if ~~this lease in the event~~ a state-owned building becomes available to the lessee for occupancy and

the lessee has given ~~upon giving~~ 6 months' advance written notice to the lessor by certified mail, return receipt requested."

(f) State agency use of space identified in the Florida State-Owned Lands and Records Information System under subsection (5) ~~Maximum rental rates, by geographic areas or by county, for leasing privately owned space~~.

(g) A standard method for the assessment of rent to state agencies and other authorized occupants of state-owned office space, notwithstanding the source of funds.

(h) For full disclosure of the names and the extent of interest of the owners holding a 4 percent ~~4-percent~~ or more interest in ~~any~~ privately owned property leased to the state or in the entity holding title to the property, for exemption from such disclosure of any beneficial interest that ~~which~~ is represented by stock in a ~~any~~ corporation registered with the Securities and Exchange Commission or registered pursuant to chapter 517~~,~~ which ~~stock~~ is for sale to the general public, and for exemption from such disclosure of any leasehold interest in property located outside the territorial boundaries of the United States.

(i) For full disclosure of the names of all public officials, agents, or employees holding any interest in any privately owned property leased to the state or in the entity holding title to the property, and the nature and extent of their interest, for exemption from such disclosure of any beneficial interest that ~~which~~ is represented by stock in any corporation registered with the Securities and Exchange

Commission or registered pursuant to chapter 517~~,~~ which ~~stock~~ is for sale to the general public, and for exemption from such disclosure of any leasehold interest in property located outside the territorial boundaries of the United States.

(j) A method for reporting leases for nominal or no consideration.

(k) For a lease of less than 2,000 ~~5,000~~ square feet, a method for certification by the agency head or the agency head's designated representative that all criteria for leasing have been fully complied with and for ~~the~~ filing ~~of~~ a copy of such lease and all supporting documents with the department for its review and approval as to technical sufficiency and whether it is in the best interests of the state.

(l) A standardized format for state agency reporting of the information required by paragraph (9)(a) ~~(3)(d)~~.

(m) Procedures for the effective and efficient administration of this section.

(11)~~(5)~~ The department shall prepare a form listing all conditions and requirements adopted pursuant to this chapter which must be met by any state agency leasing any building or part thereof. Before executing any lease, this form must ~~shall~~ be certified by the agency head or the agency head's designated representative and submitted to the department.

(12)~~(6)~~ The department may contract for real estate consulting or tenant brokerage services in order to carry out its duties relating to the strategic leasing plan under subsection (7). The contract must ~~shall~~ be procured pursuant to s. 287.057. The vendor ~~that is~~ awarded the contract shall be

compensated ~~by the department,~~ subject to the provisions of the contract, and such compensation is subject to appropriation by the Legislature. A ~~The~~ real estate consultant or tenant broker may not receive compensation directly from a lessor for services that are rendered pursuant to the contract. Moneys paid by a lessor to the department under a facility-leasing arrangement are not subject to the charges imposed under s. 215.20.

Section 6. Section 255.25, Florida Statutes, is amended to read:

255.25 Approval required before ~~prior to~~ construction or lease of buildings.—

(1) ~~(a) A state agency may not lease space in a private building that is to be constructed for state use unless prior approval of the architectural design and preliminary construction plans is first obtained from the department.~~

~~(b)~~ During the term of existing leases, each agency shall consult with the department regarding opportunities for consolidation, use of state-owned space, build-to-suit space, and potential acquisitions; shall monitor market conditions; and shall initiate a competitive solicitation or, if appropriate, lease-renewal negotiations for each lease held in the private sector to effect the best overall lease terms reasonably available to that agency.

(a) Amendments to leases may be permitted to modify any lease provisions or ~~any~~ other terms or conditions unless~~, except to the extent~~ specifically prohibited under ~~by~~ this chapter.

(b) The department shall serve as a mediator in lease-renewal negotiations if the agency and the lessor are unable to

reach a compromise within 6 months after renegotiation and if ~~either~~ the agency or lessor requests intervention by the department.

(c) If ~~When specifically~~ authorized by the General Appropriations Act, and in accordance with s. 255.2501, if applicable, the department may approve a lease-purchase, sale-leaseback, or tax-exempt leveraged lease contract or other financing technique for the acquisition, renovation, or construction of a state fixed capital outlay project if ~~when~~ it is in the best interest of the state.

(2)~~(a)~~ Except as provided in ss. 255.249 and ~~s.~~ 255.2501, a state agency may not lease a building or any part thereof unless prior approval of the lease conditions and of the need for the lease ~~therefor~~ is first obtained from the department. An ~~Any~~ approved lease may include an option to purchase or an option to renew the lease, or both, upon such terms and conditions as are established by the department, subject to final approval by the head of the department ~~of Management Services~~ and s. 255.2502.

(a)~~(b)~~ For the lease of less than 2,000 ~~5,000~~ square feet of space, including space leased for nominal or no consideration, a state agency must notify the department at least 90 ~~30~~ days before the execution of the lease. The department shall review the lease and determine whether suitable space is available in a state-owned or state-leased building located in the same geographic region. If the department determines that space is not available, the department shall determine whether the state agency lease is in the best

interests of the state. If the department determines that the execution of the lease is not in the best interests of the state, the department shall notify the agency proposing the lease, the Governor, the President of the Senate, and the Speaker of the House of Representatives ~~and the presiding officers of each house of the Legislature~~ of such finding in writing. A lease that is for a term extending beyond the end of a fiscal year is subject to ~~the provisions of~~ ss. 216.311, 255.2502, and 255.2503.

(b) ~~(c)~~ The department shall adopt ~~as a rule~~ uniform leasing procedures by rule for use by each state agency ~~other than the Department of Transportation~~. Each state agency shall ensure that the leasing practices of that agency are in substantial compliance with the uniform leasing rules adopted under this section and ss. 255.249, 255.2502, and 255.2503.

(c) ~~(d) Notwithstanding paragraph (a) and except as provided in ss. 255.249 and 255.2501, a state agency may not lease a building or any part thereof unless prior approval of the lease terms and conditions and of the need therefor is first obtained from the department.~~ The department may not approve any term or condition in a lease agreement which has been amended, supplemented, or waived unless a comprehensive analysis, including financial implications, demonstrates that such amendment, supplement, or waiver is in the state's long-term best interest. An ~~Any~~ approved lease may include an option to purchase or an option to renew the lease, or both, upon such terms and conditions as are established by the department, subject to final approval by the head of the department, ~~of~~

~~Management Services~~ and the provisions of s. 255.2502.

(3)(a) Except as provided in subsection (10), a state agency may not enter into a lease as lessee for the use of 2,000 ~~5,000~~ square feet or more of space in a privately owned building except upon advertisement for and receipt of competitive solicitations.

1.a. An invitation to bid must ~~shall~~ be made available simultaneously to all lessors and ~~must~~ include a detailed description of the space sought; the time and date for the receipt of bids and of the public opening; and all contractual terms and conditions applicable to the procurement, including the criteria to be used in determining the acceptability of the bid. If the agency contemplates renewing ~~renewal of~~ the contract, that fact must be stated in the invitation to bid. The bid must include the price for each year for which the contract may be renewed. Evaluation of bids must ~~shall~~ include consideration of the total cost for each year as submitted by the lessor. Criteria that were not set forth in the invitation to bid may not be used in determining the acceptability of the bid.

b. The contract shall be awarded with reasonable promptness by written notice to the responsible and responsive lessor that submits the lowest responsive bid. The contract file must contain a written determination that the bid meets ~~This bid must be determined in writing to meet~~ the requirements and criteria set forth in the invitation to bid.

2.a. If an agency determines in writing that the use of an invitation to bid is not practicable, leased space shall be

procured by competitive sealed proposals. A request for proposals shall be made available simultaneously to all lessors and must include a statement of the space sought; the time and date for the receipt of proposals and of the public opening; and all contractual terms and conditions applicable to the procurement, including the criteria, which must include, but need not be limited to, price, to be used in determining the acceptability of the proposal. The relative importance of price and other evaluation criteria must ~~shall~~ be indicated. If the agency contemplates renewing ~~renewal of~~ the contract, that fact must be stated in the request for proposals. The proposal must include the price for each year for which the contract may be renewed. Evaluation of proposals must ~~shall~~ include consideration of the total cost for each year as submitted by the lessor.

b. The contract shall be awarded to the responsible and responsive lessor whose proposal is determined in writing to be the most advantageous to the state, taking into consideration the price and the other criteria set forth in the request for proposals. The contract file must contain documentation supporting the basis on which the award is made.

3.a. If the agency determines in writing that the use of an invitation to bid or a request for proposals will not result in the best leasing value to the state, the agency may procure leased space by competitive sealed replies. The agency's written determination must specify reasons ~~that explain~~ why negotiation may be necessary in order for the state to achieve the best leasing value and must be approved in writing by the agency head

or his or her designee before ~~prior to the~~ advertisement of an invitation to negotiate. Cost savings related to the agency procurement process are not sufficient justification for using an invitation to negotiate. An invitation to negotiate shall be made available to all lessors simultaneously and must include a statement of the space sought; the time and date for the receipt of replies and of the public opening; and all terms and conditions applicable to the procurement, including the criteria to be used in determining the acceptability of the reply. If the agency contemplates renewing ~~renewal of~~ the contract, that fact must be stated in the invitation to negotiate. The reply must include the price for each year for which the contract may be renewed.

b. The agency shall evaluate and rank responsive replies against all evaluation criteria set forth in the invitation to negotiate and ~~shall~~ select, based on the ranking, one or more lessors with which to commence negotiations. After negotiations are conducted, the agency shall award the contract to the responsible and responsive lessor that the agency determines will provide the best leasing value to the state. The contract file must contain a short, plain statement that explains the basis for lessor selection and sets forth the lessor's deliverables and price pursuant to the contract, and an explanation of how these deliverables and price provide the best leasing value to the state.

(b) The department ~~of Management Services~~ shall have the authority to approve a lease for 2,000 ~~5,000~~ square feet or more of space which ~~that~~ covers more than 12 consecutive months ~~1~~

~~fiscal year~~, subject to ~~the provisions of~~ ss. 216.311, 255.2501, 255.2502, and 255.2503, if such lease is, in the judgment of the department, in the best interests of the state. In determining best interest, the department shall consider availability of state-owned space and analyses of build-to-suit and acquisition opportunities. This paragraph does not apply to buildings or facilities of any size leased for the purpose of providing care and living space to individuals ~~for persons~~.

(c) The department may approve extensions of an existing lease of 2,000 ~~5,000~~ square feet or more of space if such extensions are determined to be in the best interests of the state; however, ~~but in no case shall~~ the total of such extensions may not exceed 11 months. If at the end of the 11th month an agency still needs that space, it must ~~shall~~ be procured by competitive bid in accordance with s. 255.249(10)(b) ~~255.249(4)(b)~~. ~~However, an agency that determines that it is in its best interest to remain in the space it currently occupies may negotiate a replacement lease with the lessor if an independent comparative market analysis demonstrates that the rates offered are within market rates for the space and the cost of the new lease does not exceed the cost of a comparable lease plus documented moving costs. A present-value analysis and the consumer price index shall be used in the calculation of lease costs. The term of the replacement lease may not exceed the base term of the expiring lease.~~

(d) Any person who files an action protesting a decision or intended decision pertaining to a competitive solicitation for space to be leased by the agency pursuant to s. 120.57(3)(b)

shall post with the state agency at the time of filing the formal written protest a bond payable to the agency in an amount equal to 1 percent of the estimated total rental of the basic lease period or $5,000, whichever is greater, which bond is ~~shall be~~ conditioned on ~~upon~~ the payment of all costs that may be adjudged against him or her in the administrative hearing in which the action is brought and in any subsequent appellate court proceeding. If the agency prevails after completion of the administrative hearing process and any appellate court proceedings, it shall recover all costs and charges, which must ~~shall~~ be included in the final order or judgment, excluding attorney ~~attorney's~~ fees. Upon payment of such costs and charges by the person protesting the award, the bond shall be returned to him or her. If the person protesting the award prevails, the bond shall be returned to that person and he or she shall recover from the agency all costs and charges, which must ~~shall~~ be included in the final order of judgment, excluding attorney ~~attorney's~~ fees.

(e) The agency and the lessor, when entering into a lease for 2,000 ~~5,000~~ or more square feet of a privately owned building, shall, before the effective date of the lease, agree upon and separately state the cost of tenant improvements which may qualify for reimbursement if the lease is terminated before the expiration of its base term. The department shall serve as mediator if the agency and the lessor are unable to agree. The amount agreed upon and stated shall, if appropriated, be amortized over the original base term of the lease on a straight-line basis.

(f) The unamortized portion of tenant improvements, if appropriated, shall be paid in equal monthly installments over the remaining term of the lease. If any portion of the original leased premises is occupied after termination but during the original term by a tenant who ~~that~~ does not require material changes to the premises, the repayment of the cost of tenant improvements applicable to the occupied but unchanged portion shall be abated during occupancy. The portion of the repayment to be abated must ~~shall~~ be based on the ratio of leased space to unleased space.

(g) Notwithstanding s. 287.056(1), a state agency shall ~~may, at the sole discretion of the agency head or his or her designee,~~ use the services of a tenant broker under a state term contract to assist with a lease action ~~a competitive solicitation~~ undertaken by the agency, with the exception of leases between governmental entities. If using ~~In making its determination whether to use a tenant broker, a state agency shall consult with the department. A state agency may not use the services of a tenant broker unless the tenant broker is under a term contract with the state which complies with paragraph (h). If a state agency uses~~ the services of a tenant broker with respect to a transaction, the agency may not enter into a lease with a ~~any~~ landlord for whom ~~to which~~ the tenant broker is providing brokerage services for that transaction.

(h) ~~The Department of Management Services may,~~ Pursuant to s. 287.042(2)(a), the department shall procure ~~a~~ term contracts ~~contract~~ for tenant broker ~~real estate consulting and brokerage~~ services. A state agency may not purchase services from the

contract unless the contract has been procured under s. 287.057(1) ~~after March 1, 2007,~~ and contains the following provisions or requirements:

1. Awarded tenant brokers must maintain an office or presence in the market served. In awarding the contract, preference must be given to brokers who ~~that~~ are licensed in this state under chapter 475 and who ~~that~~ have 3 or more years of experience in the market served. The contract may be made with multiple ~~up to three~~ tenant brokers in order to serve the marketplace ~~in the north, central, and south areas of the state~~.

2. Each contracted tenant broker works ~~shall work~~ under the direction, supervision, and authority of the state agency, subject to the rules governing lease procurements.

3. The department shall provide training for the awarded tenant brokers concerning the rules governing the procurement of leases.

4. Tenant brokers must comply with all applicable provisions of s. 475.278.

5. Real estate consultants and tenant brokers shall be compensated by the state agency, subject to the provisions of the term contract, and such compensation is subject to appropriation by the Legislature. A real estate consultant or tenant broker may not receive compensation directly from a lessor for services that are rendered under the term contract. Moneys paid by a lessor to the state agency under a facility leasing arrangement are not subject to the charges imposed under s. 215.20. All terms relating to the compensation of the real estate consultant or tenant broker must ~~shall~~ be specified in

the term contract and may not be supplemented or modified by the state agency using the contract.

6. The department shall conduct periodic customer-satisfaction surveys.

7. Each state agency shall report the following information to the department:

a. The number of leases that adhere to the goal of the workspace-management initiative of 180 square feet per full-time employee ~~FTE~~.

b. The quality of space leased and the adequacy of tenant-improvement funds.

c. The timeliness of lease procurement, measured from the date of the agency's request to the finalization of the lease.

d. Whether cost-benefit analyses were performed before execution of the lease in order to ensure that the lease is in the best interest of the state.

e. The lease costs compared to market rates for similar types and classifications of space according to the official classifications of the Building Owners and Managers Association.

(4)(a) The department may ~~shall~~ not authorize any state agency to enter into a lease agreement for space in a privately owned building if ~~when~~ suitable space is available in a state-owned building located in the same geographic region, except upon presentation to the department of sufficient written justification, acceptable to the department, that a separate space is required in order to fulfill the statutory duties of the agency making the ~~such~~ request. The term "state-owned building" as used in this subsection means any state-owned

facility regardless of use or control.

(b) State agencies shall cooperate with local governmental units by using suitable, existing publicly owned facilities, subject to ~~the provisions of~~ ss. 255.2501, 255.2502, and 255.2503. Agencies may use ~~utilize~~ unexpended funds appropriated for lease payments to:

1. Pay their proportion of operating costs.

2. Renovate applicable spaces.

(c) Because the state has a substantial financial investment in state-owned buildings, it is legislative policy and intent that if ~~when~~ state-owned buildings meet the needs of state agencies, agencies must fully use such buildings before leasing privately owned buildings. ~~By September 15, 2006,~~ The department ~~of Management Services~~ shall create a 5-year plan for implementing this policy. The department shall update this plan annually, detailing proposed departmental actions to meet the plan's goals, and include ~~shall furnish~~ this plan annually as part of the master leasing report.

(5) Before construction or renovation of any state-owned building or state-leased space is commenced, the department ~~of Management Services~~ shall determine ~~ascertain~~, through the ~~by~~ submission of proposed plans to the Division of State Fire Marshal for review, whether ~~that~~ the proposed construction or renovation plan complies with the uniform firesafety standards required by the division ~~of State Fire Marshal~~. The review of construction or renovation plans for state-leased space must ~~shall~~ be completed within 10 calendar days after ~~of~~ receipt of the plans by the division ~~of State Fire Marshal~~. The review of

construction or renovation plans for a state-owned building must ~~shall~~ be completed within 30 calendar days after ~~of~~ receipt of the plans by the division ~~of State Fire Marshal~~. The responsibility for submission and retrieval of the plans may ~~called for in this subsection shall~~ not be imposed on the design architect or engineer, but is ~~shall be~~ the responsibility of the two agencies. If ~~Whenever~~ the division ~~of State Fire Marshal~~ determines that a construction or renovation plan is not in compliance with ~~such~~ uniform firesafety standards, the division ~~of State Fire Marshal~~ may issue an order to cease all construction or renovation activities until compliance is obtained, except those activities required to achieve ~~such~~ compliance. The lessor shall provide the department with ~~of Management Services~~ documentation certifying that the facility meets all of ~~shall withhold approval of any proposed lease until the construction or renovation plan complies with~~ the uniform firesafety standards ~~of the Division of State Fire Marshal~~. The cost of all modifications or renovations made for the purpose of bringing leased property into compliance with the uniform firesafety standards are ~~shall be~~ borne by the lessor. The state may not take occupancy without the division's final approval.

(6) Before construction or substantial improvement of any state-owned building is commenced, the department ~~of Management Services~~ must determine ~~ascertain~~ that the proposed construction or substantial improvement complies with the flood plain management criteria for mitigation of flood hazards, as prescribed in the October 1, 1986, rules and regulations of the Federal Emergency Management Agency, and the department shall

monitor the project to assure compliance with the criteria. ~~In accordance with chapter 120,~~ The department ~~of Management Services~~ shall adopt rules ~~any~~ necessary ~~rules~~ to ensure that all ~~such~~ proposed state construction and substantial improvement of state buildings in designated flood-prone areas complies with the flood plain management criteria. If ~~Whenever~~ the department determines that a construction or substantial improvement project is not in compliance with such ~~with the established flood plain management~~ criteria, the department may issue an order to cease all construction or improvement activities until compliance is obtained, except those activities required to achieve such compliance.

(7) This section does not apply to any lease having a term of less than 120 consecutive days for the purpose of securing the one-time special use of the leased property. ~~This section does not apply to any lease for nominal or no consideration.~~

(8) An agency may not enter into more than one lease for space in the same privately owned facility or complex within any 12-month period except upon competitive solicitation.

(9) Specialized educational facilities, excluding classrooms, are ~~shall be~~ exempt from the competitive bid requirements for leasing pursuant to this section if the executive head of a ~~any~~ state agency certifies in writing that the ~~said~~ facility is available from a single source and that the competitive bid requirements would be detrimental to the state. Such certification must ~~shall~~ include documentation of evidence of steps taken to determine sole-source status.

(10) The department ~~of Management Services~~ may approve

emergency acquisition of space without competitive bids if existing state-owned or state-leased space is destroyed or rendered uninhabitable by an act of God, fire, malicious destruction, or structural failure, or by legal action, or if the agency head certifies in writing that there is an immediate danger to the public health, safety, or welfare, or if other substantial loss to the state requires emergency action and ~~if~~ the chief administrator of the state agency or the chief administrator's designated representative certifies in writing that no other agency-controlled space is available to meet this emergency need; however, ~~but in no case shall~~ the lease for such space may not exceed 11 months. If the lessor elects not to replace or renovate the destroyed or uninhabitable facility, the agency shall procure the needed space by competitive bid in accordance with s. 255.249(10)(b) ~~255.249(4)(b)~~. If the lessor elects to replace or renovate the destroyed or uninhabitable facility and the construction or renovations will not be complete at the end of the 11-month lease, the agency may modify the lease to extend it on a month-to-month basis for up to ~~an additional~~ 6 months to allow completion of such construction or renovations.

(11) In any leasing of space which occurs ~~that is accomplished~~ without competition, the individuals taking part in the development or selection of criteria for evaluation, in the evaluation, and in the award processes must ~~shall~~ attest in writing that they are independent of, and have no conflict of interest in, the entities evaluated and selected.

Section 7. Subsection (4) of section 255.252, Florida

Statutes, is amended to read:

255.252 Findings and intent.—

(4) In addition to designing and constructing new buildings to be energy-efficient, it is the policy of the state to operate and maintain state facilities in a manner that minimizes energy consumption and maximizes building sustainability and to operate facilities leased by the state so as to minimize energy use. It is further the policy of the state that the renovation of existing state facilities be in accordance with a sustainable building rating or a national model green building code. State agencies are encouraged to consider shared savings financing of energy-efficiency and conservation projects, using contracts that split the resulting savings for a specified period of time between the state agency and the private firm or cogeneration contracts and that otherwise permit the state to lower its net energy costs. Such energy contracts may be funded from the operating budget. The vendor for such energy contracts may be selected in accordance with s. 287.055.

Section 8. Effective July 1, 2014, subsection (1) of section 255.254, Florida Statutes, is amended to read:

255.254 No facility constructed or leased without life-cycle costs.—

(1) A ~~No~~ state agency may not ~~shall~~ lease, construct, or have constructed, within limits prescribed in this section, a facility without having secured from the department an evaluation of life-cycle costs based on sustainable building ratings. ~~Furthermore,~~ Construction shall proceed only upon

disclosing to the department, for the facility chosen, the life-cycle costs as determined in s. 255.255, the facility's sustainable building rating goal, and the capitalization of the initial construction costs of the building. The life-cycle costs and the sustainable building rating goal shall be primary considerations in the selection of a building design. For leased facilities larger ~~buildings more~~ than 2,000 ~~5,000~~ square feet in area within a given building boundary, an energy performance analysis that calculates ~~consisting of a projection of~~ the total annual energy consumption and energy costs ~~in dollars~~ per square foot ~~of major energy-consuming equipment and systems based on actual expenses from the last 3 years and projected forward for the term of the proposed lease~~ shall be performed. The analysis must also compare the energy performance of the proposed lease to ~~lease shall only be made where there is a showing that the energy costs incurred by the state are minimal compared to available~~ like facilities. A lease may not be finalized until the energy performance analysis has been approved by the department. ~~A lease agreement for any building leased by the state from a private sector entity shall include provisions for monthly energy use data to be collected and submitted monthly to the department by the owner of the building.~~

Section 9. Effective July 1, 2014, subsection (1) of section 255.257, Florida Statutes, is amended to read:

255.257 Energy management; buildings occupied by state agencies.—

(1) ENERGY CONSUMPTION AND COST DATA.— Each state agency shall collect data on energy consumption and cost for all~~. The~~

~~data gathered shall be on~~ state-owned facilities and metered state-leased facilities ~~of 5,000 net square feet or more~~. These data will be used in the computation of the effectiveness of the state energy management plan and the effectiveness of the energy management program of each of the state agencies. Collected data shall be reported annually to the department in a format prescribed by the department.

Section 10. Subsection (4) of section 255.503, Florida Statutes, is amended to read:

255.503 Powers of the Department of Management Services.—The Department of Management Services shall have all the authority necessary to carry out and effectuate the purposes and provisions of this act, including, but not limited to, the authority to:

(4) Operate existing state-owned facilities in the pool, including charging fees directly to state employees for the use of parking facilities, and to pledge rentals or charges for such facilities for the improvement, repair, maintenance, and operation of such facilities, or to finance the acquisition of facilities pursuant to the provisions of this act.

Section 11. Subsection (7) of section 110.171, Florida Statutes, is amended to read:

110.171 State employee telework program.—

(7) Agencies that have a telework program shall establish and track performance measures that support telework program analysis and report data annually to the department in accordance with s. 255.249(9) ~~255.249(3)(d)~~. Such measures must include, but need not be limited to, those that quantify

financial impacts associated with changes in office space requirements resulting from the telework program. Agencies operating in office space owned or managed by the department shall consult the department to ensure consistency with the strategic leasing plan required under s. 255.249(7) ~~255.249(3)(b)~~.

Section 12. Paragraph (b) of subsection (15) of section 985.682, Florida Statutes, is amended to read:

985.682 Siting of facilities; study; criteria.—

(15)

(b) Notwithstanding s. 255.25(1)~~(b)~~, the department may enter into lease-purchase agreements to provide juvenile justice facilities for ~~the~~ housing ~~of~~ committed youths, contingent upon available funds. The facilities provided through such agreements must ~~shall~~ meet the program plan and specifications of the department. The department may enter into such lease agreements with private corporations and other governmental entities. However, notwithstanding ~~the provisions of~~ s. 255.25(3)(a), a ~~no such~~ lease agreement may not be entered into except upon advertisement for the receipt of competitive bids and award to the lowest and best bidder except if ~~when~~ contracting with other governmental entities.

Section 13. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2013.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1145 (2013)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

Committee/Subcommittee hearing bill: Government Operations Subcommittee

Representative La Rosa offered the following:

Amendment

Remove lines 90-92 and insert:

. The Department of Transportation shall

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

Committee/Subcommittee hearing bill: Government Operations Subcommittee

Representative La Rosa offered the following:

Amendment (with title amendment)

Remove lines 508-1084 and insert:

solicitations for leased space of 5,000 square feet or more in privately owned buildings, for evaluating ~~the~~ proposals received, for exemption from competitive solicitations requirements of any lease for ~~the purpose of which is~~ the provision of care and living space for persons or emergency space needs as provided in s. 255.25(10), and for ~~the~~ securing ~~of~~ at least three documented quotes for a lease that is not required to be competitively solicited.

(c) A standard method for determining square footage or any other measurement used as the basis for lease payments or other charges.

(d) Methods of allocating space in both state-owned office buildings and privately owned buildings leased by the state based on use, personnel, and office equipment.

(e) ~~1.~~ Acceptable terms and conditions for inclusion in lease agreements.

~~2.~~ At a minimum, such terms and conditions must ~~shall~~ include~~, at a minimum,~~ the following clauses, which may not be amended, supplemented, or waived:

1.~~a.~~ As provided in s. 255.2502, "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."

2.~~b.~~ "The lessee has ~~shall have~~ the right to terminate this lease, without penalty, if ~~this lease in the event~~ a state-owned building becomes available to the lessee for occupancy and the lessee has given ~~upon giving~~ 6 months' advance written notice to the lessor by certified mail, return receipt requested."

(f) State agency use of space identified in the Florida State-Owned Lands and Records Information System under subsection (5) ~~Maximum rental rates, by geographic areas or by county, for leasing privately owned space~~.

(g) A standard method for the assessment of rent to state agencies and other authorized occupants of state-owned office space, notwithstanding the source of funds.

(h) For full disclosure of the names and the extent of interest of the owners holding a 4 percent ~~4-percent~~ or more interest in ~~any~~ privately owned property leased to the state or in the entity holding title to the property, for exemption from such disclosure of any beneficial interest that ~~which~~ is represented by stock in a ~~any~~ corporation registered with the Securities and Exchange Commission or registered pursuant to

chapter 517~~,~~ which ~~stock~~ is for sale to the general public, and for exemption from such disclosure of any leasehold interest in property located outside the territorial boundaries of the United States.

(i) For full disclosure of the names of all public officials, agents, or employees holding any interest in any privately owned property leased to the state or in the entity holding title to the property, and the nature and extent of their interest, for exemption from such disclosure of any beneficial interest that ~~which~~ is represented by stock in any corporation registered with the Securities and Exchange Commission or registered pursuant to chapter 517~~,~~ which ~~stock~~ is for sale to the general public, and for exemption from such disclosure of any leasehold interest in property located outside the territorial boundaries of the United States.

(j) A method for reporting leases for nominal or no consideration.

(k) For a lease of less than 5,000 square feet, a method for certification by the agency head or the agency head's designated representative that all criteria for leasing have been fully complied with and for ~~the~~ filing ~~of~~ a copy of such lease and all supporting documents with the department for its review and approval as to technical sufficiency and whether it is in the best interests of the state.

(l) A standardized format for state agency reporting of the information required by paragraph (9)(a) ~~(3)(d)~~.

(m) Procedures for the effective and efficient administration of this section.

(11) ~~(5)~~ The department shall prepare a form listing all conditions and requirements adopted pursuant to this chapter which must be met by any state agency leasing any building or part thereof. Before executing any lease, this form must ~~shall~~ be certified by the agency head or the agency head's designated representative and submitted to the department.

(12) ~~(6)~~ The department may contract for real estate consulting or tenant brokerage services in order to carry out its duties relating to the strategic leasing plan under subsection (7). The contract must ~~shall~~ be procured pursuant to s. 287.057. The vendor ~~that is~~ awarded the contract shall be compensated ~~by the department,~~ subject to the provisions of the contract, and such compensation is subject to appropriation by the Legislature. A ~~The~~ real estate consultant or tenant broker may not receive compensation directly from a lessor for services that are rendered pursuant to the contract. Moneys paid by a lessor to the department under a facility-leasing arrangement are not subject to the charges imposed under s. 215.20.

Section 6. Section 255.25, Florida Statutes, is amended to read:

255.25 Approval required before ~~prior to~~ construction or lease of buildings.—

(1) ~~(a) A state agency may not lease space in a private building that is to be constructed for state use unless prior approval of the architectural design and preliminary construction plans is first obtained from the department.~~

~~(b)~~ During the term of existing leases, each agency shall consult with the department regarding opportunities for

consolidation, use of state-owned space, build-to-suit space, and potential acquisitions; shall monitor market conditions; and shall initiate a competitive solicitation or, if appropriate, lease-renewal negotiations for each lease held in the private sector to effect the best overall lease terms reasonably available to that agency.

(a) Amendments to leases may be permitted to modify any lease provisions or ~~any~~ other terms or conditions unless~~, except to the extent~~ specifically prohibited under ~~by~~ this chapter.

(b) The department shall serve as a mediator in lease-renewal negotiations if the agency and the lessor are unable to reach a compromise within 6 months after renegotiation and if ~~either~~ the agency or lessor requests intervention by the department.

(c) If ~~When specifically~~ authorized by the General Appropriations Act, and in accordance with s. 255.2501, if applicable, the department may approve a lease-purchase, sale-leaseback, or tax-exempt leveraged lease contract or other financing technique for the acquisition, renovation, or construction of a state fixed capital outlay project if ~~when~~ it is in the best interest of the state.

(2)~~(a)~~ Except as provided in ss. 255.249 and ~~s.~~ 255.2501, a state agency may not lease a building or any part thereof unless prior approval of the lease conditions and of the need for the lease ~~therefor~~ is first obtained from the department. An ~~Any~~ approved lease may include an option to purchase or an option to renew the lease, or both, upon such terms and conditions as are established by the department, subject to

final approval by the head of the department ~~of Management Services~~ and s. 255.2502.

(a) ~~(b)~~ For the lease of less than 5,000 square feet of space, including space leased for nominal or no consideration, a state agency must notify the department at least 90 ~~30~~ days before the execution of the lease. The department shall review the lease and determine whether suitable space is available in a state-owned or state-leased building located in the same geographic region. If the department determines that space is not available, the department shall determine whether the state agency lease is in the best interests of the state. If the department determines that the execution of the lease is not in the best interests of the state, the department shall notify the agency proposing the lease, the Governor, the President of the Senate, and the Speaker of the House of Representatives ~~and the presiding officers of each house of the Legislature~~ of such finding in writing. A lease that is for a term extending beyond the end of a fiscal year is subject to ~~the provisions of~~ ss. 216.311, 255.2502, and 255.2503.

(b) ~~(c)~~ The department shall adopt ~~as a rule~~ uniform leasing procedures by rule for use by each state agency ~~other than the Department of Transportation~~. Each state agency shall ensure that the leasing practices of that agency are in substantial compliance with the uniform leasing rules adopted under this section and ss. 255.249, 255.2502, and 255.2503.

(c) ~~(d) Notwithstanding paragraph (a) and except as provided in ss. 255.249 and 255.2501, a state agency may not lease a building or any part thereof unless prior approval of~~

~~the lease terms and conditions and of the need therefor is first obtained from the department.~~ The department may not approve any term or condition in a lease agreement which has been amended, supplemented, or waived unless a comprehensive analysis, including financial implications, demonstrates that such amendment, supplement, or waiver is in the state's long-term best interest. An ~~Any~~ approved lease may include an option to purchase or an option to renew the lease, or both, upon such terms and conditions as are established by the department, subject to final approval by the head of the department, ~~of Management Services~~ and the provisions of s. 255.2502.

(3)(a) Except as provided in subsection (10), a state agency may not enter into a lease as lessee for the use of 5,000 square feet or more of space in a privately owned building except upon advertisement for and receipt of competitive solicitations.

1.a. An invitation to bid must ~~shall~~ be made available simultaneously to all lessors and ~~must~~ include a detailed description of the space sought; the time and date for the receipt of bids and of the public opening; and all contractual terms and conditions applicable to the procurement, including the criteria to be used in determining the acceptability of the bid. If the agency contemplates renewing ~~renewal of~~ the contract, that fact must be stated in the invitation to bid. The bid must include the price for each year for which the contract may be renewed. Evaluation of bids must ~~shall~~ include consideration of the total cost for each year as submitted by the lessor. Criteria that were not set forth in the invitation

to bid may not be used in determining the acceptability of the bid.

b. The contract shall be awarded with reasonable promptness by written notice to the responsible and responsive lessor that submits the lowest responsive bid. The contract file must contain a written determination that the bid meets ~~This bid must be determined in writing to meet~~ the requirements and criteria set forth in the invitation to bid.

2.a. If an agency determines in writing that the use of an invitation to bid is not practicable, leased space shall be procured by competitive sealed proposals. A request for proposals shall be made available simultaneously to all lessors and must include a statement of the space sought; the time and date for the receipt of proposals and of the public opening; and all contractual terms and conditions applicable to the procurement, including the criteria, which must include, but need not be limited to, price, to be used in determining the acceptability of the proposal. The relative importance of price and other evaluation criteria must ~~shall~~ be indicated. If the agency contemplates renewing ~~renewal of~~ the contract, that fact must be stated in the request for proposals. The proposal must include the price for each year for which the contract may be renewed. Evaluation of proposals must ~~shall~~ include consideration of the total cost for each year as submitted by the lessor.

b. The contract shall be awarded to the responsible and responsive lessor whose proposal is determined in writing to be the most advantageous to the state, taking into consideration

the price and the other criteria set forth in the request for proposals. The contract file must contain documentation supporting the basis on which the award is made.

3.a. If the agency determines in writing that the use of an invitation to bid or a request for proposals will not result in the best leasing value to the state, the agency may procure leased space by competitive sealed replies. The agency's written determination must specify reasons ~~that explain~~ why negotiation may be necessary in order for the state to achieve the best leasing value and must be approved in writing by the agency head or his or her designee before ~~prior to the~~ advertisement of an invitation to negotiate. Cost savings related to the agency procurement process are not sufficient justification for using an invitation to negotiate. An invitation to negotiate shall be made available to all lessors simultaneously and must include a statement of the space sought; the time and date for the receipt of replies and of the public opening; and all terms and conditions applicable to the procurement, including the criteria to be used in determining the acceptability of the reply. If the agency contemplates renewing ~~renewal of~~ the contract, that fact must be stated in the invitation to negotiate. The reply must include the price for each year for which the contract may be renewed.

b. The agency shall evaluate and rank responsive replies against all evaluation criteria set forth in the invitation to negotiate and ~~shall~~ select, based on the ranking, one or more lessors with which to commence negotiations. After negotiations are conducted, the agency shall award the contract to the

responsible and responsive lessor that the agency determines will provide the best leasing value to the state. The contract file must contain a short, plain statement that explains the basis for lessor selection and sets forth the lessor's deliverables and price pursuant to the contract, and an explanation of how these deliverables and price provide the best leasing value to the state.

(b) The department ~~of Management Services~~ shall have the authority to approve a lease for 5,000 square feet or more of space which ~~that~~ covers more than 12 consecutive months ~~1 fiscal year~~, subject to ~~the provisions of~~ ss. 216.311, 255.2501, 255.2502, and 255.2503, if such lease is, in the judgment of the department, in the best interests of the state. In determining best interest, the department shall consider availability of state-owned space and analyses of build-to-suit and acquisition opportunities. This paragraph does not apply to buildings or facilities of any size leased for the purpose of providing care and living space to individuals ~~for persons~~.

(c) The department may approve extensions of an existing lease of 5,000 square feet or more of space if such extensions are determined to be in the best interests of the state; however, ~~but in no case shall~~ the total of such extensions may not exceed 11 months. If at the end of the 11th month an agency still needs that space, it must ~~shall~~ be procured by competitive bid in accordance with s. 255.249(10)(b) ~~255.249(4)(b)~~. ~~However, an agency that determines that it is in its best interest to remain in the space it currently occupies may negotiate a replacement lease with the lessor if an independent comparative~~

~~market analysis demonstrates that the rates offered are within market rates for the space and the cost of the new lease does not exceed the cost of a comparable lease plus documented moving costs. A present-value analysis and the consumer price index shall be used in the calculation of lease costs. The term of the replacement lease may not exceed the base term of the expiring lease.~~

(d) Any person who files an action protesting a decision or intended decision pertaining to a competitive solicitation for space to be leased by the agency pursuant to s. 120.57(3)(b) shall post with the state agency at the time of filing the formal written protest a bond payable to the agency in an amount equal to 1 percent of the estimated total rental of the basic lease period or $5,000, whichever is greater, which bond is ~~shall be~~ conditioned on ~~upon~~ the payment of all costs that may be adjudged against him or her in the administrative hearing in which the action is brought and in any subsequent appellate court proceeding. If the agency prevails after completion of the administrative hearing process and any appellate court proceedings, it shall recover all costs and charges, which must ~~shall~~ be included in the final order or judgment, excluding attorney ~~attorney's~~ fees. Upon payment of such costs and charges by the person protesting the award, the bond shall be returned to him or her. If the person protesting the award prevails, the bond shall be returned to that person and he or she shall recover from the agency all costs and charges, which must ~~shall~~ be included in the final order of judgment, excluding attorney ~~attorney's~~ fees.

(e) The agency and the lessor, when entering into a lease for 5,000 or more square feet of a privately owned building, shall, before the effective date of the lease, agree upon and separately state the cost of tenant improvements which may qualify for reimbursement if the lease is terminated before the expiration of its base term. The department shall serve as mediator if the agency and the lessor are unable to agree. The amount agreed upon and stated shall, if appropriated, be amortized over the original base term of the lease on a straight-line basis.

(f) The unamortized portion of tenant improvements, if appropriated, shall be paid in equal monthly installments over the remaining term of the lease. If any portion of the original leased premises is occupied after termination but during the original term by a tenant who ~~that~~ does not require material changes to the premises, the repayment of the cost of tenant improvements applicable to the occupied but unchanged portion shall be abated during occupancy. The portion of the repayment to be abated must ~~shall~~ be based on the ratio of leased space to unleased space.

(g) Notwithstanding s. 287.056(1), a state agency shall ~~may, at the sole discretion of the agency head or his or her designee,~~ use the services of a tenant broker under a state term contract to assist with a lease action ~~a competitive solicitation~~ undertaken by the agency, with the exception of leases between governmental entities. If using ~~In making its determination whether to use a tenant broker, a state agency shall consult with the department. A state agency may not use~~

~~the services of a tenant broker unless the tenant broker is under a term contract with the state which complies with paragraph (h). If a state agency uses~~ the services of a tenant broker with respect to a transaction, the agency may not enter into a lease with a ~~any~~ landlord for whom ~~to which~~ the tenant broker is providing brokerage services for that transaction.

(h) ~~The Department of Management Services may,~~ Pursuant to s. 287.042(2)(a), the department shall procure ~~a~~ term contracts ~~contract~~ for tenant broker ~~real estate consulting and brokerage~~ services. A state agency may not purchase services from the contract unless the contract has been procured under s. 287.057(1) ~~after March 1, 2007,~~ and contains the following provisions or requirements:

1. Awarded tenant brokers must maintain an office or presence in the market served. In awarding the contract, preference must be given to brokers who ~~that~~ are licensed in this state under chapter 475 and who ~~that~~ have 3 or more years of experience in the market served. The contract may be made with multiple ~~up to three~~ tenant brokers in order to serve the marketplace ~~in the north, central, and south areas of the state~~.

2. Each contracted tenant broker works ~~shall work~~ under the direction, supervision, and authority of the state agency, subject to the rules governing lease procurements.

3. The department shall provide training for the awarded tenant brokers concerning the rules governing the procurement of leases.

4. Tenant brokers must comply with all applicable provisions of s. 475.278.

5. Real estate consultants and tenant brokers shall be compensated by the state agency, subject to the provisions of the term contract, and such compensation is subject to appropriation by the Legislature. A real estate consultant or tenant broker may not receive compensation directly from a lessor for services that are rendered under the term contract. Moneys paid by a lessor to the state agency under a facility leasing arrangement are not subject to the charges imposed under s. 215.20. All terms relating to the compensation of the real estate consultant or tenant broker must ~~shall~~ be specified in the term contract and may not be supplemented or modified by the state agency using the contract.

6. The department shall conduct periodic customer-satisfaction surveys.

7. Each state agency shall report the following information to the department:

a. The number of leases that adhere to the goal of the workspace-management initiative of 180 square feet per full-time employee ~~FTE~~.

b. The quality of space leased and the adequacy of tenant-improvement funds.

c. The timeliness of lease procurement, measured from the date of the agency's request to the finalization of the lease.

d. Whether cost-benefit analyses were performed before execution of the lease in order to ensure that the lease is in the best interest of the state.

e. The lease costs compared to market rates for similar types and classifications of space according to the official

classifications of the Building Owners and Managers Association.

(4)(a) The department may ~~shall~~ not authorize any state agency to enter into a lease agreement for space in a privately owned building if ~~when~~ suitable space is available in a state-owned building located in the same geographic region, except upon presentation to the department of sufficient written justification, acceptable to the department, that a separate space is required in order to fulfill the statutory duties of the agency making the ~~such~~ request. The term "state-owned building" as used in this subsection means any state-owned facility regardless of use or control.

(b) State agencies shall cooperate with local governmental units by using suitable, existing publicly owned facilities, subject to ~~the provisions of~~ ss. 255.2501, 255.2502, and 255.2503. Agencies may use ~~utilize~~ unexpended funds appropriated for lease payments to:

1. Pay their proportion of operating costs.

2. Renovate applicable spaces.

(c) Because the state has a substantial financial investment in state-owned buildings, it is legislative policy and intent that if ~~when~~ state-owned buildings meet the needs of state agencies, agencies must fully use such buildings before leasing privately owned buildings. ~~By September 15, 2006,~~ The department ~~of Management Services~~ shall create a 5-year plan for implementing this policy. The department shall update this plan annually, detailing proposed departmental actions to meet the plan's goals, and include ~~shall furnish~~ this plan annually as part of the master leasing report.

(5) Before construction or renovation of any state-owned building or state-leased space is commenced, the department ~~of Management Services~~ shall determine ~~ascertain~~, through the ~~by~~ submission of proposed plans to the Division of State Fire Marshal for review, whether ~~that~~ the proposed construction or renovation plan complies with the uniform firesafety standards required by the division ~~of State Fire Marshal~~. The review of construction or renovation plans for state-leased space must ~~shall~~ be completed within 10 calendar days after ~~of~~ receipt of the plans by the division ~~of State Fire Marshal~~. The review of construction or renovation plans for a state-owned building must ~~shall~~ be completed within 30 calendar days after ~~of~~ receipt of the plans by the division ~~of State Fire Marshal~~. The responsibility for submission and retrieval of the plans may ~~called for in this subsection shall~~ not be imposed on the design architect or engineer, but is ~~shall be~~ the responsibility of the two agencies. If ~~Whenever~~ the division ~~of State Fire Marshal~~ determines that a construction or renovation plan is not in compliance with ~~such~~ uniform firesafety standards, the division ~~of State Fire Marshal~~ may issue an order to cease all construction or renovation activities until compliance is obtained, except those activities required to achieve ~~such~~ compliance. The lessor shall provide the department with ~~of Management Services~~ documentation certifying that the facility meets all of ~~shall withhold approval of any proposed lease until the construction or renovation plan complies with~~ the uniform firesafety standards ~~of the Division of State Fire Marshal~~. The cost of all modifications or renovations made for the purpose of

bringing leased property into compliance with the uniform firesafety standards are ~~shall be~~ borne by the lessor. The state may not take occupancy without the division's final approval.

(6) Before construction or substantial improvement of any state-owned building is commenced, the department ~~of Management Services~~ must determine ~~ascertain~~ that the proposed construction or substantial improvement complies with the flood plain management criteria for mitigation of flood hazards, as prescribed in the October 1, 1986, rules and regulations of the Federal Emergency Management Agency, and the department shall monitor the project to assure compliance with the criteria. ~~In accordance with chapter 120,~~ The department ~~of Management Services~~ shall adopt rules ~~any~~ necessary ~~rules~~ to ensure that all ~~such~~ proposed state construction and substantial improvement of state buildings in designated flood-prone areas complies with the flood plain management criteria. If ~~Whenever~~ the department determines that a construction or substantial improvement project is not in compliance with such ~~with the established flood plain management~~ criteria, the department may issue an order to cease all construction or improvement activities until compliance is obtained, except those activities required to achieve such compliance.

(7) This section does not apply to any lease having a term of less than 120 consecutive days for the purpose of securing the one-time special use of the leased property. ~~This section does not apply to any lease for nominal or no consideration.~~

(8) An agency may not enter into more than one lease for space in the same privately owned facility or complex within any

12-month period except upon competitive solicitation.

(9) Specialized educational facilities, excluding classrooms, are ~~shall be~~ exempt from the competitive bid requirements for leasing pursuant to this section if the executive head of a ~~any~~ state agency certifies in writing that the ~~said~~ facility is available from a single source and that the competitive bid requirements would be detrimental to the state. Such certification must ~~shall~~ include documentation of evidence of steps taken to determine sole-source status.

(10) The department ~~of Management Services~~ may approve emergency acquisition of space without competitive bids if existing state-owned or state-leased space is destroyed or rendered uninhabitable by an act of God, fire, malicious destruction, or structural failure, or by legal action, or if the agency head certifies in writing that there is an immediate danger to the public health, safety, or welfare, or if other substantial loss to the state requires emergency action and ~~if~~ the chief administrator of the state agency or the chief administrator's designated representative certifies in writing that no other agency-controlled space is available to meet this emergency need; however, ~~but in no case shall~~ the lease for such space may not exceed 11 months. If the lessor elects not to replace or renovate the destroyed or uninhabitable facility, the agency shall procure the needed space by competitive bid in accordance with s. 255.249(10)(b) ~~255.249(4)(b)~~. If the lessor elects to replace or renovate the destroyed or uninhabitable facility and the construction or renovations will not be complete at the end of the 11-month lease, the agency may modify

the lease to extend it on a month-to-month basis for up to ~~an additional~~ 6 months to allow completion of such construction or renovations.

(11) In any leasing of space which occurs ~~that is accomplished~~ without competition, the individuals taking part in the development or selection of criteria for evaluation, in the evaluation, and in the award processes must ~~shall~~ attest in writing that they are independent of, and have no conflict of interest in, the entities evaluated and selected.

Section 7. Subsection (4) of section 255.252, Florida Statutes, is amended to read:

255.252 Findings and intent.—

(4) In addition to designing and constructing new buildings to be energy-efficient, it is the policy of the state to operate and maintain state facilities in a manner that minimizes energy consumption and maximizes building sustainability and to operate facilities leased by the state so as to minimize energy use. It is further the policy of the state that the renovation of existing state facilities be in accordance with a sustainable building rating or a national model green building code. State agencies are encouraged to consider shared savings financing of energy-efficiency and conservation projects, using contracts that split the resulting savings for a specified period of time between the state agency and the private firm or cogeneration contracts and that otherwise permit the state to lower its net energy costs. Such energy contracts may be funded from the operating budget. The vendor for such energy contracts may be selected in accordance

with s. 287.055.

Section 8. Effective July 1, 2014, subsection (1) of section 255.254, Florida Statutes, is amended to read:

255.254 No facility constructed or leased without life-cycle costs.—

(1) A ~~No~~ state agency may not ~~shall~~ lease, construct, or have constructed, within limits prescribed in this section, a facility without having secured from the department an evaluation of life-cycle costs based on sustainable building ratings. ~~Furthermore,~~ Construction shall proceed only upon disclosing to the department, for the facility chosen, the life-cycle costs as determined in s. 255.255, the facility's sustainable building rating goal, and the capitalization of the initial construction costs of the building. The life-cycle costs and the sustainable building rating goal shall be primary considerations in the selection of a building design. For leased facilities larger ~~buildings more~~ than 2,000 ~~5,000~~ square feet in area within a given building boundary, an energy performance analysis that calculates ~~consisting of a projection of~~ the total annual energy consumption and energy costs ~~in dollars~~ per square foot ~~of major energy-consuming equipment and systems based on actual expenses from the last 3 years and projected forward for the term of the proposed lease~~ shall be performed. The analysis must also compare the energy performance of the proposed lease to ~~lease shall only be made where there is a showing that the energy costs incurred by the state are minimal compared to available~~ like facilities. A lease may not be finalized until the energy performance analysis has been approved by the

department. ~~A lease agreement for any building leased by the state from a private sector entity shall include provisions for monthly energy use data to be collected and submitted monthly to the department by the owner of the building.~~

Section 9. Effective July 1, 2014, subsection (1) of section 255.257, Florida Statutes, is amended to read:

255.257 Energy management; buildings occupied by state agencies.—

(1) ENERGY CONSUMPTION AND COST DATA.— Each state agency shall collect data on energy consumption and cost for all~~. The data gathered shall be on~~ state-owned facilities and metered state-leased facilities ~~of 5,000 net square feet or more~~. These data will be used in the computation of the effectiveness of the state energy management plan and the effectiveness of the energy management program of each of the state agencies. Collected data shall be reported annually to the department in a format prescribed by the department.

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

Remove lines 35-51 and insert:

additional rules; amending s. 255.25, F.S.; deleting an exemption that allows an agency to negotiate a replacement lease under certain circumstances; requiring a state agency to use a tenant broker to assist with lease actions; amending s. 255.252, F.S.; specifying that a vendor for certain energy efficiency

contracts must be selected in accordance with state procurement requirements; amending s. 255.254, F.S.; revising provisions relating to requirements for energy performance analysis for certain buildings; amending 255.257, F.S.; requiring all state-owned facilities to report energy consumption and cost data; amending ss. 110.171 and 985.682, F.S.;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1327 Pub. Rec./Crim. Hist./Human Trafficking Victims
SPONSOR(S): Spano and others
TIED BILLS: HB 1325 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N	Jones	Cunningham
2) Government Operations Subcommittee		Stramski	Williamson
3) Judiciary Committee			

SUMMARY ANALYSIS

House Bill 1325 authorizes a victim of human trafficking to petition the court for the expunction of any conviction for certain offenses committed while he or she was a victim of human trafficking, which offense was committed as a part of the human trafficking scheme of which he or she was a victim, or at the direction of an operator of the scheme.

This bill, which is linked to the passage of House Bill 1325, creates a public record exemption for a criminal history record of a victim of human trafficking that is ordered expunged. Specifically, such record retained by FDLE is confidential and exempt from public record requirements and cannot be disclosed to any person or entity except upon order of a court of competent jurisdiction.

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 Florida Constitution.

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created 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 Act[2] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

Public Record Exemption for Criminal History Records Ordered Expunged

Any criminal history record of a minor or an adult that is ordered expunged must be physically destroyed or obliterated by any criminal justice agency having custody of such record, except that the Florida Department of Law Enforcement (FDLE) must retain criminal history records in all cases. Current law provides that a criminal history record ordered expunged that is retained by FDLE is confidential and exempt[3] from s. 119.07(1), F.S., and Article I, Section 24(a) of the Florida Constitution, and is not available to any person or entity except upon order of the court with jurisdiction.[4] In addition, information relating to the existence of an expunged criminal history record is confidential and exempt from public record requirements, except that FDLE must disclose the existence of such record to certain entities as provided for in current law.[5]

House Bill 1325

House Bill 1325 (2013) creates s. 943.0583, F.S., entitled "human trafficking victim expunction." The bill authorizes a victim of human trafficking to petition the court for the expunction of any conviction for

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

[2] *See* s. 119.15, F.S.

[3] 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).

[4] Section 943.0585(4), F.S.

[5] Section 943.0585(4)(c), F.S.

an offense, except an offense listed in s. 775.084(1)(b)1., F.S., committed while he or she was a victim of human trafficking, which offense was committed as a part of the human trafficking scheme of which he or she was a victim, or at the direction of an operator of the scheme. A "victim of human trafficking" is defined as a person subjected to coercion for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.

Effect of the Bill

The bill, which is linked to the passage of House Bill 1325, creates a public record exemption for a criminal history record of a victim of human trafficking that is ordered expunged. Specifically, such record retained by FDLE is confidential and exempt from public record requirements and cannot be disclosed to any person or entity except upon order of a court of competent jurisdiction.

A criminal justice agency may retain a notation indicating compliance with an order to expunge.

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 Florida Constitution.[6]

B. SECTION DIRECTORY:

Section 1 creates s. 943.0583, F.S., relating to human trafficking victim expunction.

Section 2 provides a public necessity statement.

Section 3 provides an effective date to be the same as that of House Bill 1325 or similar legislation, if such legislation is passed during the same session and becomes law.

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.

[6] Article 1, Sec. 24(c), FLA. CONST.

D. FISCAL COMMENTS:

The bill likely could create a minimal fiscal impact on FDLE, because staff responsible for complying with public record requests could require training related to expansion of the public record exemption. In addition, FDLE 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:

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; 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 limited to expunged criminal records of victims of human trafficking. 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:

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

None.

A bill to be entitled

An act relating to public records; amending s. 943.0583, F.S.; providing an exemption from public records requirements for criminal history records of victims of human trafficking expunged under s. 943.0583, F.S.; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; 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 (9) of section 943.0583, Florida Statutes, is created to read:

943.0583 Human trafficking victim expunction.—

(9)(a) A criminal history record ordered expunged under this section that is retained by the department is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution and shall not be disclosed to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation indicating compliance with an order to expunge.

(b) This subsection 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.

Section 2. The Legislature finds that it is a public

necessity that persons who are victims of human trafficking and who have been convicted of crimes committed at the behest of their traffickers are themselves victims of crimes. Such victims face barriers to employment and other life opportunities as long as these criminal convictions remain on record and accessible to potential employers and others. It is necessary that these records be made confidential in order for human trafficking victims to have the chance to rebuild their lives and reenter society.

Section 3. This act shall take effect on the same date that HB 1325 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1333 Public Records/Toll Facilities
SPONSOR(S): La Rosa
TIED BILLS: **IDEN./SIM. BILLS:** SB 1424

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	14 Y, 0 N	Thompson	Miller
2) Government Operations Subcommittee		JS Stramski	Williamson
3) Economic Affairs Committee			

SUMMARY ANALYSIS

Current law provides a public records exemption for personal identifying information provided to, acquired by, or in the possession of the Department of Transportation (DOT), a county, or an expressway authority for the purpose of using a credit card, charge card, or check for the prepayment of electronic toll facilities. This prepayment system is the electronic transponder method of toll payment otherwise known as "SunPass."

The bill expands the current public record exemption to include personal identifying information held by DOT, a county, or an expressway authority for the purpose of paying, prepaying, or collecting tolls and other amounts due. This would include personal identifying information of customers who use the post-payment method of toll payment otherwise known as "Toll-By-Plate."

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.

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 expands a current public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

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

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[2] 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.

Electronic Toll Payment

Subject to limited exemptions, current law prohibits persons from using any toll facility without payment.[3] The Department of Transportation (DOT) is authorized to adopt rules relating to the payment, collection, and enforcement of tolls, including, but not limited to, rules for the implementation of video or other image billing and variable pricing.[4] DOT has implemented two programs (SunPass and Toll-By-Plate) for electronic toll collections.

SunPass[5] is an electronic system of toll collection accepted on all Florida toll roads and nearly all toll bridges. SunPass utilizes a prepaid account system and electronic devices called transponders that attach to the inside of a car's windshield. When a car equipped with SunPass goes through a tolling location, the transponder sends a signal and the toll is deducted from the customer's prepaid account. SunPass account information includes the license plate number, address, and credit card information.[6]

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

[2] *See* s. 119.15, F.S.

[3] *See* s. 338.155(1), F.S. The exemptions generally include toll employees on official state business, state military personnel on official military business, persons authorizing resolution for bonds to finance the facility, persons using the toll facility as a required detour route, law enforcement officers or persons operating a fire or rescue vehicle when on official business, funeral processions of law enforcement officers killed in the line of duty, and handicapped persons.

[4] Section 338.155(1), F.S.

[5] Rule 14-15.0081, F.A.C.

[6] Information on SunPass is available at, http://www.floridasturnpike.com/all-electronictolling/SunPass.cfm (last visited March 12, 2013).

The Toll-By-Plate[7] program, established by DOT in 2010, is an image based system of toll collection available on the Homestead Extension of Florida's Turnpike, from Florida City to Miramar in Miami-Dade County. Toll-By-Plate takes a photo of a license plate as a vehicle travels through a Turnpike tolling location and mails a monthly bill for the tolls, including an administrative charge, to the registered owner of the vehicle. Accounts can be set up as pre-paid or post-paid.[8] Accounts may require name, address, email, driver's license number, day time phone number, and credit and debit card numbers.[9]

Public Records Exemption: Electronic Payment of Tolls

Section 338.155(6), F.S., provides that personal identifying information provided to, acquired by, or in the possession of DOT, a county, or an expressway authority for the purpose of using a credit card, charge card, or check for the prepayment of electronic toll facilities charges is exempt[10] from public records requirements. This provision was first adopted in 1996.[11]

Recently, DOT has expanded its use of electronic toll collection with the Toll-By-Plate video billing. As a consequence, the current public records exemption does not protect personal identifying information related to the post-payment of electronic toll facilities by Toll-By-Plate customers.

Proposed Changes

The bill amends s. 338.155(6), F.S., to expand the current public records exemption to include personal identifying information held by the Department of Transportation, a county, or an expressway authority for the purpose of paying, prepaying, or collecting tolls and associated administrative charges due for the use of toll facilities. This would include personal identifying information of Toll-By-Plate customers.

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.

B. SECTION DIRECTORY:

Section 1 amends s. 338.155, F.S., related to the payment of tolls on toll facilities.

Section 2 provides a finding of public necessity.

Section 3 provides that the bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

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[7] Rule 14-100.005, F.A.C.

[8] Information on toll-by-plate is available at, http://www.floridasturnpike.com/all-electronictolling/TOLL-BY-PLATE.cfm (Last visited March 12, 2013).

[9] Information on toll-by-plate accounts can be found at, https://www.tollbyplate.com/displaySelectCustomerTypeRegisterAccountNewAccount (Last visited March 12, 2013).

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

[11] Chapter 96-178, L.O.F.; codified as s. 338.155(6), F.S.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could create a minimal fiscal impact on state and local agencies with staff responsible for complying with public records requests as staff could require training related to the expansion of the public record exemption. In addition, an agency could incur costs associated with redacting the 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 expands 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 expands 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 or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands the public record exemption to include personal identifying information held by the Department of Transportation, a county, or an expressway authority for the purpose of paying tolls by any means of payment. 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Retroactive Application

The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively.[12] The bill does not contain a provision requiring retroactive application. As such, the public record exemption would apply prospectively; however, the Toll-By-Plate program began in 2010.[13]

Other Comments: Public Necessity Statement

The public necessity statement provides that the Legislature finds that it is a public necessity to exempt personal identifying information about individuals held by certain agencies; however, it does not specify if the exemption is from public records or public meetings requirements. Since the public necessity statement is not codified in the Florida Statutes, it is recommended that the bill be amended to specify that it is a necessity to exempt certain information from public records requirements.

In addition, the public necessity statement provides that "[t]he exemption protects the health and safety of the public by making exempt information regarding the location of individuals as they use the toll road system." It is unclear how the release of such information would endanger the health and safety of the public.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[12] *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

[13] Information received from the Florida Department of Transportation, March 13, 2013 (email on file with the Transportation and Highway Safety Subcommittee).

A bill to be entitled

An act relating to public records; amending s. 338.155, F.S., relating to payment of tolls and associated charges; providing an exemption from public records requirements for personal identifying information; providing for future legislative 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. Subsection (6) of section 338.155, Florida Statutes, is amended to read:

338.155 Payment of toll on toll facilities required; exemptions.—

(6)(a) Personal identifying information held by ~~provided to, acquired by, or in the possession of~~ the Department of Transportation, a county, or an expressway authority for the purpose of paying, prepaying, or collecting tolls and associated administrative charges due for the use of ~~using a credit card, charge card, or check for the prepayment of electronic~~ toll facilities ~~charges to the department, a county, or an expressway authority~~ is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) This subsection 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.

Section 2. The Legislature finds that it is a public necessity to exempt personal identifying information about individuals which is held by the Department of Transportation, a county, or an expressway authority for the purpose of paying, by any means of payment, for the use of toll facilities. The exemption puts individuals who pay for tolls by TOLL-BY-PLATE, which is video billed, on equal footing with individuals who pay for tolls by check, debit card, or credit card, or who pay cash at the toll booth. The exemption protects the health and safety of the public by making exempt information regarding the location of individuals as they use the toll road system. The exemption promotes the use of the electronic toll collection system, which is a more efficient and effective government collection system for tolls, because paying for tolls by TOLL-BY-PLATE, which is video billed, or paying for tolls by check, debit card, or credit card not only saves individuals time when passing through the toll facilities, compared to individuals who pay for tolls with cash, but also costs much less to administer. Further, the exemption protects the privacy of individuals and promotes their right to be let alone from unreasonable government intrusion by prohibiting the public disclosure of private information about the finances and location of the individual using the toll road system.

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1333 (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	____

Committee/Subcommittee hearing bill: Government Operations Subcommittee

Representative La Rosa offered the following:

Amendment

Remove lines 30-34 and insert:

Section 2. The Legislature finds that it is a public necessity to exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State Constitution personal identifying information about individuals held by the Department of Transportation, a county, or an expressway authority for the purpose of paying, prepaying, or collecting tolls and associated administrative charges due for the use of toll facilities. The

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7089 PCB ANRS 13-02 Public Records Exemption/School Food and Nutrition Service Program Participants
SPONSOR(S): Agriculture & Natural Resources Subcommittee, Beshears
TIED BILLS: HB 7087 **IDEN./SIM. BILLS:** SB 1756

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Agriculture & Natural Resources Subcommittee	12 Y, 0 N	Kaiser	Blalock
1) Government Operations Subcommittee		Harrington	Williamson
2) State Affairs Committee			

SUMMARY ANALYSIS

Current law provides that applicants for or participants in a school food and nutrition service program must provide certain information to the Department of Agriculture and Consumer Services (DACS), the Department of Education (DOE), or the Department of Children and Families (DCF). The DACS Division of Food, Nutrition, and Wellness receives personal identification information on students and student families who receive free or reduced cost meals during the school year and summer period. Some of the information provided for purposes of determining eligibility is considered to be of a sensitive, personal nature.

The bill creates a public record exemption for personal identifying information of an applicant for or a participant in a school food and nutrition service program held by DACS, DCF, or DOE. It also provides that such personal identifying information must be disclosed to another governmental entity in the performance of its official duties and responsibilities, or to any person who has the written consent of the applicant for or participant in such program. This does not prohibit a participant's legal guardian from obtaining confirmation of acceptance and approval, dates of applicability, or other information the legal guardian may request.

The bill provides for retroactive application of the public records exemption. It also provides that the public records exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature. Finally, the bill provides a statement of public necessity as required by the State Constitution.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption. The bill creates a new public records 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 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. A bill enacting an exemption or substantially amending an existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[1]

Public policy regarding access to government records is addressed further in s. 119.07(1), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[2] provides that a public record 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.

School Food and Nutrition Service Program

The 2011 Legislature created the Healthy Schools for Healthy Lives Act, which provided for a type two transfer of administration of school food and nutrition programs from the Department of Education (DOE) to the Department of Agriculture and Consumer Services (DACS).[3]

Current law provides that applicants for or participants in a school food and nutrition service program must provide certain information to DACS, DOE, or the Department of Children and Families (DCF). The DACS Division of Food, Nutrition, and Wellness receives personal identification information on students and student families who receive free or reduced cost meals during the school year and summer period. Some of the information provided for purposes of determining eligibility is considered to be of a sensitive, personal nature.

Effect of Proposed Changes

The bill provides that personal identifying information of an applicant for or a participant in a school food and nutrition service program[4] held by DACS, DCF, or DOE is exempt[5] from public records requirements.

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[1] Section 24(c), Article I of the State Constitution.
[2] Section 119.15, F.S.
[3] Chapter 2011-217, L.O.F., and ss. 570.98-570.984, F.S.
[4] As defined in s. 595.402, F.S.
[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.

The bill provides that such personal identifying information must be disclosed to another governmental entity in the performance of its official duties and responsibilities, or any person who has the written consent of the applicant for or participant in such program. This does not prohibit a participant's legal guardian from obtaining confirmation of acceptance and approval, dates of applicability, or other information the legal guardian may request.

The exemption applies to any information identifying a program applicant or participant held by DACS, DCF, or DOE before, on, or after the effective date of this exemption.

The bill provides that the exemption is subject to the Open Sunset Review Act and stands repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.[6]

B. SECTION DIRECTORY:

Section 1: Creates s. 595.409, F.S., providing an exemption from public records requirements for personal identifying information of an applicant for or participant in a school food and nutrition service program held by the Department of Agriculture and Consumer Services, the Department of Children and Families, or the Department of Education; providing for specified disclosure; providing for applicability; and, providing for legislative review and repeal of the exemption under the Open Government Sunset Review Act.

Section 2: Provides a statement of public necessity as required by the State Constitution.

Section 3: Provides an effective date that is contingent upon the passage of HB 7087 or similar legislation.

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

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).

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

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

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:

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 records exemption. The bill creates a new public records 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 exemption. The bill creates a new public records exemption; thus, it includes a public necessity statement.

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 foster the security of persons applying for and participating in a school food and nutrition service program and to protect information held by DACS, DCF, and DEP.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Retroactive Application
The Supreme Court of Florida has ruled that a public records exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively.[7] The bill expressly provides that the public records exemption applies to identifying information held before, on, or after the effective date of the exemption.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None

[7] *See Metropolitan Dade County v. Chase Federal Housing Corporation*, 737 So.2d 494 (Fla. 1999); *see also Memorial Hospital-West Volusia, Inc. v. News-Journal Corp.*, 784 So.2d 438 (Fla. 2001).

A bill to be entitled

An act relating to public records; creating s. 595.409, Florida Statutes; providing an exemption from public records requirements for personal identifying information of an applicant for or participant in a school food and nutrition service program, as defined in s. 595.402, F.S., held by the Department of Agriculture and Consumer Services, the Department of Children and Families, or the Department of Education; providing for specified disclosure; providing for applicability; providing for legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a contingent effective date.

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

Section 1. Section 595.450, Florida Statutes, is created to read:

595.409 Public records exemption.—

(1) Personal identifying information of an applicant for or participant in a school food and nutrition service program, as defined in s. 595.402, held by the department, the Department of Children and Families, or the Department of Education is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2)(a) Such information shall be disclosed to:

1. Another governmental entity in the performance of its

official duties and responsibilities; or

2. Any person who has the written consent of the applicant for or participant in such program.

(b) This section does not prohibit a participant's legal guardian from obtaining confirmation of acceptance and approval, dates of applicability, or other information the legal guardian may request.

(3) This exemption applies to any information identifying a program applicant or participant held by the department, the Department of Children and Families, or the Department of Education before, on, or after the effective date of this exemption.

(4) This section 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.

Section 2. The Legislature finds that it is a public necessity that personal identifying information of an applicant for or participant in a school food and nutrition service program, as defined in s. 595.402, Florida Statutes, held by the Department of Agriculture and Consumer Services, the Department of Children and Families, or the Department of Education be made exempt from the requirements of s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. In order for a person applying to or participating in a school food and nutrition service program to feel secure in the program, the applicant or participant should be able to rely upon the fact that his or her personal identifying information held by the

Department of Agriculture and Consumer Services, the Department of Children and Families, or the Department of Education is protected from disclosure to anyone other than those who have the need to know such information. A public records exemption for personal identifying information of an applicant for or participant in a school food and nutrition service program, as defined in s. 595.402, Florida Statutes, held by the Department of Agriculture and Consumer Services, the Department of Children and Families, or the Department of Education protects information of a sensitive, personal nature concerning an individual, the release of which could be defamatory to the individual, could cause unwarranted damage to his or her good name or reputation, and could possibly jeopardize the safety of the individual. Additionally, the public records exemption allows the state to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption. Thus, the Legislature declares that it is a public necessity that the personal identifying information of an applicant for or a participant in a school food and nutrition service program, as defined in s. 595.402, Florida Statutes, held by the Department of Agriculture and Consumer Services, the Department of Children and Families, or the Department of Education be made exempt from public records requirements.

Section 3. This act shall take effect on the same date that HB 7087 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7095 PCB IBS 13-02 Public Records/Citizens Property Insurance Corporation Clearinghouse Program
SPONSOR(S): Insurance & Banking Subcommittee, Nelson
TIED BILLS: HB 7093 **IDEN./SIM. BILLS:** SB 1606

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee	13 Y, 0 N	Callaway	Cooper
1) Government Operations Subcommittee		Harrington	Williamson

SUMMARY ANALYSIS

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. Although it operates like a private insurance company, it is not a private insurance company. As of February 28, 2013, Citizens is the largest property insurer in Florida with almost 1.3 million policies and over $406 billion in exposure.

Current law allows homeowners with offers for property insurance from an insurer in the private market to nonetheless obtain insurance from Citizens if certain Citizens' eligibility requirements are met. One major requirement for Citizens is a 15 percent premium restriction. This restriction prohibits a homeowner from buying insurance in Citizens if an insurer in the private market offers the homeowner insurance for a premium that is up to 15 percent more than the Citizens' premium. Thus, a homeowner can buy insurance from Citizens only if the private insurer's premium is more than 15 percent than the Citizens' premium. There is no mechanism for any insurance agent to check with all insurers in the private market to see if any will write insurance within the premium restriction. This likely allows policies to be written by Citizens even though an insurer will write the policy for a premium within 15 percent points of the Citizens' premium. Additionally, homeowners can circumvent the premium eligibility restriction and buy insurance in Citizens even when an insurer in the private market will write insurance within the restriction by shopping for property insurance with multiple agents.

House Bill 7093 establishes a clearinghouse program (clearinghouse) for use by Citizens before property insurance can be written or renewed by Citizens. The purpose of the clearinghouse is to ensure that only property meeting the Citizens' premium eligibility restrictions obtains insurance in Citizens. All applications for new insurance and all policies to be renewed in Citizens must be submitted to the clearinghouse to determine if the policy can be written or renewed by a private property insurer within the premium eligibility restrictions. Insurers are not required to participate in the clearinghouse. House Bill 7093 also implements a 5 percent premium eligibility restriction for policies renewed by Citizens.

This bill provides that underwriting guidelines, manuals, rating information, or other underwriting criteria or instructions submitted by an insurer to the Citizens' clearinghouse program that are used by the clearinghouse to identify and select risks from the clearinghouse are confidential and exempt from public records requirements.

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.

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 records exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose. A bill enacting an exemption or substantially amending an existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[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 Act[2] provides that a public record 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.

Citizens Property Insurance Corporation

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. Although it operates like a private insurance company, it is not a private insurance company. As of February 28, 2013, Citizens is the largest property insurer in Florida with almost 1.3 million policies and over $406 billion in exposure.[3] Citizens insures over 444,000 residential and commercial policies in Florida's coastal areas and over 835,000 residential policies in Florida's non-coastal areas. The remaining policies are commercial policies insured in Florida's non-coastal areas.[4]

Current law allows homeowners with offers for property insurance from an insurer in the private market to still obtain insurance from Citizens if certain Citizens' eligibility requirements are met and requires Citizens to have a procedure to determine the eligibility of a potential risk. A major eligibility requirement for insurance in Citizens provided in current law is a 15 percent premium restriction. This restriction prohibits a homeowner from buying insurance in Citizens if an insurer in the private market offers the homeowner insurance for a premium that is up to 15 percent more than the Citizens' premium. In addition, the coverage offered by the private insurer must be comparable to Citizens'

[1] Section 24(c), Art. I of the State Constitution.
[2] Section 119.15, F.S.
[3] https://www.citizensfla.com/about/corpfinancials.cfm (last viewed March 22, 2013).
[4] *Id.*

coverage. Thus, a homeowner can buy insurance from Citizens only if the private insurer's premium is more than 15 percent than the Citizens' premium.

Currently, an insurance agent selling a property insurance policy checks with the insurers in the private market represented by the agent to see if any of them will write the policy for a premium up to 15 percent more than the Citizens' premium. If an insurer will do that, the agent puts the policy with that insurer. However, the agent can only check with the insurers he or she represents and because captive agents represent only one insurer, these agents can only check with one insurer. There is no mechanism for any agent, either captive or not, to check with all insurers in the private market to see if any will write insurance within the premium restriction. This likely allows policies to be written by Citizens even though an insurer will write the policy for a premium up to 15 percent more than the Citizens' premium.

Additionally, homeowners can circumvent the premium eligibility restriction and buy insurance in Citizens even when an insurer in the private market will write insurance within the restriction by shopping for property insurance with multiple agents. If one agent denies the homeowner insurance in Citizens because he or she represents a private insurer that will write the policy for a premium up to 15 percent more than the Citizens' premium, the homeowner can go to a different agent. If that agent does not represent a private insurer willing to write the policy within the 15 percent premium eligibility restriction, the agent can place the policy into Citizens. Thus, the policy goes into Citizens even though there is a private insurer willing to write it within the 15 percent premium restriction simply because the agent selling the policy does not represent that private insurer.

House Bill 7093

House Bill 7093 establishes a clearinghouse program (clearinghouse) for use by Citizens before property insurance can be written or renewed by Citizens. The purpose of the clearinghouse is to ensure only property meeting the Citizens' premium eligibility restrictions obtains insurance in Citizens. The bill also implements a five percent premium eligibility restriction for policies renewed by Citizens.

All applications for insurance in Citizens and all policies to be renewed in Citizens must be submitted to the clearinghouse to determine if the policy can be written or renewed by a property insurer operating in the private market within the statutory premium eligibility restrictions of 15 percent for new insurance applications and five percent for renewals. Insurers are not required to participate in the clearinghouse.

When an application for insurance in Citizens is submitted to the clearinghouse, the insurers participating in the clearinghouse have 48 hours to select the property to insure. If the 48 hour period expires and no insurer has elected to insure the property, Citizens will insure it. If the property is selected by an insurer and the premium offered by the insurer is within the statutory premium eligibility guideline for new applications, then the homeowner is not eligible for insurance in Citizens. If more than one insurer offers insurance within the guideline, the homeowner can choose from which insurer to purchase insurance. If an insurer offers to write insurance, but the premium is more than the guideline, then the homeowner can choose to buy insurance with the insurer or buy insurance with Citizens.

The same clearinghouse submission and selection process applies to Citizens' renewals, but there is no 48 hour waiting period. Citizens' renewals will be submitted to the clearinghouse for selection during the time period provided by law for notifying the policyholder their policy is being renewed, which is 45 days before renewal. If property insured by Citizens is up for renewal and is selected from the clearinghouse by an insurer with a premium from the insurer within the statutory renewal premium eligibility guidelines, then the homeowner is not eligible to renew insurance in Citizens. If more than one insurer offers insurance at premiums within the renewal guideline, the homeowner can choose from which insurer to purchase insurance. If an insurer offers to write insurance, but the premium is more than the renewal guideline, then the homeowner can choose to buy insurance with the insurer or renew their insurance with Citizens.

Surplus lines insurers[5] can also participate in the clearinghouse. A surplus lines insurer cannot offer to insure a property if a Florida licensed insurer[6] makes an offer. Unlike offers of insurance made to homeowners through the clearinghouse from Florida licensed insurers, if a homeowner receives an offer of insurance through the clearinghouse from a surplus lines insurer within the Citizens' premium eligibility restrictions, the homeowner can still be insured by Citizens if they choose. Likewise, homeowners can choose to have their insurance renewed in Citizens even if they receive an offer of insurance from a surplus lines insurer within the renewal premium eligibility guidelines.

Effect of the Bill

The bill provides that underwriting guidelines, manuals, rating information, or other underwriting criteria or instructions submitted by an insurer to the Citizens' clearinghouse that are used by the clearinghouse to identify and select risks from the clearinghouse are confidential and exempt[7] from public records requirements.

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.[8]

B. SECTION DIRECTORY:

Section 1: Amends s. 627.3518, F.S., providing an exemption from public records requirements for all underwriting guidelines, manuals, rating information, and other underwriting criteria or instructions submitted by an insurer to the corporation's policyholder eligibility clearinghouse program which are used to identify and select risks from the program; provides for future review and repeal of the exemption under the Open Government Sunset Review Act.

Section 2: Provides a statement of public necessity.

Section 3: Provides an effective date that is contingent upon the passage of HB 7093 or similar legislation creating s. 627.3518, F.S., the Citizens' clearinghouse takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

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[5] Surplus lines insurance refers to a category of insurance for which there is no market available through standard insurance carriers in the admitted market (insurance companies licensed to transact insurance in Florida). Surplus lines insurers are not "authorized" insurers as defined in the Florida Insurance Code and thus do not obtain a certificate of authority from the Office of Insurance Regulation (OIR) to transact insurance in Florida. Rather, surplus lines insurers are "unauthorized" insurers, but are eligible to transact surplus lines insurance under the surplus lines law as "eligible surplus insurers". OIR determines whether a surplus lines insurer is "eligible" based on statutory guidelines.

[6] An admitted insurer is one licensed to transact insurance in Florida.

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

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

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:

This bill likely could create a minimal fiscal impact on Citizens, because staff responsible for complying with public record requests could require training related to the creation of the public record exemption. In addition, Citizens 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 Citizens.

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:

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 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

None.

A bill to be entitled

An act relating to public records; amending s. 627.3518, F.S.; providing an exemption from public records requirements for all underwriting guidelines, manuals, rating information, and other underwriting criteria or instructions submitted by an insurer to the corporation's policyholder eligibility clearinghouse program which are used to identify and select risks from the program; providing for future review and repeal of the exemption under the Open Government Sunset Review Act; 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 (10) is added to section 627.3518, Florida Statutes, as created by HB 7093, 2013 Regular Session, to read:

627.3518 Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.—

(10) All underwriting guidelines, manuals, rating information, and other underwriting criteria or instructions submitted by an insurer to the corporation's policyholder eligibility clearinghouse program which are used to identify and select risks from the program are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subsection 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.

Section 2. The Legislature finds that it is public necessity that all underwriting guidelines, manuals, rating information, and other underwriting criteria or instructions submitted by an insurer to the Citizens Property Insurance Corporation's policyholder eligibility clearinghouse program which are used to identify and select risks from the program be made confidential and exempt from the requirements of s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The program will facilitate obtaining offers of coverage from insurers for applicants for insurance coverage with Citizens Property Insurance Corporation and for policyholders with existing insurance coverage with Citizens Property Insurance Corporation. Obtaining offers of coverage from insurers through the program will provide more choices for consumers and reduce Citizens Property Insurance Corporation's exposure and potential for assessments on its policyholders and policyholders in the private market. In order for the program to efficiently determine whether there are insurers interested in making an offer of coverage for a particular risk, a substantial amount of detailed data from participating insurers must be provided to the program. Public disclosure of the detailed data could result in a substantial chilling effect on insurer participation in the program, thereby undermining the program's success. Therefore, the Legislature declares that it is a public necessity that all underwriting guidelines, manuals, rating

information, and other underwriting criteria or instructions submitted by an insurer to the Citizens Property Insurance Corporation's policyholder eligibility clearinghouse program which are used to identify and select risks from the program be made confidential and exempt from public records requirements.

Section 3. This act shall take effect on the same date that HB 7093 or similar legislation creating s. 627.3518, Florida Statutes, the Citizen's Property Insurance Corporation policyholder eligibility clearinghouse program, takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 13-04 OGSR Direct-support Organization of the Department of Veterans' Affairs
SPONSOR(S): Government Operations Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 474

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

SUMMARY ANALYSIS

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

Current law authorizes the Department of Veterans' Affairs (department) to establish a direct-support organization (DSO) to provide assistance, funding, and support for the department in carrying out its mission. The DSO was incorporated as the Florida Veterans Foundation and is governed by a board of directors appointed by the executive director of the department.

Current law provides a public record and public meeting exemption for the DSO. Information that identifies a donor or prospective donor to the DSO who desires to remain anonymous is confidential and exempt from public record requirements. In addition, portions of meetings of the DSO during which the identity of donors or prospective donors is discussed are exempt from public meeting requirements.

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

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

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

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

Department of Veterans' Affairs, Direct-Support Organization

In 2008, the Legislature authorized the Department of Veterans' Affairs (department) to establish a direct-support organization (DSO) to provide assistance, funding, and support for the department in carrying out its mission.[4] The DSO was incorporated as the Florida Veterans Foundation and is governed by a board of directors appointed by the executive director of the department.[5] The DSO operates under a written contract with the department.[6]

Public Record and Public Meeting Exemptions under Review

In 2008, the Legislature created a public record and public meeting exemption for the DSO.[7] Information that identifies a donor or prospective donor to the DSO who desires to remain anonymous

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[1] Section 119.15, F.S.
[2] Section 24(c), Art. I of the State Constitution
[3] An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.
[4] Chapter 2008-84, L.O.F.; codified as s. 292.055, F.S.
[5] Section 292.055(3), F.S.
[6] Section 292.055(4), F.S.
[7] Chapter 2008-85, L.O.F.; codified as s. 292.055(9), F.S.

is confidential and exempt[8] from public record requirements.[9] In addition, portions of meetings of the DSO during which the identity of donors or prospective donors is discussed are exempt from public meeting requirements.[10]

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 the department and the DSO as part of the Open Government Sunset Review process. Both the department and the DSO recommended reenactment of the public record and public meeting exemption under review.

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record and public meeting exemption for the DSO. It clarifies that the public meeting exemption only applies to those portions of meetings wherein confidential and exempt donor information is discussed.

B. SECTION DIRECTORY:

Section 1 amends s. 292.055, F.S., to save from repeal the public record and public meeting exemption for information identifying certain donors to the DSO.

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.

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

[9] Section 292.055(9)(a), F.S.

[10] Section 292.055(9)(b), F.S.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 292.055, F.S., which provides an exemption from public record and public meeting requirements for information identifying certain donors to the direct-support organization for the Department of Veterans' Affairs; removing superfluous language; specifying that the public meeting exemption applies to those portions of meetings wherein the identity of a donor or prospective donor whose identity is confidential and exempt is discussed; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (9) of section 292.055, Florida Statutes, is amended to read:

292.055 Direct-support organization.—

(9) CONFIDENTIALITY OF DONORS.—

(a) Any information identifying ~~The identity of~~ a donor or prospective donor to the direct-support organization who desires to remain anonymous~~, and all information identifying such donor or prospective donor,~~ is confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Portions of meetings of the direct-support organization during which the identity of a donor ~~donors~~ or

prospective donor, whose identity is confidential and exempt pursuant to paragraph (a), ~~donors~~ is discussed are exempt from ~~the provisions of~~ s. 286.011 and s. 24(b), Art. I of the State Constitution.

~~(c) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2013, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 13-06 OGSR Employment Discrimination Complaints
SPONSOR(S): Government Operations Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1800

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

SUMMARY ANALYSIS

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

Current law prohibits employment discrimination on the basis of race, color, religion, national origin, sex, handicap, or marital status.

Current law provides a public record exemption for all complaints in the custody of any agency that relate to a complaint of employment discrimination. Specifically, all complaints and other records in the custody of an agency that relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, or marital status in connection with hiring practices, position classifications, salary, benefits, discipline, discharge, employee performance, evaluation, or other related activities are exempt from public record requirements. In addition, when the alleged victim chooses not to file a complaint and requests that records of the complaint remain confidential, all records relating to an allegation of employment discrimination are confidential and exempt from public record requirements.

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

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

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

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

Florida Commission on Human Relations

The Florida Commission on Human Relations (commission) is an independent commission comprised of 12 members appointed by the Governor, subject to confirmation by the Senate.[4] Members of the commission must be broadly representative of various racial, religious, ethnic, social, economic, political, and professional groups within the state. At least one member of the commission must be at least 60 years of age.[5]

The commission is assigned to the Department of Management Services; however, in the performance of its duties pursuant to the Florida Civil Rights Act of 1992, it is not subject to control, supervision, or direction by the department.[6]

The commission is tasked with promoting and encouraging fair treatment and equal opportunity for all persons and mutual understanding and respect among economic, social, racial, religious, and ethnic groups.[7] Current law specifies the duties and responsibilities of the commission, including requiring the

[1] Section 119.15, F.S.
[2] Section 24(c), Art. I of the State Constitution
[3] An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.
[4] Section 760.03(1), F.S.
[5] Section 760.03(2), F.S.
[6] Section 760.04, F.S.
[7] Section 760.05, F.S.

commission to receive, initiate, investigate, seek to conciliate, hold hearings on, and act upon complaints alleging any discriminatory practice.[8]

Employment Discrimination
Current law prohibits employment discrimination on the basis of race, color, religion, national origin, sex, handicap, or marital status.[9]

Public Record Exemption under Review
Current law provides a public record exemption for all complaints in the custody of any agency[10] that relate to a complaint of employment discrimination. Specifically, all complaints and other records in the custody of an agency that relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, or marital status in connection with hiring practices, position classifications, salary, benefits, discipline, discharge, employee performance, evaluation, or other related activities are exempt[11] from public record requirements. The exemption expires when a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding.[12]

Current law specifies that the exemption does not affect any function or activity of the commission.[13] In addition, any state or federal agency that is authorized to have access to such complaints or records by any provision of law must be granted access in the furtherance of such agency's statutory duties.[14]

Current law also provides that when the alleged victim chooses not to file a complaint and requests that records of the complaint remain confidential, all records relating to an allegation of employment discrimination are confidential and exempt from public record requirements.[15]

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2013, unless reenacted by the Legislature.[16]

During the 2012 interim, subcommittee staff sent questionnaires to all state and local government agencies regarding their use of the public record exemption under review. Those state and local agencies responding to the questionnaire indicated that there is a public necessity to continue the public record exemption under review and recommended reenactment of it.

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record exemption for employment discrimination complaints and other records relating to the complaint that are in the custody of an agency. The bill also makes clarifying changes.

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[8] Section 760.06(5), F.S.
[9] *See* s. 760.10, F.S.
[10] Section 119.011(2), F.S., defines "agency" to mean as "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."
[11] 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).
[12] Section 119.071(2)(g)1.a., F.S.
[13] Section 119.071(2)(g)1.b., F.S.
[14] Section 119.071(2)(g)1.c., F.S.
[15] Section 119.071(2)(g)2., F.S.
[16] Section 119.071(2)(g)3., F.S.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to save from repeal the public record exemption for employment discrimination complaints and other records relating to the complaint.

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

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.071, F.S., which provides an exemption from public record requirements for employment discrimination complaints and other records; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Paragraph (g) of subsection (2) of section 119.071, Florida Statutes, is amended to read:

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

(2) AGENCY INVESTIGATIONS.—

(g)1.~~a.~~ All complaints and other records in the custody of any agency which relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, or marital status in connection with hiring practices, position classifications, salary, benefits, discipline, discharge, employee performance, evaluation, or other related activities are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding.

a.~~b.~~ This exemption does ~~provision shall~~ not affect any function or activity of the Florida Commission on Human

Relations.

b.~~e.~~ Any state or federal agency that is authorized to have access to such complaints or records by any provision of law shall be granted such access in the furtherance of such agency's statutory duties.

2. If an ~~When the~~ alleged victim chooses not to file a complaint and requests that records of the complaint remain confidential, all records relating to an allegation of employment discrimination are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

~~3. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2013, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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