



State Affairs Committee

Thursday, April 02, 2015

9:00 AM

Morris Hall (17 HOB)

Meeting Packet

Steve Crisafulli
Speaker

Matt Caldwell
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

State Affairs Committee

Start Date and Time: Thursday, April 02, 2015 09:00 am
End Date and Time: Thursday, April 02, 2015 10:30 am
Location: Morris Hall (17 HOB)
Duration: 1.50 hrs

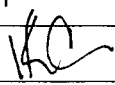
Consideration of the following bill(s):

HB 599 Exemption from Legislative Lobbying Requirements by Rogers
CS/CS/HB 627 Animal Control by Local Government Affairs Subcommittee, Agriculture & Natural Resources Subcommittee, Sullivan, Pilon
CS/HB 821 Florida Historic Capitol by Government Operations Subcommittee, Hutson, Santiago
CS/HB 917 Cattle Market Development Act by Agriculture & Natural Resources Subcommittee, Combee, Albritton
CS/HB 985 Maintenance of Agency Final Orders by Rulemaking Oversight & Repeal Subcommittee, Eisnaugle
CS/HB 1011 Addresses of Legal Residence by Government Operations Subcommittee, Spano
CS/HB 1287 Public Records/Veterinary Medical Practice by Business & Professions Subcommittee, Renuart, Harrell
CS/HB 1333 Firefighters' Relief and Pension Fund of the City of Pensacola, Escambia County by Local Government Affairs Subcommittee, Ingram
HB 7103 Public Records/Juvenile Criminal History Records by Criminal Justice Subcommittee, Pritchett
HB 7107 Pub. Rec./Expunged and Sealed Criminal History Records by Criminal Justice Subcommittee, Latvala
HB 7129 OGSR/Child Abuse Death Review Committees by Government Operations Subcommittee, Fant

NOTICE FINALIZED on 03/31/2015 16:07 by Love.John

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 599 Exemption from Legislative Lobbying Requirements
SPONSOR(S): Rogers
TIED BILLS: IDEN./SIM. **BILLS:** SB 984

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	12 Y, 0 N	Toliver	Williamson
2) State Affairs Committee		Toliver LT	Camechis 
3) Rules, Calendar & Ethics Committee			

SUMMARY ANALYSIS

Current law prohibits lobbyists and principals from making, and a member or employee of the Legislature from accepting, expenditures. The term "expenditure" is defined as a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or a principal for the purpose of lobbying. Current law also provides penalties for violating the expenditure prohibition.

The bill revises the definition of "expenditure" to create an exception for a "public-legislative use." It provides that a "public-legislative use" is the use of a public facility or property that is made available by a governmental entity to a legislator for a public purpose, regardless of whether the governmental entity is required to register a person as a lobbyist.

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:

Present Situation

Section 11.045, F.S., relates to lobbying before the Legislature. Section 11.045(4)(a), F.S. prohibits lobbyists¹ and principals from making, and a member or employee of the Legislature from accepting, any direct or indirect expenditure. The term “principal” is defined to mean “the person, firm, corporation, or other entity which has employed or retained a lobbyist,”² which appears to include governmental entities such as municipalities, counties, and universities. The term “expenditure” is defined as:³

[A] payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying. The term does not include contributions or expenditures reported pursuant to chapter 106 or federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, any other contribution or expenditure made by or to a political party or affiliated party committee, or any other contribution or expenditure made by an organization that is exempt from taxation under 26 U.S.C. s. 547 or s. 501(c)(4).

The following penalties can be imposed for violating the expenditure prohibition:⁴

- A fine of not more than \$5,000;
- Reprimand;
- Censure;
- Probation; or
- Prohibition from lobbying⁵ for a period not to exceed 24 months.

The Florida House of Representatives’ Administrative Policy Manual further addresses the prohibition on acceptance of lobbying expenditures, including exceptions to the prohibition on lobbying expenditures. The administrative policy provides an exception for government facilities and transportation:⁶

With the prior approval of the Speaker, based upon a public legislative purpose, real property and facilities owned or operated by state or local public entities, and transportation provided by such entity, may be used without payment by a legislator, committee, or staff of the House. Approval is required under this provision, even if the public entity has the practice of providing the space or service at no cost to other government entities or the general public.

However, this exception does not extend to entertainment venues, food, beverages, entertainment, or free parking privileges at locations other than a legislator’s district office.⁷

¹ Section 11.045(1)(g), F.S. defines the term “lobbyist” to mean “a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity.”

² Section 11.045(1)(i), F.S.

³ Section 11.045(1)(c), F.S.

⁴ Section 11.045(7), F.S.

⁵ Section 11.045(1)(e), F.S., defines the term “lobbying” to mean influencing or attempting to influence legislative action or nonaction through oral or written communication or an attempt to obtain the goodwill of a member or employee of the Legislature.”

⁶ Fla. House of Rep. Admin. Policy Manual, Policy 1.11. (Dec. 2014)

⁷ *Id.*

Effect of the Bill

The bill revises the definition of "expenditure" to create an exception for a "public-legislative use." The bill provides that a "public-legislative use" is the use of a public facility or public property that is made available by a governmental entity to a legislator for a public purpose, regardless of whether the governmental entity is required to register a person as a lobbyist.

B. SECTION DIRECTORY:

Section 1: Amends s. 11.045, F.S., relating to lobbying before the Legislature.

Section 2: Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on local government expenditures.

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 municipal or county government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to exemption from legislative lobbying
 3 requirements; amending s. 11.045, F.S.; revising the
 4 definition of the term "expenditure"; specifying that
 5 the term does not include use of a public facility or
 6 public property that is made available by a
 7 governmental entity to a legislator for a public
 8 purpose, to exempt such use from legislative lobbying
 9 requirements; providing an effective date.

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

12
 13 Section 1. Paragraph (c) of subsection (1) of section
 14 11.045, Florida Statutes, is amended to read:

15 11.045 Lobbying before the Legislature; registration and
 16 reporting; exemptions; penalties.-

17 (1) As used in this section, unless the context otherwise
 18 requires:

19 (c) "Expenditure" means a payment, distribution, loan,
 20 advance, reimbursement, deposit, or anything of value made by a
 21 lobbyist or principal for the purpose of lobbying. The term does
 22 not include:

23 1. Contributions or expenditures reported pursuant to
 24 chapter 106 or federal election law, campaign-related personal
 25 services provided without compensation by individuals
 26 volunteering their time, any other contribution or expenditure

27 | made by or to a political party or affiliated party committee,
28 | or any other contribution or expenditure made by an organization
29 | that is exempt from taxation under 26 U.S.C. s. 527 or s.
30 | 501(c)(4).

31 | 2. A public-legislative use, which is the use of a public
32 | facility or public property that is made available by a
33 | governmental entity to a legislator for a public purpose,
34 | regardless of whether the governmental entity is required to
35 | register a person as a lobbyist pursuant to this section.

36 | Section 2. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 627 Animal Control

SPONSOR(S): Local Government Affairs Subcommittee; Agriculture & Natural Resources Subcommittee; Sullivan and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 420

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N, As CS	Gregory	Blalock
2) Local Government Affairs Subcommittee	13 Y, 0 N, As CS	Darden	Miller
3) State Affairs Committee		Gregory	Camechis

SUMMARY ANALYSIS

Disposition of At Large or Stray Livestock

“Livestock” includes all animals of the equine, bovine, or swine class, including goats, sheep, mules, horses, hogs, cattle, ostriches, and other grazing animals. Law enforcement officers of a county or an animal control center who find livestock running at large or stray must confine, hold, and impound the livestock. After the livestock is impounded, the sheriff must attempt to notify the owner advising of the location of the livestock, the amount due for impounding, and that the livestock will be sold if not redeemed. If the livestock is not redeemed, the sheriff must put the livestock up for sale or auction. The sheriff must also determine and collect the fees allowed for impounding, serving notice, care and feeding, advertising, and disposing of impounded animals.

The bill:

- Authorizes sheriffs and county animal control centers to offer for adoption or humanely dispose of impounded livestock, excluding cattle, as an alternative to the sale or auction of the livestock;
- Requires county animal control centers, in addition to sheriffs, to determine the fees allowed for impounding, serving notice, care and feeding, advertising, and disposing of impounded animals; and
- Authorizes county animal control centers to collect payment in the same manner as sheriffs for impounding expenses when the livestock owner redeems the impounded livestock.

Municipal Animal Control Officers

Counties and societies or associations for the prevention of cruelty to children or animals (societies/associations) may appoint agents to investigate violations of certain animal cruelty laws and other laws protecting children and animals. The bill grants municipalities with certified animal control officers the same powers as counties and societies/associations.

Local Animal Control or Cruelty Ordinances Civil Citation Procedures

Counties and municipalities may adopt ordinances related to animal control and cruelty. To enforce such ordinances, counties and municipalities are specifically authorized to follow certain procedures established in statute. It is not clear whether additional, more flexible procedures authorized in statute for municipal code enforcement apply to the animal control and cruelty ordinances. The bill authorizes counties and municipalities to use these other code enforcement procedures afforded in statute to enforce animal control and cruelty ordinances.

The bill appears to have an indeterminate positive fiscal impact on counties. (See Fiscal Impacts section below).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Disposition of At Large or Stray Livestock

Present Situation

"Livestock" includes all animals of the equine, bovine, or swine class, including goats, sheep, mules, horses, hogs, cattle, ostriches, and other grazing animals.¹ Owners who intentionally, willfully, carelessly, or negligently allow their livestock to run at large or stray upon public roads can be held liable for injury and property damage caused by the animal.² These owners can also be charged with a second degree misdemeanor, which may be penalized by a term of imprisonment not exceeding 60 days and/or a fine of \$500.³

Sheriffs, their deputies or designees, other law enforcement officers of the county, the county animal control center, and state highway patrol officers (impounders) who find livestock running at large or stray must confine, hold, and impound the livestock.⁴ After the livestock is impounded, the sheriff must notify the owner, or publish notice if the owner is not known, advising of the location of the livestock, the amount due for impounding, and that the livestock will be sold if not redeemed within three days.⁵ If the livestock is not redeemed within three days, the sheriff must publish notice that the livestock will be sold in not less than five days and not more than ten days.⁶

An impounder is required to provide feed and water for the impounded animals at least twice a day and ensure that milk cows and milk goats are milked twice a day. An impounder also must employ persons necessary to protect, feed, care for, and keep the impounded animals. The impounder is entitled to the fees for the feed and care.⁷

The sheriff must determine the fees allowed for impounding, serving notice, care and feeding, advertising, and disposing of impounded animals.⁸ Damages caused in the pursuit, capture, handling, or care of the livestock are the sole responsibility of the sheriff or law enforcement agency.⁹ The owner of the impounded animal may redeem the animal at any time before the animal is sold by paying the fees determined by the sheriff. If there is a dispute regarding the fees, the owner must give a bond with sufficient sureties to the sheriff, not to exceed the value of the livestock, and then institute a suit to adjudicate the damages in court.¹⁰

The sheriff must report the sale or other disposal to the clerk of the circuit court. This report must include a description of the sold or disposed of livestock, the name of the person who bought the livestock, and the sale price.¹¹ The sheriff must give the clerk of the circuit court the proceeds gained from the sale of the impounded livestock.¹² The clerk must then pay all costs associated with impounding, serving notice, care and feeding, advertising, and disposing of the impounded animal.¹³

¹ S. 588.13(1), F.S.

² S. 588.15, F.S.

³ S. 588.24, F.S.

⁴ S. 588.16, F.S.

⁵ S. 588.17(1), (2), F.S.

⁶ S. 588.17(3), F.S.

⁷ S. 588.22, F.S.

⁸ S. 588.18, F.S.

⁹ *Id.*

¹⁰ S. 588.23 F.S.

¹¹ S. 588.20(1), F.S.

¹² S. 588.20(2), F.S.

¹³ S. 588.20(3), F.S.

Any remaining proceeds must then be paid to the impounded animal's owner.¹⁴ If the owner cannot be found, the proceeds must go to the county.¹⁵

Effect of Proposed Changes

The bill creates a new subsection (4) of s. 588.17, F.S., to allow impounded livestock, excluding cattle, to be adopted or humanely disposed of¹⁶ as an alternative to selling, auctioning, or otherwise disposing of the livestock. This grants sheriffs and county animal control centers more options to adequately deal with impounded livestock when sale or auction is not feasible, and to control the quality of placement of the animals. Sheriffs and county animal control centers must carry out the following procedures if impounded livestock are offered for adoption or humanely disposed of:

- The sheriffs and county animal control centers must provide written notice to the owner, if known, advising of the location of the livestock, the amount due by reason of impounding, and that unless the livestock is redeemed within a timeframe to be established by the impounder, not less than three days, the livestock will be offered for adoption or disposed of humanely.
- If the owner is unknown or cannot be located, the sheriffs and county animal control centers must notify the owner by publishing a notice on the designated impounder's website. If the livestock is not redeemed within a timeframe to be established by the impounder, not less than three days, the livestock will be offered for adoption or disposed of humanely.

The bill also makes conforming changes in subsection (1) through (3) of s. 588.17, F.S.

The bill amends s. 588.18, F.S., authorizing county animal control centers, in addition to sheriffs, to determine the fees allowed for impounding, serving notice, care and feeding, advertising, and disposing of impounded animals. This provision allows county animal control centers to directly perform this task without requiring them to work through the local sheriff. The provision also makes county animal control centers responsible for damages done in pursuit, capture, handling, or care of the livestock.

The bill amends s. 588.23, F.S., to allow county animal control centers to receive payment in the same manner as sheriffs for impounding expenses when the livestock owner redeems the impounded livestock. Further, the bill allows county animal control centers to receive sureties in the same manner as sheriffs when there is a dispute over the fee. This provision will allow county animal control centers to directly collect fees related to the care and disposition of impounded livestock without requiring them to work through the local sheriff.

Municipal Animals Control Officers

Present Situation

"Cruelty" to animals includes every act, omission, or neglect whereby unnecessary or unjustifiable pain or suffering is caused, except when done in the interest of medical science, permitted, or allowed to continue when there is reasonable remedy or relief.¹⁷ The penalties for cruelty to animals are:

- Prison time not to exceed 1 year and/or up to a \$5000 fine for a person who unnecessarily overloads, overdrives, torments, deprives of necessary sustenance or shelter, or unnecessarily mutilates, or kills any animal, or causes the same to be done, or carries in or upon any vehicle, or otherwise, any animal in a cruel or inhumane manner;¹⁸
- Prison time not to exceed 5 years and/or up to a \$10,000 for a person who intentionally commits an act to any animal, or a person who owns or has the custody or control of any animal and fails

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ "Humane disposal" is not defined by the bill, but the term is used several times in ch. 828, F.S.

¹⁷ Section 828.02, F.S.

¹⁸ S. 828.12(1), F.S.

to act, which results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering, or causes the same to be done.¹⁹

- There is a minimum mandatory fine of \$2,500 if the person is found to have knowingly and intentionally tortured or tormented the animal;²⁰ and
- Persons convicted of a second or subsequent violation must pay a minimum mandatory fine of \$5000 and serve a minimum of six months in prison. In addition, the person shall be released only upon expiration of sentence, is not eligible for parole, control release, or any form of early release, and must serve 100 percent of the court-imposed sentence;²¹
- Prison time not to exceed 5 years and/or up to a \$5000 fine for person who intentionally trips, fells, ropes, or lassos the legs of a horse for the purpose of entertainment.²²

An "animal control officer" is any person employed or appointed by a county or municipality who is authorized to investigate, on public or private property, civil infractions relating to animal control or cruelty and to issue citations.²³ An animal control officer is not authorized to bear arms or make arrests, but may, with appropriate training, carry a device to chemically subdue and tranquilize an animal.²⁴ County animal control officers must, and municipally employed animal control officers may, complete a 40-hour minimum standards training course approved by the Florida Animal Control Association to be certified.²⁵ This course must include training for animal cruelty investigations, search and seizure, animal handling, courtroom demeanor, and civil citations.²⁶

Counties and societies for the prevention of cruelty to children or animals (societies/associations) are authorized to appoint agents for investigation of violations of chapter 828, F.S., and other laws for the purpose of protecting children and animals and preventing cruelty to children or animals.²⁷ Appointments by a society/association must be approved by the mayor of the municipality.²⁸ If the society/association operates outside of a municipality, appointment must be approved by a local judge.²⁹

These agents may:

- Lawfully take custody of any animal found neglected or cruelly treated by removing the animal from its present location; or
- Order the owner of any animal found neglected or cruelly treated to provide certain care to the animal at the owner's expense without removal of the animal from its present location.³⁰

After an animal is taken or the owner is ordered to provide care for the animal, the agent must file a petition with the county court and the court must hold a hearing to determine if the owner is able to provide adequately for the animal and is fit to have custody of the animal.³¹ The agent must provide the owner, if known and residing in the county where the animal was taken, with notice of the hearing at least three days before the hearing.³² If the court determines that the owner of the animal is unfit or unable to adequately provide for the animal the court may require:

¹⁹ S. 828.12(2), F.S.

²⁰ S. 828.12(2)(a), F.S.

²¹ S. 828.12(2)(b), F.S.

²² S. 828.12(5), F.S.

²³ S. 828.27(1)(b), F.S.

²⁴ *Id.*

²⁵ S. 828.27(4)(a)1, F.S. Animal control officers authorized before January 1, 1990, are not required to complete the minimum standards course. S. 828.27(4)(a)2., F.S.

²⁶ *Id.*

²⁷ Section 828.03(1), F.S.

²⁸ Section 828.03(2), F.S.

²⁹ *Id.*

³⁰ S. 828.073(2), F.S.

³¹ *Id.*

³² S. 828.073(3), F.S.

- The owner no longer have custody of the animal;³³
- The animal be sold;³⁴
- The animal be remanded to certain organizations;³⁵
- The animal be destroyed;³⁶
- The owner to pay for care of the animal during the agent's possession of the animal;³⁷ and
- The owner loses custody of other animals not seized by the agent.³⁸

Current law does not appear to give municipalities the authority to seize animals in cruelty cases or petition for custody.

Effect of Proposed Changes

The bill amends s. 828.073, F.S., to grant municipalities with certified animal control officers the same powers as counties and societies/associations. This also makes conforming changes in s. 828.073, F.S.

Local Animal Control or Cruelty Ordinances Civil Citation Procedures

Present Situation

Section 828.27(2), F.S., authorizes counties and municipalities to adopt ordinances related to animal control and cruelty. The statute sets forth what must be in the ordinance and the procedure to assess and collect fines. These ordinances may not conflict with chapter 828, F.S.³⁹ It is not clear whether the more flexible procedures authorized in chapter 162, F.S., for municipal code enforcement apply to the animal control and cruelty ordinances.

Chapter 162, F.S., authorizes counties and municipalities to enforce their codes through local code enforcement boards that employ code inspectors to notify individuals of violations and can order the violations be corrected.⁴⁰ Code enforcement boards may hold hearings, impose enforcement fees and fines, and file liens on property.⁴¹ Counties and municipalities may also employ code enforcement officers who may issue citations not to exceed \$500⁴² or require the appearance of an individual before the county court regarding a violation.⁴³ It is unclear whether these procedures apply to the animal cruelty statutes in chapter 828, F.S.

Section 828.27(4)(b), F.S., authorizes counties and municipalities to impose and collect a surcharge of \$5 associated with each violation of an ordinance relating to animal control or cruelty. The counties and municipalities must use the surcharge to pay the costs of training for animal control officers.⁴⁴ Counties may also use this surcharge to fund animal shelter operations until July 1, 2014.⁴⁵

³³ S. 828.073(4)(a)1.a, F.S.

³⁴ *Id.*

³⁵ S. 828.073(4)(a)1.b, F.S.

³⁶ *Id.*

³⁷ S. 828.073(4)(a)2, F.S.

³⁸ S. 828.073(4)(a)3, F.S.

³⁹ S. 828.27(7), F.S.

⁴⁰ S. 162.06, F.S.

⁴¹ *Id.*; s. 162.09, F.S.

⁴² See s. 162.21(5)(b), F.S. (establishing maximum civil penalty for citation).

⁴³ S. 162.21(3)(a), F.S.

⁴⁴ S. 828.27(4)(b)1, F.S.

⁴⁵ S. 828.27(4)(b)2, F.S.

Effect of Proposed Changes

The bill repeals s. 828.27(4)(b)2., F.S., which allowed counties to use the surcharge for violation of an ordinance relating to animal control or cruelty to fund animal shelter operations until July 1, 2014.⁴⁶

The bill adds subsection (8) to s. 828.27, F.S., to clarify that counties and municipalities are not limited to using only the procedures set forth in s. 828.27, F.S., to enforce animal control and cruelty ordinances, but may also use other enforcement means. This includes the procedures set forth in chapter 162, F.S. Counties and municipalities will be allowed to utilize tools such as local code enforcement boards and special magistrates in an effort to maximize collections related to animal cruelty ordinances.⁴⁷

B. SECTION DIRECTORY:

- Section 1. Amends s. 588.17, F.S., relating to disposition of impounded livestock.
- Section 2. Amends s. 588.18, F.S., relating to fees allowed for impounding livestock.
- Section 3. Amends s. 588.23, F.S., relating to the rights of owners of impounded livestock.
- Section 4. Amends s. 828.073, F.S., relating to procedures for animals found in distress.
- Section 5. Amends s. 828.27, F.S., relating to local animal control or cruelty ordinances.
- Section 6. Provides an effective date of July 1, 2015.

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:

Impounded Livestock

The bill will likely have an indeterminate positive fiscal impact on counties. County animal control centers will be able to set and collect fees related to impounded livestock. The county animal control centers will no longer have to work through the sheriff to be reimbursed for impounding livestock. This will likely be a more efficient collection procedure by not requiring the sheriff to expend resources to help the county animal control centers.

⁴⁶ The provision allowing the surcharge to fund animal shelter operations expired July 1, 2014.

⁴⁷ See s. 161.03, F.S.

Municipal Animal Control Officers

The bill will likely have an indeterminate positive fiscal impact on municipalities. Municipalities with certified animal control officers will be able to exercise many powers related to animal control and cruelty ordinances now held by counties. Municipalities no longer would have to work with counties to enforce animal control and cruelty ordinances. This will likely be a more efficient enforcement procedure by not requiring the counties to expend resources to help the animal control officers.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate negative economic impact on individuals who allow their livestock, excluding cattle, to stray or violate animal control and cruelty ordinances. County animal control centers and municipalities will now be able to more efficiently collect fees and enforce ordinances. This may lead to more collection of livestock impoundment fees and enforcement of animal control and cruelty ordinances.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires implementation by executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2015, the Agriculture & Natural Resources Subcommittee adopted a strike all amendment and reported the bill favorably as a committee substitute. The amendment made the following revisions to the bill:

- Removed references to “designated impounders” and replaced them with references to “county animal control centers;”
- Excluded cattle from being adopted or humanely disposed of as an alternative to auction;
- Removed references to “officer’s designee;”
- Made conforming changes to the changes above.

On March 25, 2015, the Local Government Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarifies the bill does not provide new or additional powers to local humane societies or other non-governmental entities, but instead applies to county and municipal animal control agencies.

This analysis is drafted to the bill as amended and passed by the Agriculture & Natural Resources Subcommittee and Local Government Affairs Subcommittee.

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A bill to be entitled
 An act relating to animal control; amending s. 588.17,
 F.S.; providing a procedure for adopting or humanely
 disposing of impounded stray livestock, excluding
 cattle, as an alternative to sale or auction; amending
 s. 588.18, F.S.; requiring a sheriff or county animal
 control center to establish fees and be responsible
 for damages caused while impounding livestock;
 amending s. 588.23, F.S.; conforming provisions to
 changes made by the act; amending s. 828.073, F.S.;
 conforming provisions; authorizing certain municipal
 animal control officers to take custody of an animal
 found neglected or cruelly treated or to order the
 owner of such an animal to provide certain care at the
 owner's expense; authorizing county courts to remand
 animals to the custody of certain municipalities;
 authorizing the allocation of auction proceeds to
 certain animal control officers; amending s. 828.27,
 F.S.; deleting obsolete provisions; clarifying that
 certain provisions relating to local animal control
 are not the exclusive means of enforcing animal
 control laws; providing an effective date.

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

Section 1. Section 588.17, Florida Statutes, is amended to

27 read:

28 588.17 Disposition of impounded livestock.-

29 (1) Upon the impounding of any livestock by the sheriff or
 30 his or her deputies or designees, or any other law enforcement
 31 officers of the county, the county animal control center, or
 32 state highway patrol officers, the sheriff shall ~~forthwith~~ serve
 33 written notice upon the owner, advising the ~~such~~ owner of the
 34 location or place where the livestock is being held and
 35 impounded, of the amount due by reason of the ~~such~~ impounding,
 36 and that unless the ~~such~~ livestock is ~~be~~ redeemed within 3 days
 37 after the date of the notice, ~~from date thereof that~~ the
 38 livestock will ~~same shall~~ be offered for sale.

39 (2) If ~~In the event~~ the owner of the ~~such~~ livestock is
 40 unknown or cannot be found, service upon the owner shall be
 41 obtained by ~~once~~ publishing a notice once in a newspaper of
 42 general circulation in the county where the livestock is
 43 impounded, excluding ~~(Sundays and holidays excluded)~~. If there
 44 is ~~be~~ no such newspaper, then by posting of the notice shall be
 45 posted at the courthouse door and at two other conspicuous
 46 places in the ~~within said~~ county.

47 Such notice shall be in substantially the following form:

48
 49 "TO WHOM IT MAY CONCERN:

50 YOU ARE HEREBY NOTIFIED THAT THE FOLLOWING DESCRIBED
 51 LIVESTOCK ... (GIVING FULL AND ACCURATE DESCRIPTION OF SAME,
 52 INCLUDING MARKS AND BRANDS)... IS NOW IMPOUNDED AT ... (GIVING

79 THE FOLLOWING DESCRIBED LIVESTOCK ... (GIVING FULL AND ACCURATE
80 DESCRIPTION OF EACH HEAD OF LIVESTOCK)... AT O'CLOCK,
81 M. (THE HOUR OF SALE WILL ~~TO~~ BE BETWEEN 11 A.M. AND 2 P.M.
82 EASTERN STANDARD TIME) ON THE DAY OF AT THE FOLLOWING
83 PLACE (WHICH PLACE SHALL BE WHERE THE LIVESTOCK IS
84 IMPOUNDED OR AT THE PLACE PROVIDED BY THE COUNTY COMMISSIONERS
85 FOR THE TAKING UP AND KEEPING OF SUCH LIVESTOCK) TO SATISFY A
86 CLAIM IN THE SUM OF FOR FEES, EXPENSES FOR FEEDING AND
87 CARE, AND OTHER RELATED COSTS ~~HEREOF~~.
88 ... (DATE)... ... (SHERIFF)...
89 OF COUNTY, FLORIDA"

91 (4) Notwithstanding subsections (1)-(3), the sheriff or
92 the county animal control center may offer for adoption or
93 humanely dispose of stray livestock, excluding cattle. If the
94 livestock is to be offered for adoption or humanely disposed of,
95 the sheriff or the county animal control center shall:

96 (a) Provide written notice to the owner, if known,
97 advising the owner of the location where the livestock is
98 impounded, of the amount due by reason of the impounding, and
99 that unless the livestock is redeemed within a timeframe to be
100 established by the sheriff or the county animal control center,
101 which shall be a period of at least 3 business days, the
102 livestock will be offered for adoption or humanely disposed of;
103 or

104 (b) If the owner is unknown or cannot be located, obtain

105 service upon the owner by publishing a notice on the sheriff's
 106 or the county animal control center's website. If the livestock
 107 is not redeemed within a timeframe to be established by the
 108 authorized agency, which shall be a period of at least 3
 109 business days, the livestock will be offered for adoption or
 110 humanely disposed of.

111 Section 2. Section 588.18, Florida Statutes, is amended to
 112 read:

113 588.18 Livestock at large; fees.—The fees allowed for
 114 impounding, serving notice, care and feeding, advertising, and
 115 disposing of impounded animals shall be determined by the
 116 sheriff or the county animal control center of each county.
 117 Damages caused ~~done~~ by the sheriff or the county animal control
 118 center, ~~sheriff's designees, or any other law enforcement~~
 119 ~~officer~~ in pursuit, or in the capture, handling, or care of the
 120 livestock are the sole responsibility of the sheriff or the
 121 county animal control center ~~other law enforcement agency.~~

122 Section 3. Section 588.23, Florida Statutes, is amended to
 123 read:

124 588.23 Right of owner.—The owner of any impounded
 125 livestock has ~~shall have~~ the right at any time before the
 126 disposition ~~sale~~ thereof to redeem the livestock ~~same~~ by paying
 127 to the sheriff or the county animal control center all
 128 impounding expenses, including fees, keeping charges,
 129 advertising, or other costs incurred therewith, which sum shall
 130 be deposited by the sheriff or the county animal control center

131 with the clerk of the circuit court who shall pay all fees and
 132 costs as allowed in s. 588.18. If ~~In the event~~ there is a
 133 dispute as to the amount of such costs and expenses, the owner
 134 may give bond with sufficient sureties to be approved by the
 135 sheriff or the county animal control center, in an amount to be
 136 determined by the sheriff or the county animal control center,
 137 but not exceeding the fair cash value of such livestock,
 138 conditioned to pay such costs and damages; thereafter, within 10
 139 days, the owner shall institute suit in equity to have the
 140 damage adjudicated by a court of equity or referred to a jury if
 141 requested by either party to such suit.

142 Section 4. Section 828.073, Florida Statutes, is amended
 143 to read:

144 828.073 Animals found in distress; ~~when agent may take~~
 145 ~~charge; hearing; disposition; sale.~~-

146 (1) The purpose of this section is to provide a means by
 147 which a neglected or mistreated animal may ~~can~~ be:

148 (a) Removed from its present custody, or

149 (b) Made the subject of an order to provide care, issued
 150 to its owner by the county court, any law enforcement officer,
 151 any animal control officer certified pursuant to s. 828.27, or
 152 any agent of any ~~the~~ county or of any society or association for
 153 the prevention of cruelty to animals appointed under s. 828.03,

154
 155 and protected ~~given protection~~ and disposed of appropriately and
 156 humanely ~~an appropriate and humane disposition made.~~

157 (2) Any law enforcement officer, any animal control
 158 officer certified pursuant to s. 828.27, or any agent of any
 159 county or of any society or association for the prevention of
 160 cruelty to animals appointed under ~~the provisions of~~ s. 828.03
 161 may:

162 (a) Lawfully take custody of any animal found neglected or
 163 cruelly treated by removing the animal from its present
 164 location, or

165 (b) Order the owner of any animal found neglected or
 166 cruelly treated to provide certain care to the animal at the
 167 owner's expense without removal of the animal from its present
 168 location,

169
 170 and shall file a petition seeking relief under this section in
 171 the county court of the county in which the animal is found
 172 within 10 days after the animal is seized or an order to provide
 173 care is issued. The court shall schedule and commence a hearing
 174 on the petition within 30 days after the petition is filed to
 175 determine whether the owner, if known, is able to adequately
 176 provide ~~adequately~~ for the animal and is fit to have custody of
 177 the animal. The hearing shall be concluded and the court order
 178 entered thereon within 60 days after the date the hearing is
 179 commenced. The timeframes set forth in this subsection are not
 180 jurisdictional. However, if a failure to meet such timeframes is
 181 attributable to the officer or agent, the owner is not required
 182 to pay the officer or agent for care of the animal during any

183 period of delay caused by the officer or agent. A fee may not be
 184 charged for filing the petition. This subsection does not
 185 require court action for ~~the taking into~~ custody and properly
 186 disposing ~~making proper disposition~~ of stray or abandoned
 187 animals as lawfully performed by animal control agents.

188 (3) The law enforcement officer, the animal control
 189 officer certified pursuant to s. 828.27, or the agent of any
 190 county or of any society or association for the prevention of
 191 cruelty to animals taking custody charge of an ~~any~~ animal
 192 pursuant to ~~the provisions of~~ this section shall have written
 193 notice served, at least 3 days before the hearing scheduled
 194 under subsection (2), upon the owner of the animal, if he or she
 195 is known and is residing in the county where the animal was
 196 taken, in accordance ~~conformance~~ with ~~the provisions of~~ chapter
 197 48 relating to service of process. The sheriff of the county may
 198 ~~shall~~ not charge a fee for service of such notice.

199 (4)(a) The law enforcement officer, the animal control
 200 officer certified pursuant to s. 828.27, or the agent of any
 201 county or of any society or association for the prevention of
 202 cruelty to animals taking custody charge of an animal pursuant
 203 to as provided for in this section shall provide for the animal
 204 until either:

205 1. The owner is adjudged by the court to be able to
 206 adequately provide ~~adequately~~ for, and have custody of, the
 207 animal, in which case the animal shall be returned to the owner
 208 upon payment by the owner for the care and provision for the

209 animal while in the agent's or officer's custody; or

210 2. The animal is turned over to the officer or agent
 211 pursuant to ~~as provided in~~ paragraph (c) and humanely disposed
 212 of a humane disposition of the animal is made.

213 (b) If the court determines that the owner is able to
 214 provide adequately for, and have custody of, the animal, the
 215 order shall provide that the animal in the possession of the
 216 officer or agent be claimed and removed by the owner within 7
 217 days after the date of the order.

218 (c) Upon the court's judgment that the owner of the animal
 219 is unable or unfit to adequately provide for the animal:

220 1. The court may:

221 a. Order that the current owner have no further custody of
 222 the animal and that the animal be sold by the sheriff at public
 223 auction ~~or, that the current owner have no further custody of~~
 224 ~~the animal, and that any animal not bid upon be remanded to the~~
 225 custody of the Society for the Prevention of Cruelty to Animals,
 226 the Humane Society, the county, the municipality with animal
 227 control officers certified pursuant to s. 828.27, or any agency
 228 or person the judge deems appropriate, to be disposed of as the
 229 agency or person sees fit; or

230 b. Order that the animal be destroyed or remanded directly
 231 to the custody of the Society for the Prevention of Cruelty to
 232 Animals, the Humane Society, the county, the municipality with
 233 animal control officers certified pursuant to s. 828.27, or any
 234 agency or person the judge deems appropriate, to be disposed of

235 | as the agency or person sees fit.

236 | 2. The court, upon proof of costs incurred by the officer
 237 | or agent, may require that the owner pay for the care of the
 238 | animal while in the custody of the officer or agent. A separate
 239 | hearing may be held.

240 | 3. The court may order that other animals that are in the
 241 | custody of the owner and that were not seized by the officer or
 242 | agent be turned over to the officer or agent, if the court
 243 | determines that the owner is unable or unfit to adequately
 244 | provide for the animals. The court may enjoin the owner's
 245 | further possession or custody of other animals.

246 | (5) In determining the person's fitness to have custody of
 247 | an animal ~~under the provisions of this act~~, the court may
 248 | consider, among other matters:

249 | (a) Testimony from the agent or officer who seized the
 250 | animal and other witnesses as to the condition of the animal
 251 | when seized and as to the conditions under which the animal was
 252 | kept.

253 | (b) Testimony and evidence as to the veterinary care
 254 | provided to the animal.

255 | (c) Testimony and evidence as to the type and amount of
 256 | care provided to the animal.

257 | (d) Expert testimony as to the community standards for
 258 | proper and reasonable care of the same type of animal.

259 | (e) Testimony from any witnesses as to prior treatment or
 260 | condition of this or other animals in the same custody.

261 (f) The owner's past record of judgments pursuant to ~~under~~
 262 ~~the provisions of~~ this chapter.

263 (g) Convictions pursuant to applicable ~~under the~~ statutes
 264 prohibiting cruelty to animals.

265 (h) ~~Any~~ Other evidence the court considers to be material
 266 or relevant.

267 (6) If the evidence indicates a lack of proper and
 268 reasonable care of the animal, the burden is on the owner to
 269 demonstrate by clear and convincing evidence that he or she is
 270 able and fit to have custody of and adequately provide
 271 ~~adequately~~ for the animal.

272 (7) In any case in which an animal is offered for auction
 273 ~~under the provisions of~~ this section, the proceeds shall be:

274 (a) Applied, first, to the cost of the sale.

275 (b) Applied, secondly, to the care of and provision for
 276 the animal by the law enforcement officer, the animal control
 277 officer certified pursuant to s. 828.27, or the agent of any
 278 county or of any society or association for the prevention of
 279 cruelty to animals taking custody ~~charge~~.

280 (c) Applied, thirdly, to the payment of the owner for the
 281 sale of the animal.

282 (d) Paid over to the court if the owner is not known.

283 Section 5. Subsection (4) of section 828.27, Florida
 284 Statutes, is amended, and subsection (8) is added to that
 285 section, to read:

286 828.27 Local animal control or cruelty ordinances;

287 | penalty.-

288 | (4)(a)1. County-employed animal control officers must
 289 | ~~shall~~, and municipally employed animal control officers may,
 290 | successfully complete a 40-hour minimum standards training
 291 | course. Such course must ~~shall~~ include, but is not limited to,
 292 | training for: animal cruelty investigations, search and seizure,
 293 | animal handling, courtroom demeanor, and civil citations. The
 294 | course curriculum must be approved by the Florida Animal Control
 295 | Association. An animal control officer who successfully
 296 | completes such course shall be issued a certificate indicating
 297 | that he or she has received a passing grade.

298 | 2. Any animal control officer who is authorized before
 299 | ~~prior to~~ January 1, 1990, by a county or municipality to issue
 300 | citations is not required to complete the minimum standards
 301 | training course.

302 | 3. In order to maintain valid certification, every 2 years
 303 | each certified ~~county-employed~~ animal control officer must ~~shall~~
 304 | complete 4 hours of postcertification continuing education
 305 | training. Such training may include, but is not limited to,
 306 | training for: animal cruelty investigations, search and seizure,
 307 | animal handling, courtroom demeanor, and civil citations.

308 | (b)~~1~~. The governing body of a county or municipality may
 309 | impose and collect a surcharge of up to \$5 upon each civil
 310 | penalty imposed for violation of an ordinance relating to animal
 311 | control or cruelty. The proceeds from such surcharges shall be
 312 | used to pay the costs of training for animal control officers.

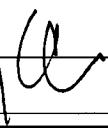
313 ~~2. In addition to the uses set forth in subparagraph 1., a~~
 314 ~~county, as defined in s. 125.011, may use the proceeds specified~~
 315 ~~in that subparagraph and any carryover or fund balance from such~~
 316 ~~proceeds for animal shelter operating expenses. This~~
 317 ~~subparagraph expires July 1, 2014.~~

318 (8) This section is an additional, supplemental, and
 319 alternative means of enforcing county or municipal codes or
 320 ordinances. This section does not prohibit a county or
 321 municipality from enforcing its codes or ordinances by any other
 322 means, including, but not limited to, the procedures provided in
 323 chapter 162.

324 Section 6. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 821 Florida Historic Capitol
SPONSOR(S): Government Operations Subcommittee; Hutson
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 396

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	12 Y, 0 N, As CS	Toliver	Williamson
2) State Affairs Committee		Toliver LT	Camechis 

SUMMARY ANALYSIS

The Legislature provided for the restoration of the Florida Historic Capitol (Historic Capitol) to its 1902 appearance, and made provisions for its use as a museum. The President of the Senate and the Speaker of the House of Representatives appoint the Florida Historic Capitol Curator (curator). The curator works in conjunction with the Legislative Research Center and Museum (center) at the Historic Capitol to raise funds, apply for and collect grants, make expenditures, and receive donations for the benefit of the Historic Capitol. The center functions as a citizen support organization (CSO) that is authorized to collect rental fees, apply for and receive grants, and receive gifts and donations for the direct or indirect benefit of the center. The Florida Historic Capitol Foundation (foundation) acts as a direct-support organization for the Historic Capitol (DSO). A nine-member board of directors (board) governs the foundation.

The bill renames the Legislative Research Center and Museum the Florida Historic Capitol Museum (museum). It also renames the Florida Historic Capitol Curator the Florida Historic Museum Director (director). The bill requires the director to propose a strategic plan to the President of the Senate and the Speaker of the House of Representatives by May 1 of each year, and to propose an annual operating plan.

The bill creates the Florida Historic Capitol Museum Council (council) within the legislative branch. The council is composed of 13 members, selected based upon their dedication to preserving the Historic Capitol and advancing the mission of the museum. The bill provides for the composition of the council, and requires prospective members to be experts in fields relating to the mission of the museum or to be leaders in their communities or statewide with demonstrated success in building support for cultural institutions. Council members serve without compensation, but are entitled to receive reimbursement for per diem and travel expenses from the funds of the museum's DSO. The bill provides certain requirements for the council, including assisting the director in developing a strategic plan to guide the activities of the museum.

The bill removes all references authorizing the establishment of a CSO. Furthermore, the bill redirects the funding from the fee for specialty license plates from the center's CSO to the DSO.

Effective July 1, 2015, the bill increases from two to 12 the number of additional appointments the board of the DSO can make to itself. Each additional appointment serves a three-year term. Additionally, the bill requires the board to be reimbursed for per diem and travel expenses from DSO funds.

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

The Florida Historic Capitol (Historic Capitol) has been at its present location since 1845.¹ Following the construction of the new capitol building, the Legislature provided for the restoration of the Historic Capitol to its 1902 appearance, and made provisions for its use as a museum.² The Historic Capitol must be maintained in accordance with good historic preservation practices as specified in the National Park Service Preservation Briefs and the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.³

The Florida Historic Capitol Curator (curator)⁴ is appointed by the President of the Senate (President) and the Speaker of the House of Representatives (Speaker).⁵ The curator, in part, must promote knowledge and appreciation of the Historic Capitol, as well as collect, preserve, and exhibit artifacts and objects related to the Historic Capitol.⁶ The curator works in conjunction with the Legislative Research Center and Museum (center) at the Historic Capitol to raise funds, apply for and collect grants, make expenditures, and receive donations for the benefit of the Historic Capitol.⁷

The center was created in 2008,⁸ and its mission is to "collect, preserve and make available to research significant materials connected with Florida's legislative history."⁹ The center functions as a citizen support organization (CSO).¹⁰ The CSO must provide for an annual financial audit and all records of the CSO are public records for purposes of chapter 119, F.S.¹¹ The CSO is authorized to collect rental fees, apply for and receive grants, and receive gifts and donations for the direct or indirect benefit of the center.¹²

In 2009, the Legislature authorized the establishment of a direct-support organization (DSO) to provide assistance and promotional support through fundraising for the center.¹³ The Florida Historic Capitol Foundation (foundation) acts as the DSO.¹⁴ A board of directors (board) governs the foundation.¹⁵ The board consists of nine members who serve three-year terms;¹⁶ however, at its discretion, the board may add two additional members.¹⁷ The board serves without compensation other than reimbursement for travel and per diem.¹⁸

¹ FLORIDA HISTORIC CAPITOL, <http://www.flhistoriccapitol.gov/about.cfm#background> (last visited 3/20/2015).

² Chapter 1981-232, L.O.F., directed the Department of State to assure that all space in the Florida Historic Capitol was restored in a manner consistent with the 1902 form and made available for allocation.

³ Section 272.129(2), F.S. The Florida Historic Capitol is on the National Register of Historic Places.

⁴ The curator is now referred to as coordinator. 2015 Bill Analysis of SB 396 by the Florida Historic Capitol Museum (on file with the Government Operations Subcommittee).

⁵ Section 272.135(1), F.S. The position of curator was established in 1981. *See* chapter 1981-232, s. 2, L.O.F.

⁶ Section 272.135(2), F.S.

⁷ Section 272.135(3), F.S. The curator also works with the center to receive, hold, invest, and administer, in the name of the Historic Capitol and the center, securities, funds, objects of value, and real and personal property.

⁸ Chapter 2008-199, s. 13, L.O.F.

⁹ FLORIDA LEGISLATIVE RESEARCH CENTER, <http://www.flcrm.gov/about.cfm> (last visited 3/2/2015).

¹⁰ Section 272.129(4)(a), F.S.

¹¹ Section 272.129(4)(c) and (d), F.S.

¹² Section 272.129(2)(e), F.S.

¹³ Chapter 2009-179, L.O.F. The statute has not been updated to reflect that the center and the Historic Capitol merged in 2006, and are operating as the Capitol Museum.

¹⁴ 2015 Bill Analysis of SB 396 by the Florida Historic Capitol Museum (on file with the Government Operations Subcommittee).

¹⁵ Section 272.136(1), F.S.

¹⁶ Section 272.136(1)(c), F.S.

¹⁷ Section 272.136(1)(c), F.S.

¹⁸ Section 272.136(1)(d), F.S.

The center receives additional funding from specialty license plates for former members of Congress or former state Senators or Representatives.¹⁹ The fee for the specialty license plate is \$500, of which the center receives \$450 and the remaining \$50 is deposited into the Highway Safety Operating Trust Fund.²⁰

Effect of the Bill

The bill renames the Legislative Research Center and Museum the Florida Historic Capitol Museum (museum).

The bill creates a new council, the Florida Historic Capitol Museum Council (council), within the legislative branch. The council is composed of 13 members who are selected based upon their dedication to preserving the Historic Capitol and advancing the mission of the museum. Prospective members of the council should be experts in, or hold credentials in, the fields most directly related to the mission of the museum or be leaders in their respective communities or statewide with demonstrated success in building community support for cultural institutions. The council consists of the following members:

- The Secretary of the Senate.
- The Clerk of the House of Representatives.
- The Sergeant at Arms of the Senate and the House.
- The President and the Speaker each appoint three members. Two members must be former legislators or officers of the Legislature and one must be a representative of the general public.
- The board must appoint three members from its membership.

Council members serve without compensation, but are entitled to receive reimbursement for per diem and travel expenses from the funds of the museum's DSO. Each council member must:

- Attend a majority of the council's quarterly meetings;
- Serve as an advocate and ambassador for the museum;
- Lend expertise for the advancement of the museum;
- Participate in key museum events; and
- Become a member of the museum.

The council must designate a chair. It must provide guidance and support to assist the Florida Historic Museum Director (director) and staff in developing a strategic plan to guide the activities of the museum, and periodically review the strategic plan. Additionally, the council must:

- Ensure that the museum retains an emphasis on preserving legislative history and traditions by cultivating relationships with current and former legislators, collecting historic materials, and encouraging public participation in the museum's activities;
- Ensure that the museum operates as a public trust in accordance with the Ethics, Standards, and Best Practices and the Code of Ethics for Museums adopted by the American Alliance of Museums;
- Meet annually with the board to review the museum's strategic plan before it is presented to the President and the Speaker and evaluate the DSO's long-term development goals and near-term strategies; and
- Assist museum staff in planning the Biennial Joint Legislative Reunion.

The bill renames the Florida Historic Capitol Curator the Florida Historic Museum Director. It requires the director to propose a strategic plan to the President and the Speaker by May 1 of each year in which a general election is held, and to propose an annual operating plan.

¹⁹ Section 320.0807(6), F.S.

²⁰ Section 320.0807(6)(c), F.S.

The bill removes all references authorizing the establishment of a CSO. Furthermore, the bill redirects the funding from the fee for specialty license plates from the center's CSO to the DSO.

Effective July 1, 2015, the bill increases from two to 12 the number of additional appointments the board of the DSO can make to the board. Each additional appointment serves a three-year term. Additionally, the bill requires the board to be reimbursed for per diem and travel expenses from DSO funds.

B. SECTION DIRECTORY:

Section 1: Amends s. 272.129, F.S., relating to the Historic Capitol.

Section 2: Creates s. 272.131, F.S., relating to the Florida Historical Capitol Museum Council.

Section 3: Amends s. 272.135, F.S., relating to the Florida Historical Capitol Museum Director.

Section 4: Amends s. 272.136, F.S., relating to the DSO for the museum.

Section 5: Amends s. 320.0807, F.S., relating to special license plates for Governor and federal and state legislators.

Section 6: Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2015, the Government Operations Subcommittee adopted a strike-all amendment and reported the bill favorably with committee substitute. The strike-all amendment:

- Increases the council membership from 12 to 13 and requires that the board appoint the additional member.
- Shifts responsibility for proposing the strategic plan from the council to the director.
- Changes the due date of the strategic plan from December 31, 2017, to May 1 of every year in which a general election is held.
- Requires the council to provide guidance and support to assist the director in developing the strategic plan, and to review the strategic plan before it is presented.
- Removes the director as an advisory member of the council.
- Adds qualification requirements for prospective members of the council.
- Specifies that the legislators and officers of the legislature appointed to the council by the President and the Speaker be former legislators and former officers, and that the President and the Speaker each appoint one person who is a representative of the general public.
- Removes the requirement that council members serve as a liaison to the Governor, President, and Speaker; cultivate relationships with legislative staff; and use his or her professional contacts for the advancement of the museum.
- Provides that the provision authorizing the board to appoint up to 12 additional members to the board is effective July 1, 2015, and provides that the additional members serve three-year terms.
- Requires the council to assist the museum staff in planning the Biennial Joint Legislative Reunion.

This analysis is drafted to the committee substitute as approved by the Government Operations Subcommittee.

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A bill to be entitled
 An act relating to the Florida Historic Capitol;
 amending s. 272.129, F.S.; removing references to the
 Legislative Research Center and Museum at the Historic
 Capitol; removing provisions authorizing establishment
 of a citizen support organization to support the
 Legislative Research Center and Museum; creating s.
 272.131, F.S.; creating the Florida Historic Capitol
 Museum Council; providing for the appointment and
 qualifications of council members; prescribing duties
 and responsibilities for the council and individual
 council members; amending s. 272.135, F.S.; renaming
 the position of Capitol Curator as the Florida
 Historic Capitol Museum Director; conforming
 provisions; amending s. 272.136, F.S.; revising the
 composition of the board of directors governing the
 Florida Historic Capitol Museum's direct-support
 organization; providing that per diem and travel
 expenses must be paid from direct-support organization
 funds; conforming provisions; amending s. 320.0807,
 F.S.; redirecting a portion of the proceeds from the
 fee for special license plates for former federal or
 state legislators to the Florida Historic Capitol
 Museum's direct-support organization; providing an
 effective date.

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

28

29 Section 1. Section 272.129, Florida Statutes, is amended
30 to read:

31 272.129 Florida Historic Capitol; space allocation;
32 maintenance, repair, and security.—

33 (1) The Legislature shall ensure that all space in the
34 Florida Historic Capitol is restored in a manner consistent with
35 the 1902 form and made available for allocation. Notwithstanding
36 the provisions of ss. 255.249 and 272.04 that relate to space
37 allocation in state-owned buildings, the President of the Senate
38 and the Speaker of the House of Representatives shall have
39 responsibility and authority for the allocation of all space in
40 the restored Florida Historic Capitol, provided:

41 (a) The rotunda, corridors, Senate chamber, House of
42 Representatives chamber, and Supreme Court chamber may ~~shall~~ not
43 be used as office space.

44 (b) The Legislature shall be allocated sufficient space
45 for program and administrative functions relating to the
46 preservation, museum, and cultural programs of the Legislature.

47 (2) The Florida Historic Capitol shall be maintained in
48 accordance with good historic preservation practices as
49 specified in the National Park Service Preservation Briefs and
50 the Secretary of the Interior's Standards for Rehabilitation and
51 Guidelines for Rehabilitating Historic Buildings.

52 (3) Custodial and preventive maintenance and repair of the
 53 entire Florida Historic Capitol and the grounds located adjacent
 54 thereto shall be the responsibility of the Department of
 55 Management Services, subject to the special requirements of the
 56 building as determined by the Florida Historic Capitol Museum
 57 Director Curator.

58 ~~(4) (a) The Legislative Research Center and Museum at the~~
 59 ~~Historic Capitol, hereinafter referred to as "center," may~~
 60 ~~support the establishment of a citizen support organization to~~
 61 ~~provide assistance, funding, and promotional support for the~~
 62 ~~center. For the purposes of this subsection, "citizen support~~
 63 ~~organization" means an organization that is:~~

64 1. ~~A Florida corporation not for profit incorporated under~~
 65 ~~the provisions of chapter 617 and approved by the Department of~~
 66 ~~State.~~

67 2. ~~Organized and operated to conduct programs and~~
 68 ~~activities; raise funds; request and receive grants, gifts, and~~
 69 ~~bequests of money; acquire, receive, hold, invest, and~~
 70 ~~administer in its own name securities, funds, objects of value,~~
 71 ~~or other real and personal property; and make expenditures to or~~
 72 ~~for the direct or indirect benefit of the center.~~

73 3. ~~Determined by the center to be consistent with the~~
 74 ~~goals of the center and in the best interests of the state.~~

75 4. ~~Annually approved in writing by the center to operate~~
 76 ~~for the direct or indirect benefit of the center. Such approval~~
 77 ~~shall be given in a letter of agreement from the center.~~

78 ~~(b) 1. The Legislative Research Center and Museum at the~~
 79 ~~Historic Capitol may permit, without charge, appropriate use of~~
 80 ~~fixed property and facilities of the center by the citizen~~
 81 ~~support organization, subject to the provisions of this~~
 82 ~~subsection. Such use must be directly in keeping with the~~
 83 ~~approved purposes of the citizen support organization and may~~
 84 ~~not be made at times or places that would unreasonably interfere~~
 85 ~~with normal operations of the center.~~

86 ~~2. The center may prescribe by rule any condition with~~
 87 ~~which the citizen support organization must comply in order to~~
 88 ~~use fixed property or facilities of the center.~~

89 ~~3. The center may not permit the use of any fixed property~~
 90 ~~or facilities by any citizen support organization if such~~
 91 ~~organization does not provide equal membership and employment~~
 92 ~~opportunities to all persons regardless of race, color,~~
 93 ~~religion, gender, age, or national origin.~~

94 ~~(c) A citizen support organization shall provide for an~~
 95 ~~annual financial audit in accordance with s. 215.981.~~

96 ~~(d) All records of a citizen support organization~~
 97 ~~constitute public records for the purposes of chapter 119.~~

98 ~~(e) The citizen support organization for the Legislative~~
 99 ~~Research Center and Museum at the Historic Capitol is authorized~~
 100 ~~to collect rental fees, apply for and receive grants, and~~
 101 ~~receive gifts and donations for the direct or indirect benefit~~
 102 ~~of the center.~~

103 ~~(f) All funds obtained through rental fees, grants, gifts,~~
 104 ~~and donations to the citizen support organization shall be~~
 105 ~~deposited into the account of the citizen support organization~~
 106 ~~and used for the direct or indirect benefit of the Legislative~~
 107 ~~Research Center and Museum at the Historic Capitol unless the~~
 108 ~~citizen support organization is no longer authorized as required~~
 109 ~~by this subsection, fails to comply with the requirements of~~
 110 ~~this subsection, fails to maintain its tax-exempt status~~
 111 ~~pursuant to s. 501(c)(3) of the Internal Revenue Code, or ceases~~
 112 ~~to exist. If the citizen support organization is no longer~~
 113 ~~authorized as required by this subsection, fails to comply with~~
 114 ~~the requirements of this subsection, fails to maintain its tax-~~
 115 ~~exempt status pursuant to s. 501(c)(3) of the Internal Revenue~~
 116 ~~Code, or ceases to exist, all funds obtained through rental~~
 117 ~~fees, grants, gifts, and donations in the citizen support~~
 118 ~~organization account shall revert to the state and be deposited~~
 119 ~~into an account designated by the Legislature.~~

120 Section 2. Section 272.131, Florida Statutes, is created
 121 to read:

122 272.131 Florida Historic Capitol Museum Council.—The
 123 Florida Historic Capitol Museum Council is created within the
 124 legislative branch of state government.

125 (1) The council is composed of 13 members. Council members
 126 shall be selected based on their dedication to preserving the
 127 Florida Historic Capitol and advancing the mission of the
 128 Florida Historic Capitol Museum. Council members must

129 demonstrate an interest in documenting the institutional
 130 knowledge and historic traditions of state governance with an
 131 emphasis on legislative history, the advancement of civics
 132 education, and the encouragement of residents of this state to
 133 engage with state government. To serve on the council,
 134 prospective members should be experts in, or hold credentials
 135 in, the fields most directly related to the mission of the
 136 Florida Historic Capitol Museum, including, but not limited to,
 137 history, education, historic preservation, legal history, or
 138 political science, or be leaders in their respective communities
 139 or statewide, with demonstrated success in building community
 140 support for cultural institutions. The council consists of the
 141 following members:

- 142 (a) The Secretary of the Senate.
- 143 (b) The Clerk of the House of Representatives.
- 144 (c) The Sergeants at Arms of both houses of the
 145 Legislature.
- 146 (d) The President of the Senate and the Speaker of the
 147 House of Representatives shall each appoint three members, two
 148 of whom must be former legislators or officers of the
 149 Legislature and one of whom must be a representative of the
 150 general public.
- 151 (e) The board of directors of the Florida Historic Capitol
 152 Museum's direct-support organization shall appoint three members
 153 from its membership.
- 154 (2) A council member shall:

155 (a) Serve without compensation, except that he or she is
 156 entitled to receive reimbursement for per diem and travel
 157 expenses in accordance with s. 112.061. Such expenses must be
 158 paid out of funds of the Florida Historic Capitol Museum's
 159 direct-support organization.

160 (b) Attend a majority of the council's quarterly meetings.

161 (c) Serve as an advocate and ambassador for the museum.

162 (d) Lend expertise for the advancement of the museum.

163 (e) Participate in key museum events.

164 (f) Become a member of the museum.

165 (3) The council shall:

166 (a) Designate a chair.

167 (b) Provide guidance and support to assist the Florida
 168 Historic Capitol Museum Director and staff in developing a
 169 strategic plan to guide the activities of the museum.

170 (c) Periodically review the museum's strategic plan.

171 (d) Ensure that the museum retains an emphasis on
 172 preserving legislative history and traditions by cultivating
 173 relationships with current and former legislators, collecting
 174 historic materials, and encouraging public participation in the
 175 museum's programs.

176 (e) Ensure that the museum operates as a public trust in
 177 accordance with the Ethics, Standards, and Best Practices and
 178 the Code of Ethics for Museums adopted by the American Alliance
 179 of Museums.

180 (f) Meet annually with the board of directors of the
 181 Florida Historic Capitol Museum's direct-support organization to
 182 jointly review the museum's strategic plan before it is
 183 presented to the President of the Senate and the Speaker of the
 184 House of Representatives and evaluate the direct-support
 185 organization's long-term development goals and near-term
 186 strategies.

187 (g) Assist museum staff in planning the Biennial Joint
 188 Legislative Reunion.

189 Section 3. Section 272.135, Florida Statutes, is amended
 190 to read:

191 272.135 Florida Historic Capitol Museum Director ~~Curator~~.-

192 (1) The position of Florida Historic Capitol Museum
 193 Director ~~Capitol Curator~~ is created within the Legislature,
 194 which shall establish the qualifications for the position. The
 195 director ~~curator~~ shall be appointed by and serve at the pleasure
 196 of the President of the Senate and the Speaker of the House of
 197 Representatives.

198 (2) The director ~~Capitol Curator~~ shall:

199 (a) Promote and encourage throughout the state knowledge
 200 and appreciation of the Florida Historic Capitol.

201 (b) Collect, research, exhibit, interpret, preserve, and
 202 protect the history, artifacts, objects, furnishings, and other
 203 materials related to the Florida Historic Capitol, except for
 204 archaeological research and resources.

205 (c) Develop, direct, supervise, and maintain the interior
 206 design and furnishings of all space within the Florida Historic
 207 Capitol in a manner consistent with the restoration of the
 208 Florida Historic Capitol in its 1902 form.

209 (d) Propose a strategic plan to the President of the
 210 Senate and the Speaker of the House of Representatives by May 1
 211 of each year in which a general election is held and shall
 212 propose an annual operating plan.

213 (3) In conjunction with ~~the Legislative Research Center~~
 214 ~~and Museum at the~~ Florida Historic Capitol Museum Council, the
 215 director Capitol Curator may assist the Florida Historic Capitol
 216 Museum in the performance of its mission by:

- 217 (a) Raising money.~~†~~
- 218 (b) Submitting requests for and receiving grants.~~†~~
- 219 (c) Receiving, holding, investing, and administering in
 220 the name of the Florida Historic Capitol Museum ~~and the~~
 221 ~~Legislative Research Center and Museum~~ securities, funds,
 222 objects of value, or other real and personal property.~~†~~
- 223 (d) Receiving gifts and donations for the direct or
 224 indirect benefit of the Florida Historic Capitol.~~†~~ ~~and~~
- 225 (e) Making expenditures to or for the direct or indirect
 226 benefit of the Florida Historic Capitol.

227 Section 4. Section 272.136, Florida Statutes, is amended
 228 to read:

229 272.136 Direct-support organization.--The ~~Legislative~~
 230 ~~Research Center and Museum at the~~ Florida Historic Capitol

231 Museum Council and the Florida Historic Capitol Museum Director
 232 ~~Capitol Curator~~ may establish a direct-support organization to
 233 provide assistance and promotional support through fundraising
 234 for the Florida Historic Capitol Museum ~~and the Legislative~~
 235 ~~Research Center and Museum~~, including, but not limited to, its
 236 ~~their~~ educational programs and initiatives.

237 (1) The direct-support organization shall be governed by a
 238 board of directors. Board members must demonstrate ~~who have~~
 239 ~~demonstrated~~ a capacity for supporting the mission of the
 240 Florida Historic Capitol.

241 (a) Initial appointments to the board shall be made by the
 242 President of the Senate and the Speaker of the House of
 243 Representatives at the recommendation of the council ~~center~~ and
 244 the director ~~curator~~. Appointments to the board shall thereafter
 245 be made by the board.

246 (b) The initial board shall consist of nine members who
 247 shall be appointed to 3-year terms, except that the terms of
 248 such ~~the initial~~ appointees shall be designated ~~accomplished~~ so
 249 that three members are appointed for 1 year, three members are
 250 appointed for 2 years, and three members are appointed for 3
 251 years, in order to achieve staggered terms, as determined by the
 252 presiding officers.

253 (c) Effective July 1, 2015, the board may add up to 12 ~~two~~
 254 additional members to be appointed for 3-year terms.

255 (d) ~~The~~ Board members shall serve without compensation,
 256 but ~~except that they~~ are entitled to receive reimbursement for

257 | per diem and travel expenses in accordance with s. 112.061. Such
 258 | expenses must be paid out of funds of the direct-support
 259 | organization.

260 | (e) The board may use the fixed property and facilities of
 261 | the Florida Historic Capitol, subject to the provisions of this
 262 | subsection. Such use must be directly in keeping with the
 263 | approved purposes of the direct-support organization and may not
 264 | be made at times or places that would unreasonably interfere
 265 | with the normal operations of the Florida Historic Capitol.

266 | (2) The direct-support organization must be a Florida
 267 | corporation, not for profit, incorporated under chapter 617, and
 268 | approved by the Department of State.

269 | (3) The director and council ~~curator and center~~ may
 270 | prescribe any condition with which the direct-support
 271 | organization must comply.

272 | (4) The director ~~curator and the center~~ may not authorize
 273 | ~~permit~~ the use of any fixed property or facilities by the
 274 | direct-support organization if the organization does not provide
 275 | equal membership and employment opportunities to all persons
 276 | regardless of race, color, religion, gender, age, or national
 277 | origin.

278 | (5) The direct-support organization shall provide for an
 279 | annual financial audit in accordance with s. 215.981.

280 | (6) If the direct-support organization is no longer
 281 | authorized by this section, fails to comply with the
 282 | requirements of this section, fails to maintain its tax-exempt

283 status pursuant to s. 501(c)(3) of the Internal Revenue Code, or
 284 ceases to exist, all funds obtained through grants, gifts, and
 285 donations in the direct-support organization account shall
 286 revert to the state and be deposited into an account designated
 287 by the Legislature for the support of the Florida Historic
 288 Capitol, provided that donations made for specific purposes in
 289 an original donor agreement shall be applied only to those
 290 purposes.

291 (7)(a) The identity of a donor or prospective donor to the
 292 direct-support organization who desires to remain anonymous, and
 293 all information identifying such donor or prospective donor, is
 294 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 295 of the State Constitution. Such anonymity shall be maintained in
 296 any auditor's report created pursuant to the annual financial
 297 audit required under subsection (5).

298 (b) This subsection is subject to the Open Government
 299 Sunset Review Act in accordance with s. 119.15 and shall stand
 300 repealed on October 2, 2017, unless reviewed and saved from
 301 repeal through reenactment by the Legislature.

302 Section 5. Paragraph (c) of subsection (6) of section
 303 320.0807, Florida Statutes, is amended to read:

304 320.0807 Special license plates for Governor and federal
 305 and state legislators.—

306 (6)

307 (c) Four hundred fifty dollars of the one-time fee
 308 collected under paragraph (a) shall be distributed to the

CS/HB 821


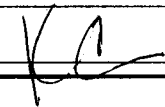
2015

309 account of the direct-support organization established pursuant
 310 to s. 272.136 ~~citizen support organization established pursuant~~
 311 ~~to s. 272.129~~ and used for the benefit of the Florida Historic
 312 Capitol Museum ~~Legislative Research Center and Museum at the~~
 313 ~~Historic Capitol~~, and the remaining \$50 shall be deposited into
 314 the Highway Safety Operating Trust Fund.

315 Section 6. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 917 Cattle Market Development Act
SPONSOR(S): Agriculture & Natural Resources Subcommittee; Combee and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1220

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N, As CS	Gregory	Blalock
2) Agriculture & Natural Resources Appropriations Subcommittee	12 Y, 0 N	Lolley	Massengale
3) State Affairs Committee		Gregory 	Camechis 

SUMMARY ANALYSIS

In 2004, the Legislature passed SB 1770, which created the Beef Market Development Act (Act) to promote the growth of the cattle industry in the state. The Act also created the Florida Beef Council, Inc. (Council), a not-for-profit corporation organized to operate as a direct-support organization under the Department of Agriculture and Consumer Services (DACs). In addition, the Act authorized the Council to impose a \$1 maximum assessment on each head of cattle sold in the state if the imposition of the assessment is approved by referendum as described below. However, SB 1770 provided that the \$1 assessment established under the Act would not be imposed unless the national beef assessment program was repealed, stayed, or enjoined by the U.S. Congress, by a court, or by other operation of law. The U.S. Supreme Court ruled that the national program was constitutional, and therefore, the \$1 assessment established in the Act has never been implemented.

The bill amends current law to rename the Act to the Cattle Market Development Act, and for purposes of the Act, replace the Florida Beef Council, Inc. (Council), with the Florida Cattle Enhancement Board, Inc. (Board), a direct-support organization for DACs.

The bill:

- Establishes procedures for the Board to administer a state beef assessment program that charges an assessment of up to \$1 on each head of cattle sold in the state if the program is approved by a simple majority vote of the cattle producers. This assessment will be in addition to the \$1 assessment by the national beef program;
- Requires the Board to use the proceeds from the assessment to promote beef and beef products;
- Sets forth criteria to be a Board member;
- Sets forth powers and duties of the Board;
- Directs adoption of bylaws to govern the day-to-day operations of the Board;
- Establishes procedures to hold referenda to approve the assessment, modify the assessment, raise the assessment above \$1, and continue the assessment;
- Establishes procedures to collect the assessment;
- Establishes procedures to refund the assessments on request;
- Authorizes the Board to accept grants and gifts; and
- Authorizes the Board to make payments to organizations for services performed.

The bill appears to have no impact on state or local government, but does have an impact on the private sector. See Fiscal Analysis & Economic Impact Statement.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Beef Market Development Act

In 2004, the Legislature passed SB 1770, creating the Beef Market Development Act (Act).¹ The Act provides that it is the intent of the Legislature for the Act to:

- Promote the growth of the cattle industry in the state;
- Assure the public an adequate and wholesome food supply;
- Provide for the general economic welfare of producers and consumers of beef and the state; and
- Authorize the beef cattle production and feeding industry of the state with the authority to establish a self-financed, self-governed program to help develop, maintain, and expand the state, national, and foreign markets for beef and beef products that are produced, processed, or manufactured in this state.²

The Legislature created the Act in response to a ruling by the U.S. Eighth Circuit Court of Appeals, which held that the national beef assessment program is unconstitutional because it violates the First Amendment by compelling individuals to support financially private speech.³ The national beef assessment program charges a \$1 assessment for each head of cattle sold.⁴ Funds from the national beef program are expended on advertising, marketing, education, and research programs all aimed at stimulating beef sales.⁵

Section 2 of SB 1770 (2004) included an effective date which provided that the \$1 assessment established under the Act would not be imposed until the national beef program was repealed, stayed, or enjoined by the U.S. Congress, by a court, or by other operation of law.⁶ The U.S. Supreme Court later held the national beef program to be constitutional because the type of speech of which it compelled financial support was not private speech, but government speech.⁷ Compelled funding of government speech is constitutional because, as a general rule, government may support valid programs and policies by taxes or other exactions binding on protesting parties.⁸ Thus, the Florida beef assessment program has never been implemented.

The Florida Beef Council, Inc., (Council) created by the Act did not perform the powers of the Act because the Florida beef assessment program was never implemented. The Council does implement the national beef program.⁹ Under this program, \$.50 of the national beef assessment goes to state programs while \$.50 of the assessment goes to national programs.¹⁰

¹ Section 570.83, F.S.

² Section 570.83(2), F.S.

³ Senate Staff Analysis and Economic Impact Statement, Senate Bill 1770 p. 2 (April 13, 2004); See Livestock Marketing Ass'n v. U.S. Dep't of Agriculture, 335 F.3d 711 (8th Cir. 2003).

⁴ 7 U.S.C. § 2904.

⁵ Id.

⁶ Chapter 2004-65, Laws of Fla.

⁷ Johanns v. Livestock Marketing Ass'n, 544 U.S. 550 (2005).

⁸ Id. at 559.

⁹ Beef Board, State Beef Councils, <http://www.beefboard.org/qsbc.asp> (last visited February 25, 2015).

¹⁰ 7 U.S.C. § 2904; Beef Board, Understanding You Beef Checkoff Program, p. 5 available at <http://www.beefboard.org/> (last visited February 25, 2015).

If the national beef assessment program is ever repealed, stayed, or enjoined, the Council could implement the Florida beef assessment program, discussed below.

Florida Beef Assessment Program

Florida Beef Council, Inc.

The Act creates the Florida Beef Council, Inc. (Council), a not-for-profit corporation organized to operate as a direct-service organization under the Department of Agriculture and Consumer Services (DACs). In addition, the Act authorizes the Council to impose a \$1 maximum assessment on each head of cattle sold in the state if the imposition of the assessment is approved by referendum as described below.¹¹

The Act defines the following terms used in the Act:

- “Beef” or “beef products” means products of beef intended for human consumption which are derived from any bovine animal, regardless of age, including, but not limited to, veal.
- “Cattle” means animals so designated by federal law, which includes all bovine animals. A cow and nursing calf sold together are considered one unit.
- “Council” means the Florida Beef Council, Inc.
- “Department” means the Department of Agriculture and Consumer Services.
- “Collection agent” means a person who sells, offers for sale, markets, distributes, trades, or processes cattle that have been purchased or acquired from a producer or that are marketed on behalf of a producer and also includes meatpacking firms and their agents which purchase or consign to purchase cattle.
- “Person” means any natural person, partnership, corporation, company, association, society, trust, or other business unit or organization.
- “Producer” means a person that has owned or sold cattle in the previous calendar year or presently owns cattle.¹²

The Act also requires the Council to:

- Establish the amount of the assessment at not more than \$1 per head of cattle;
- Develop, implement, and monitor a collection system for the assessment;
- Coordinate the collection of the assessment with other states;
- Establish refund procedures;
- Conduct referenda on the assessment;
- Plan, implement, and conduct programs of promotion, research, and consumer information or industry information to strengthen the cattle industry in the state and in the nation and to maintain and expand domestic and foreign markets and expand uses for beef and beef products;
- Use the proceeds of the assessment for funding cattle production and beef research, education, promotion, and consumer and industry information in the state and in the nation;
- Plan and implement a cattle and beef industry feedback program in the state;
- Coordinate research, education, promotion, industry, and consumer information programs with any national programs or programs of other states;
- Develop new uses and markets for beef and beef products;
- Develop and improve methods of distributing beef and beef products to the consumer;
- Develop methods of improving the quality of beef and beef products for the benefit of consumers;
- Inform and educate the public concerning the nutritive and economic values of beef and beef products;

¹¹ Section 570.83(4), F.S.

¹² Section 570.83(3), F.S.

- Serve as liaison within the beef and other food industries of the state and elsewhere in matters that would increase efficiencies that ultimately benefit both consumers and industry;
- Buy, sell, mortgage, rent, or improve, in any manner that the Council considers expedient, real property or personal property, or both;
- Publish and distribute information as the board of directors deems appropriate;
- Do all other acts necessary or expedient to achieve the purposes of the Council; and
- Approve an annual plan, budget, and audit.¹³

The Council is prohibited from:

- Participating in a political campaign;
- Using receipts to benefit directors, officers, or other private persons, except that the Council may pay reasonable compensation for services rendered by staff employees and may make payments and distributions to further the purposes of the Act;
- Participating in activities prohibited for not for profit corporations under federal tax law; or
- Pursuing any activities that are not in furtherance of the Council's specific and primary purposes.¹⁴

Governing Board

The Act establishes the Council's governance structure. The Act creates a 13-member board of directors composed of:

- Eight representatives of the Florida Cattlemen's Association, of whom one must represent the Florida Association of Livestock Markets, and one must represent practicing order buyers;
- One representative of the Dairy Farmers, Inc.;
- One representative of Florida CattleWomen, Inc.;
- One representative of the Florida Farm Bureau Federation;
- One representative of an allied-industry; and
- One representative of the Institute of Food and Agricultural Sciences (IFAS).¹⁵

The Commissioner of Agriculture (Commissioner) may appoint an ex-officio, nonvoting member to the board.¹⁶

The term of each member of the board of directors is three years with a limit of two consecutive terms.¹⁷ Members are required to be Florida residents who have been cattle producers for the immediately preceding five years, except for the last three representatives mentioned above.¹⁸ Members can be reimbursed for travel, but are not entitled to a salary.¹⁹ A director may be removed if he or she misses three meetings of the board.²⁰ The statute requires the board to adopt bylaws to establish the Council's officers and to establish duties and responsibilities.²¹

Referenda on Assessments

To determine whether the cattle producers would like to impose an assessment that is funded through mandatory, but refundable, contributions, the Act requires that there be a referendum in which each cattle producer is entitled to one vote by secret ballot.²² The referenda are required to be conducted at

¹³ Section 570.83(4)(b)&(c), F.S.

¹⁴ Section 570.83(4)(d), F.S.

¹⁵ Section 570.83(5)(a), F.S.

¹⁶ Section 570.83(5)(c), F.S.

¹⁷ Section 570.83(5)(b), F.S.

¹⁸ Id.

¹⁹ Id.

²⁰ Section 570.83(5)(d), F.S.

²¹ Section 570.83(5)(c), F.S.

²² Section 570.83(6), F.S.

the extension offices of IFAS or the United States Department of Agriculture. Any issue subject to referendum must be determined by a simple majority of the votes cast.²³ Notice of a referendum is required to be given at least once in trade publications, the public press, and statewide newspapers at least 30 days before the referendum is held.²⁴ Additional referenda can be held to authorize the Council to increase the assessment to more than \$1 per head of cattle.²⁵ Referenda cannot be held more often than once every three years.²⁶

Powers and Duties of the Council

The Council is required to establish an office in the state, to receive and disburse funds to be used in implementing the programs, to keep books and records maintained in the ordinary course of business, to prepare reports as required, and to appoint a banking institution to receive the program funds and handle distribution.²⁷

The Council is authorized to conduct or contract for research programs, disseminate information benefiting the consumer and the beef industry, and respond to requests from government bodies concerning beef. It may also sue and be sued as a Council without individual members being liable for acts within the scope of the powers of the Act. The Council may borrow money and maintain emergency reserves in amounts not to exceed 50 percent of the anticipated annual income of the Council. The Council is also authorized to appoint advisory groups, hire and administer a staff of employees, and cooperate with other entities having similar objectives. The Council may send an authorized agent upon the premises of any market agency or agent, or collection agency or agent, to examine the accounts to ensure the payment of assessments due, and perform all other acts to further its objectives not prohibited by law.²⁸

Acceptance of Grants and Gifts

The Council is authorized to receive grants and donations provided that there were no restrictions that it considers to be inconsistent with the objectives of the Florida beef assessment program.²⁹

Payments to Organizations

The Council is authorized to fund other organizations for services rendered through a written agreement consistent with the objectives of the Florida beef assessment program.³⁰

Collection of Moneys at Time of Marketing

The Act provides procedures for the collection and remission of assessments at the time of sale by a collection agent. The Council is required to maintain a separate accounting of all assessments. The Council can cooperate with other beef councils to collect the assessment for cattle from other states sold in Florida or from Florida cattle sold in other states. If a person fails to pay the assessment, the Council can bring a civil action against that person in the circuit court of any county and can add a penalty in the amount of the sum of 10 percent of the assessment owed the cost of enforcing the collection of the assessment, court costs, and reasonable attorney's fees.³¹

²³ Section 570.83(6)(e), F.S.

²⁴ Section 570.83(6)(b), F.S.

²⁵ Section 570.8396(c), F.S.

²⁶ Id.

²⁷ Section 570.83(7)(a), F.S.

²⁸ Section 570.83(8)(b), F.S.

²⁹ Section 570.83(8), F.S.

³⁰ Section 570.83(9), F.S.

³¹ Section 570.83(10), F.S.

Refunds

A producer of cattle may obtain a full refund upon request within 45 days after the sale transaction takes place, and any disputes will be settled in the same manner as collection disputes. The Council is required to take action on refund requests within 30 calendar days from the date of receipt of the request.³²

Vote on Continuing the Assessment

A referendum to vote to continue the Act may be held once in a three-year period if the Council receives petitions from at least 1,800 producers or 10 percent of Florida's producers as determined by DACS, whichever is less. Petitioners are required to collect the signatures within a 12-month period. Within 90 days of receiving the petitions, the Council must conduct a referendum to determine whether a majority of the producers voting support the continuation of the Act.³³

Bylaws

The Council is directed to adopt bylaws to carry out the intent and purposes of the Act. The statute also provided procedures for amending the bylaws.³⁴

Repeal

Lastly, the statute provides that it would be repealed on October 1, 2019, if not reviewed and saved by the Legislature.³⁵ The Legislature added this provision in 2014 as part of a comprehensive effort to create new reporting and transparency requirements for each citizen support organization (CSO) and direct support organization (DSO) that aids an executive agency.³⁶

Effect of Proposed Changes

Cattle Market Development Act

This bill amends s. 570.83, F.S., to give effect to the current law by establishing a new Florida beef assessment program and includes various revisions to the Act. The bill:

- Renames the statute the "Cattle Market Development Act;"
- Creates the Florida Cattle Enhancement Board, Inc.; and
- Creates a new Florida beef assessment program that is separate from and in addition to the national beef assessment program.

The bill amends the definition of "cattle" in s. 570.83(3), F.S., to eliminate the provision that treats a cow and a calf sold together as one unit. Thus, under the new Florida beef assessment program, a producer will pay an assessment for both the cow and the calf.

The bill amends s. 570.83(4), F.S., to create the Florida Cattle Enhancement Board (Board), a not-for-profit corporation organized to operate as a direct-service organization under DACS. Activities of the Board are to be financed by an assessment of not more than \$1 on each head of cattle sold in the state. This assessment is in addition to the \$1 assessment for the national beef assessment program. This assessment must be approved by a referendum of cattle producers.

³² Section 570.83(11), F.S.

³³ Section 507.83(12), F.S.

³⁴ Section 507.83(13), F.S.

³⁵ Section 507.83(14), F.S.

³⁶ Senate Bill Analysis and Fiscal Impact Statement, Senate Bill 1194 p. 1 (March 27, 2014).

The bill grants the Board the same powers as the Council by amending ss. 570.83(4) and (7), F.S., to consolidate the duties and powers into subsection (7) and eliminating some duplicative powers. The bill also prohibits the Board from exercising certain powers in the same manner that the Beef Market Development Act prohibited the Council from exercising certain powers. Notably, the bill does not grant the Board the power to sue or be sued. Nor does the bill protect Board directors from personal liability when acting within the scope of powers set forth in the Cattle Market Development Act. This may be because the Board will be a not-for-profit corporation. Not-for-profit corporations may sue or be sued under s. 617.0302(2), F.S. Further, directors of not-for-profit corporations are already afforded liability protection under s. 617.0834, F.S.

Under s. 570.83(5), F.S., the Board will be composed of the same group of representatives as the Council, except the Commissioner will appoint a representative from DACS instead of appointing an ex officio nonvoting member. The initial board of directors will be appointed by the Commissioner for staggered terms of 1 year for three members, 2 years for three members, 3 years for four members, and 4 years for four members. Board directors must meet the same qualifications as Council directors. The Board must create bylaws and will not be compensated except for travel. Similar to the Council, vacancies will be filled as provided in the bylaws, directors will serve 3-year terms, not to exceed two terms, and missing three meetings will be grounds to declare the seat vacant.

The bill amends s. 507.83(6), F.S., to require that the Florida beef assessment be approved by a referendum of cattle producers in the same manner as the Beef Market Development Act. Also like the Beef Market Development Act, the assessment may be increased to be more than \$1 and continued by referendum of the cattle producers. The bill requires the first referendum to be held within 180 days of July 1, 2015, and provides it may not be held more often than once every 3 years. The Commissioner must provide notice of a referendum 90 days in advance. Notice of a referendum must be given at least once in trade publications, the public press, and statewide newspapers at least 30 days before the referendum is held. The Commissioner may designate the referendum to take place for at least 5 days, but not more than 10 days. A simple majority vote will determine any issue that requires a referendum.

Under s. 570.83(10), F.S., the assessment collection procedure of the Cattle Market Development Act will be similar to the Beef Market Development Act. The only notable differences are that collection agents must forward the money to the Board by the 15th of each month and collection agents will not be entitled to deduct 2.5 percent of the amount collected to retain as a reasonable collection allowance prior to remitting the funds to the Board.

Under s. 507.83(11), F.S., cattle producers will be entitled to an unconditional refund of the assessment if requested.

Lastly, the bill amends s. 570.83(13), F.S., to change the provision requiring the Act to be repealed by October 1, 2019 if not reviewed and saved by the Legislature to reflect that the bill creates a new DSO and must be reviewed and saved by the Legislature by October 1, 2020.

The Board will be subject to the oversight, reporting, and audit requirements of ss. 20.058 and 215.981, F.S., because it is a direct support organization.

B. SECTION DIRECTORY:

Section 1. Amends s. 570.83, F.S., creating the Cattle Market Development Act.

Section 2. Providing an effective date of July 1, 2015.

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 economic impact of the bill on cattle producers is indeterminate. If an assessment is approved by referendum of 1,800 producers or 10 percent, whichever is less, each producer will be assessed \$1 for every head of cattle sold, including both cow and calf. While the bill initially limits the assessment to not more than \$1 per head of cattle sold, the assessment may be raised by referendum. However, a producer is entitled to a full refund on request.

The bill eliminates the 2.5 percent collection allowance to collection agents.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

As discussed above, the U.S. Supreme Court held that the national beef assessment program did not violate the First Amendment because it compelled financial support of government speech, which is fundamentally different from compelled funding of private speech.³⁷ Compelled funding of government speech is constitutional because, as a general rule, government may support valid programs and policies by taxes or other exactions binding on protesting parties.³⁸ The U.S. Supreme Court found the national beef assessment program was government speech because the U.S. Department of Agriculture (USDA) controlled the message coming from the Beef Board by

³⁷ Johanns, at 559.

³⁸ Id.

having the power to appoint and remove the Beef Board's Operating Committee, specifying what the message may be and the elements of the message, and maintaining final approval authority over the message.³⁹

The bill does not have the same control mechanisms as the national beef assessment program. However, ss. 20.058 and 215.981, F.S., subjects DSOs (like the proposed Florida Cattle Enhancement Board) to governmental oversight and auditing. DSOs must report to their parent agency every year, are subject to modification or termination every year, and must be audited on a regular basis by their parent agency.⁴⁰ Thus, one could argue this oversight is sufficient to demonstrate that the proposed Florida beef assessment program is government speech, and therefore, may be found constitutional.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2015, the Agriculture & Natural Resources Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The amendments made the following revisions to the bill:

- Amends s. 570.83(13), F.S., to change the provision requiring the Act to be repealed in 2019 if not reviewed and saved by the Legislature to reflect that the bill creates a new DSO and must be reviewed and saved by the Legislature in 2020;
- Corrects a drafting error to change "council" to "board" in s. 570.83(7)(a)11., F.S.; and
- Authorizes the Board to accept grants and gifts and make payments to organizations for services performed.

This analysis is drafted to the bill as amended and passed by the Agriculture & Natural Resources Subcommittee.

³⁹ Id. at 560 – 561.

⁴⁰ Section 20.058 and 215.981, F.S.

27 financial reserve for emergency use, and to appoint
 28 advisory groups; specifying a date by which collection
 29 agents must collect and forward assessments to the
 30 board; removing provisions entitling collection agents
 31 to deduct a fee from the amount of assessments
 32 collected; revising the date of the scheduled repeal
 33 of the act; providing an effective date.

34

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

36

37 Section 1. Section 570.83, Florida Statutes, is amended to
 38 read:

39 570.83 Cattle ~~Beef~~ Market Development Act; definitions;
 40 Florida Cattle Enhancement Board ~~Beef Council~~, Inc., creation,
 41 purposes, governing board, powers, and duties; referendum on
 42 assessments imposed on gross receipts from cattle sales;
 43 payments to organizations for services; collecting and refunding
 44 assessments; vote on continuing the act; board ~~council~~ bylaws.-

45 (1) SHORT TITLE ~~POPULAR NAME~~.—This section ~~act~~ may be
 46 cited as the "Cattle ~~Beef~~ Market Development Act."

47 (2) LEGISLATIVE INTENT.—The Legislature intends by this
 48 act to promote the growth of the cattle industry in this state;
 49 to assure the public an adequate and wholesome food supply; to
 50 provide for the general economic welfare of producers and
 51 consumers of beef and the state; and to provide the ~~beef~~ cattle
 52 ~~production and feeding~~ industry of this state with the authority

53 | to establish a self-financed, self-governed program to help
 54 | develop, maintain, and expand the state, national, and foreign
 55 | markets for beef and beef products that are produced, processed,
 56 | or manufactured in this state.

57 | (3) DEFINITIONS.—As used in this section ~~act~~, the term:

58 | (a) "Beef" or "beef products" means the products of beef
 59 | intended for human consumption which are derived from any bovine
 60 | animal, regardless of age, including, but not limited to, veal.

61 | (b) ~~(c)~~ "Board" or "Florida Cattle Enhancement Board"
 62 | "~~Council~~" means the Florida Cattle Enhancement Board ~~Beef~~
 63 | ~~Council~~, Inc.

64 | (c) ~~(b)~~ "Cattle" means such animals as are so designated by
 65 | federal law, including any marketing, promotion, and research
 66 | orders as are in effect. Unless such federal law provides to the
 67 | contrary, the term "cattle" includes all bovine animals,
 68 | regardless of age, including, but not limited to, calves. ~~A cow~~
 69 | ~~and nursing calf sold together are considered one unit.~~

70 | (d) ~~(e)~~ "Collection agent" means a person who sells, offers
 71 | for sale, markets, distributes, trades, or processes cattle that
 72 | have been purchased or acquired from a producer or that are
 73 | marketed on behalf of a producer. The term also includes
 74 | meatpacking firms and their agents that purchase or consign to
 75 | purchase cattle.

76 | (e) ~~(d)~~ "Department" means the Department of Agriculture
 77 | and Consumer Services.

78 | (f) "Person" means any natural person, partnership,

79 corporation, company, association, society, trust, or other
 80 business unit or organization.

81 (g) "Producer" means a person that has owned or sold
 82 cattle in the previous calendar year or presently owns cattle.

83 (4) FLORIDA CATTLE ENHANCEMENT BOARD ~~BEEF COUNCIL~~, INC.;
 84 CREATION; PURPOSES.—

85 (a) There is created the Florida Cattle Enhancement Board
 86 ~~Beef Council~~, Inc., a not-for-profit corporation organized under
 87 the laws of this state for the purpose of ~~and~~ operating as a
 88 direct-support organization to ~~of~~ the department pursuant to
 89 this section.

90 (b) The board may ~~council is authorized to~~ impose an
 91 initial assessment, in addition to any other assessment provided
 92 by law, of not more than \$1 on each head of cattle sold in the
 93 state if the imposition of the assessment is approved by
 94 referendum pursuant to subsection (6). The proceeds of the
 95 assessment shall be used to fund the activities of the board
 96 ~~council. The council shall:~~

97 ~~1. Establish the amount of the assessment at not more than~~
 98 ~~\$1 per head of cattle.~~

99 ~~2. Develop, implement, and monitor a collection system for~~
 100 ~~the assessment.~~

101 ~~3. Coordinate the collection of the assessment with other~~
 102 ~~states.~~

103 ~~4. Establish refund procedures.~~

104 ~~5. Conduct referenda under subsections (6) and (12).~~

- 105 | ~~(c) The council shall:~~
- 106 | ~~1. Plan, implement, and conduct programs of promotion,~~
- 107 | ~~research, and consumer information or industry information which~~
- 108 | ~~are designed to strengthen the cattle industry's market position~~
- 109 | ~~in this state and in the nation and to maintain and expand~~
- 110 | ~~domestic and foreign markets and expand uses for beef and beef~~
- 111 | ~~products.~~
- 112 | ~~2. Use the proceeds of the assessment for the purpose of~~
- 113 | ~~funding cattle production and beef research, education,~~
- 114 | ~~promotion, and consumer and industry information in this state~~
- 115 | ~~and in the nation.~~
- 116 | ~~3. Plan and implement a cattle and beef industry feedback~~
- 117 | ~~program in this state.~~
- 118 | ~~4. Coordinate research, education, promotion, industry,~~
- 119 | ~~and consumer information programs with any national programs or~~
- 120 | ~~programs of other states.~~
- 121 | ~~5. Develop new uses and markets for beef and beef~~
- 122 | ~~products.~~
- 123 | ~~6. Develop and improve methods of distributing beef and~~
- 124 | ~~beef products to the consumer.~~
- 125 | ~~7. Develop methods of improving the quality of beef and~~
- 126 | ~~beef products for the benefit of consumers.~~
- 127 | ~~8. Inform and educate the public concerning the nutritive~~
- 128 | ~~and economic values of beef and beef products.~~
- 129 | ~~9. Serve as a liaison within the beef and other food~~
- 130 | ~~industries of the state and elsewhere in matters that would~~

131 | ~~increase efficiencies that ultimately benefit both consumers and~~
 132 | ~~industry.~~

133 | ~~10. Buy, sell, mortgage, rent, or improve, in any manner~~
 134 | ~~that the council considers expedient, real property or personal~~
 135 | ~~property, or both.~~

136 | ~~11. Publish and distribute such papers or periodicals as~~
 137 | ~~the board of directors considers necessary to encourage and~~
 138 | ~~accomplish the purposes of the council.~~

139 | ~~12. Do all other acts necessary or expedient for the~~
 140 | ~~administration of the affairs and attainment of the purposes of~~
 141 | ~~the council.~~

142 | ~~13. Approve an annual plan, budget, and audit for the~~
 143 | ~~council.~~

144 | (c)(d)1. The board ~~council~~ may not participate in or
 145 | intervene in any political campaign on behalf of or in
 146 | opposition to any candidate for public office. This restriction
 147 | includes, but is not limited to, a prohibition against
 148 | publishing or distributing any statements.

149 | (d)2. ~~No part of~~ The net receipts of the board ~~may not~~
 150 | ~~council shall~~ inure to the benefit of or be distributable to its
 151 | directors, its officers, or other private persons, except that
 152 | the board ~~council~~ may pay reasonable compensation for services
 153 | rendered by staff employees and may make payments and
 154 | distributions in furtherance ~~of the purposes~~ of this section
 155 | ~~act.~~

156 | (e)3. Notwithstanding any other provision of law, the

157 | board council may not carry on any other activities prohibited
 158 | for not permitted to be carried on:

159 | 1.a. ~~By~~ A corporation exempt from federal income tax under
 160 | s. 501(c)(3) of the Internal Revenue Code of 1986, as amended;
 161 | or

162 | 2.b. ~~By~~ A corporation to which contributions are
 163 | deductible under s. 170(c)(2) of the Internal Revenue Code of
 164 | 1986, as amended.

165 | (f)4. Notwithstanding any other statement of the purposes
 166 | and responsibilities of the board council, the board council may
 167 | not engage in any activities or exercise any powers that are not
 168 | in furtherance of its ~~specific and primary~~ purposes.

169 | (5) GOVERNING BOARD.—

170 | (a) The Florida Cattle Enhancement Board ~~Beef Council,~~
 171 | ~~Inc.,~~ shall be governed by a board of directors composed of 14
 172 | ~~13~~ members as follows:

173 | 1. ~~Eight, including 8~~ representatives of the Florida
 174 | Cattlemen's Association, of whom one is a representative of the
 175 | Florida Association of Livestock Markets and one is a practicing
 176 | order buyer.†

177 | 2. One ~~a~~ representative of the Dairy Farmers, Inc.†

178 | 3. One ~~a~~ representative of the Florida CattleWomen, Inc.†

179 | 4. One ~~a~~ representative of the Florida Farm Bureau
 180 | Federation.†

181 | 5. One representative of an allied-industry.

182 | 6. One representative of the department appointed by the

183 Commissioner of Agriculture. ~~representative; and~~

184 7. One representative of the an Institute of Food and
185 Agricultural Sciences ~~representative.~~

186 (b) The initial board of directors shall be appointed by
187 the Commissioner of Agriculture for staggered terms ~~a term~~ of 1
188 year for three members, 2 years for three members, 3 years for
189 four members, and 4 years for four members. Each subsequent
190 vacancy shall be filled in accordance with the bylaws of the
191 Florida Cattle Enhancement Board ~~council~~. Thereafter, each ~~board~~
192 member of the board of directors shall be appointed by the
193 Florida Cattle Enhancement Board to serve a 3-year term and may
194 be reappointed to serve an additional consecutive term. A member
195 may not serve more than two consecutive terms. A member must be
196 a resident of this state and must be a producer who has been a
197 producer for at least the 5 years immediately preceding the
198 first day of his or her service on the board, except that the
199 representative of the Florida Farm Bureau Federation, the
200 allied-industry representative, the department representative,
201 and the Institute of Food and Agricultural Sciences
202 representative need not be producers. All members of the ~~beef~~
203 ~~council~~ board of directors ~~positions~~ shall serve without
204 compensation but be unsalaried ; however, the board members are
205 entitled to reimbursement as provided in s. 112.061 for travel
206 and other expenses incurred in carrying out ~~the intents and~~
207 ~~purposes of this section~~ act.

208 (c) The Florida Cattle Enhancement Board ~~council~~ shall

209 | provide for its officers through its bylaws, including the
 210 | ability to set forth offices and responsibilities and form
 211 | committees necessary for the implementation of this section ~~act~~.
 212 | ~~The Commissioner of Agriculture may designate an ex officio~~
 213 | ~~nonvoting member of the board of directors.~~

214 | (d) If a member of the board of directors misses three
 215 | consecutive, officially called meetings, the board of directors
 216 | may declare that position vacant.

217 | (6) REFERENDUM ON ASSESSMENTS.—

218 | (a) All producers in this state shall have the opportunity
 219 | to vote in a referendum to determine whether the Florida Cattle
 220 | Enhancement Board ~~may council shall be authorized to~~ impose an
 221 | assessment of not more than \$1 per head on cattle sold in the
 222 | state. The referendum shall pose the question: "Do you approve
 223 | of a Florida ~~an~~ assessment program, up to \$1 per head of cattle
 224 | pursuant to section 570.83, Florida Statutes, to be funded
 225 | through specific contributions that are mandatory and refundable
 226 | upon request?" The initial referendum under this paragraph shall
 227 | take place within 180 days after July 1, 2015. Such referendum
 228 | may not be held more often than once every 3 years.

229 | (b) Additional referenda may be held to authorize the
 230 | board to increase the assessment to more than \$1 per head of
 231 | cattle if the board receives petitions from at least 1,800
 232 | producers or 10 percent of Florida's producers as determined by
 233 | the department, whichever is less, requesting an increase in the
 234 | assessment or if the board, by a two-thirds vote of its voting

235 members, approves a motion to increase the assessment. All
 236 petition signatures must be collected within a consecutive 12-
 237 month period. The referendum shall pose the question: "Do you
 238 approve of granting the Florida Cattle Enhancement Board, Inc.,
 239 authority to increase the per-head-of-cattle assessment pursuant
 240 to section 570.83, Florida Statutes, from ...(present rate)...
 241 to up to a maximum of ...(proposed rate)... per head?" Such
 242 referendum may not be held more often than once every 3 years.

243 (c) If the board receives petitions from at least 1,800
 244 producers or 10 percent of Florida's producers as determined by
 245 the department, whichever is less, asking, "Shall the assessment
 246 authorized by the Cattle Market Development Act continue?" the
 247 board shall, within 90 days, conduct a referendum to determine
 248 whether a majority of the producers voting in the referendum
 249 support the continuation of the Cattle Market Development Act.
 250 All petition signatures must be collected within a consecutive
 251 12-month period. Such referendum may not be held more often than
 252 once every 3 years.

253 (d) The Commissioner of Agriculture may initiate a
 254 referendum with a 90-day notice, but not more often than once
 255 every 3 years.

256 (e)-a) A referendum held under this subsection ~~section~~
 257 must be conducted by secret ballot at extension offices of the
 258 Institute of Food and Agricultural Sciences of the University of
 259 Florida or at offices of the United States Department of
 260 Agriculture with the cooperation of the department to ensure

261 fairness in the referendum process.

262 (f) The Commissioner of Agriculture shall designate at
 263 least 5 but not more than 10 consecutive business days for a
 264 referendum to take place.

265 ~~(g)(b) Notice of a referendum to be held under this act~~
 266 ~~must be given at least once in trade publications, the public~~
 267 ~~press, and statewide newspapers at least 30 days before the~~
 268 ~~referendum is held.~~

269 ~~(c) Additional referenda may be held to authorize the~~
 270 ~~council to increase the assessment to more than \$1 per head of~~
 271 ~~cattle. Such referendum shall pose the question: "Do you approve~~
 272 ~~of granting the Florida Beef Council, Inc., authority to~~
 273 ~~increase the per head of cattle assessment pursuant to section~~
 274 ~~570.83, Florida Statutes, from ... (present rate) ... to up to a~~
 275 ~~maximum of ... (proposed rate) ... per head?" Referenda may not be~~
 276 ~~held more often than once every 3 years.~~

277 ~~(h)(d) Each cattle producer is entitled to only one vote~~
 278 ~~in a referendum held under this subsection section.~~ Proof of
 279 identification and cattle ownership must be presented before
 280 voting.

281 ~~(i)(e) A simple majority of those casting ballots shall~~
 282 ~~determine any issue that requires a referendum under this~~
 283 ~~subsection section.~~

284 (7) POWERS AND DUTIES OF THE BOARD COUNCIL.-

285 (a) The board council shall:

- 286 1. Establish the amount of the assessment at not more than

- 287 | \$1 per head of cattle.
- 288 | 2. Develop, implement, and monitor a collection system for
 289 | the assessment.
- 290 | 3. Coordinate the collection of the assessment with other
 291 | states.
- 292 | 4. Establish refund procedures.
- 293 | 5. Conduct referenda under subsection (6).
- 294 | 6. Plan, implement, and conduct programs of promotion,
 295 | research, and consumer information or industry information which
 296 | are designed to strengthen the market position of the cattle
 297 | industry in this state and in the nation and to maintain and
 298 | expand domestic and foreign markets and expand uses for beef and
 299 | beef products.
- 300 | 7. Use the proceeds of the assessment for the purpose of
 301 | funding cattle production and beef research, education,
 302 | promotion, and consumer and industry information in this state
 303 | and in the nation.
- 304 | 8. Plan and implement a cattle and beef industry feedback
 305 | program in this state.
- 306 | 9. Coordinate research, education, promotion, industry,
 307 | and consumer information programs with any national programs or
 308 | programs of other states.
- 309 | 10. Serve as a liaison within the beef and other food
 310 | industries of the state and elsewhere in matters that would
 311 | increase efficiencies that ultimately benefit consumers and
 312 | industry.

313 11. Buy, sell, mortgage, rent, or improve, in any manner
 314 that the board considers expedient, real property or personal
 315 property, or both.

316 12. Publish and distribute such papers or periodicals as
 317 the board of directors considers necessary to encourage and
 318 accomplish the purposes of the Florida Cattle Enhancement Board.

319 ~~13.1. Receive and disburse funds, pursuant to as~~
 320 ~~prescribed elsewhere in this section act,~~ to be used in
 321 administering and implementing this section ~~the act.~~

322 ~~2. Maintain a permanent record of its business~~
 323 ~~proceedings.~~

324 ~~3. Maintain a permanent, detailed record of its financial~~
 325 ~~dealings.~~

326 ~~4. Prepare periodic reports and an annual report of its~~
 327 ~~activities for the fiscal year, for review by the beef industry~~
 328 ~~in this state, and file its annual report with the department.~~

329 14.5. Prepare, for review by the beef industry in this
 330 state, periodic reports and an annual accounting for each fiscal
 331 year of all receipts and expenditures to be filed with the
 332 department, and shall retain a certified public accountant for
 333 this purpose.

334 ~~15.6. Appoint a licensed banking institution to serve as~~
 335 ~~the depository for program funds and to handle disbursements of~~
 336 ~~those funds.~~

337 ~~7. Maintain frequent communication with officers and~~
 338 ~~industry representatives at the state and national levels,~~

339 | ~~including the department.~~

340 | 16.8. Maintain an office in this state.

341 | 17. Do all other acts necessary permitted by law to
 342 | further the intent of this section.

343 | (b) The board ~~council~~ may:

344 | 1. Conduct or contract for scientific research with any
 345 | accredited university, college, or similar institution, and
 346 | enter into other contracts or agreements that will aid in
 347 | carrying out the purposes of the program, including contracts
 348 | for the purchase or acquisition of facilities or equipment
 349 | necessary to carry out the purposes of the program.

350 | 2. Disseminate reliable information benefiting the
 351 | consumer and the beef industry on subjects such as, but not
 352 | limited to, the purchase, identification, care, storage,
 353 | handling, cookery, preparation, serving, and nutritive value of
 354 | beef and beef products.

355 | 3. ~~Provide to government bodies, on request, information~~
 356 | ~~relating to subjects of concern to the beef industry, and may~~
 357 | Act jointly or in cooperation with the state or Federal
 358 | Government, and agencies thereof, in the development or
 359 | administration of programs that the board ~~council~~ considers to
 360 | be consistent with the objectives of the program.

361 | 4. ~~Sue and be sued as a council without individual~~
 362 | ~~liability of the members for acts of the council when acting~~
 363 | ~~within the scope of the powers of this act and in the manner~~
 364 | ~~prescribed by the laws of this state.~~

365 4.5. Borrow from licensed lending institutions money in
 366 amounts that are not cumulatively greater than 50 percent of the
 367 board's ~~council's~~ anticipated annual income.

368 ~~6. Maintain a financial reserve for emergency use, the~~
 369 ~~total of which must not exceed 50 percent of the council's~~
 370 ~~anticipated annual income.~~

371 ~~7. Appoint advisory groups composed of representatives~~
 372 ~~from organizations, institutions, governments, or businesses~~
 373 ~~related to or interested in the welfare of the beef industry and~~
 374 ~~the consuming public.~~

375 5.8. Employ staff ~~subordinate officers and employees of~~
 376 ~~the council~~, prescribe their duties, and fix their compensation
 377 and terms of employment.

378 6.9. Cooperate with any local, state, regional, or
 379 nationwide organization or agency engaged in work or activities
 380 consistent with the objectives of the program.

381 7.10. Cause any duly authorized agent or representative to
 382 enter upon the premises of any market agency, market agent,
 383 collection agency, or collection agent and examine or cause to
 384 be examined, only by the authorized agent, ~~only~~ books, papers,
 385 and records that deal with the payment of the assessment
 386 provided for in this section ~~act~~ or with the enforcement of this
 387 section ~~act~~.

388 ~~11. Do all other things necessary to further the intent of~~
 389 ~~this act which are not prohibited by law.~~

390 (8) ACCEPTANCE OF GRANTS AND GIFTS.—The board ~~council~~ may

391 accept grants, donations, contributions, or gifts from any
 392 source if the use of such resources is not restricted in any
 393 manner that the board ~~council~~ considers to be inconsistent with
 394 the objectives of the program.

395 (9) PAYMENTS TO ORGANIZATIONS.—

396 (a) The board ~~council~~ may pay funds to other organizations
 397 for work or services performed which are consistent with the
 398 objectives of the program.

399 (b) Before making payments pursuant to ~~described in~~ this
 400 subsection, the board ~~council~~ must secure a written agreement
 401 that the organization receiving payment will:

402 1. Furnish at least annually, or more frequently on
 403 request of the board ~~council~~, written or printed reports of
 404 program activities and reports of financial data that are
 405 relative to the board's ~~council's~~ funding of such activities;
 406 and

407 2. Agree to have appropriate representatives attend
 408 business meetings of the board ~~council~~ as reasonably requested
 409 by the chairperson of the board ~~council~~.

410 (c) The board ~~council~~ may require adequate proof of
 411 security bonding on such ~~said~~ funds to any individual, business,
 412 or other organization.

413 (10) COLLECTION OF MONEYS AT TIME OF MARKETING.—

414 (a) Each collection agent shall ~~may~~ deduct from the gross
 415 receipts of the producer, at the time of sale, the assessment
 416 imposed by the board ~~council~~.

417 (b) The collection agent shall collect all such moneys and
 418 forward them to the board by the 15th day of each ~~council~~
 419 ~~periodically, at least once a month.~~ and The board ~~council~~
 420 shall provide appropriate business forms for the convenience of
 421 the collecting agent in executing this duty.

422 (c) The board ~~council~~ shall maintain within its financial
 423 records a separate accounting of all moneys received under this
 424 section ~~subsection~~.

425 (d) The assessment is due and payable upon the sale of
 426 cattle in this state. The assessment constitutes a personal debt
 427 of the producer who is so assessed or who otherwise owes the
 428 assessment. If a producer fails to remit any properly due
 429 assessment, the board ~~council~~ may bring a civil action against
 430 that person in the circuit court of any county for the
 431 collection thereof, and may add a penalty in the amount of 10
 432 percent of the assessment owed, the cost of enforcing the
 433 collection of the assessment, court costs, and reasonable
 434 attorney ~~attorney's~~ fees. The action shall be tried and judgment
 435 rendered as in any other cause of action for debts due and
 436 payable. All assessments, penalties, and enforcement costs are
 437 due and payable to the board ~~council~~.

438 (e) The board ~~council~~ may adopt reciprocal agreements with
 439 other beef councils or similar organizations relating to moneys
 440 collected by ~~at~~ Florida collection agents on cattle from other
 441 states and to Florida cattle sold at other state markets.

442 ~~(f) The collection agents shall be entitled to deduct 2.5~~

443 ~~percent of the amount collected to retain as a reasonable~~
 444 ~~collection allowance prior to remitting the funds to the~~
 445 ~~council.~~

446 (11) REFUNDS.—

447 (a) A producer who has had moneys deducted from his or her
 448 gross sales receipts under this section ~~act~~ is entitled to a
 449 prompt and full refund on request.

450 (b) The board ~~council~~ shall make available to all
 451 collection agents business forms for requesting refunds
 452 ~~permitting request for refund~~, which forms are to be submitted
 453 by the objecting producer within 45 days after the sale
 454 transaction takes place.

455 (c) A refund claim must include the claimant's signature,
 456 date of sale, place of sale, number of cattle, and amount of
 457 assessment deducted, and must have attached thereto proof of the
 458 assessment deducted.

459 (d) If the board ~~council~~ has reasonable doubt that a
 460 refund claim is valid, it may withhold payment and take such
 461 action as it considers necessary to determine the validity of
 462 the claim. Any dispute arising under this subsection shall be
 463 determined as specified in paragraph (10)(d).

464 (e) The board ~~council~~ shall take action on refund requests
 465 within 30 calendar days following the date of receipt of the
 466 request.

467 (f) Only the producer may initiate a request for refund.

468 ~~(12) VOTE ON CONTINUING THE ASSESSMENT. Upon the delivery~~

469 ~~by certified mail to the Florida Beef Council office of~~
 470 ~~petitions from at least 1,800 producers or 10 percent of~~
 471 ~~Florida's producers as determined by the department, whichever~~
 472 ~~is less, and stating "Shall the assessment authorized by the~~
 473 ~~Beef Market Development Act continue?" the council shall, within~~
 474 ~~90 days, conduct a referendum to determine whether a majority of~~
 475 ~~the producers voting in the referendum support the continuation~~
 476 ~~of the Beef Market Development Act. All signatures must be~~
 477 ~~collected within a 12-month period. A referendum held under this~~
 478 ~~subsection may not be held more than one time in a 3-year~~
 479 ~~period. Qualifications for signature and vote are the same as~~
 480 ~~those required in subsection (6).~~

481 ~~(12)~~ (13) BYLAWS.—The Florida Cattle Enhancement Board ~~Beef~~
 482 ~~Council~~ shall, within 90 days after the governing board is
 483 appointed ~~this act becomes a law,~~ adopt bylaws to carry out the
 484 intents and purposes of this section ~~act~~. ~~The~~ These bylaws may
 485 be amended with a 30-day notice to governing board members at
 486 any regular or special meeting called for such ~~this~~ purpose. The
 487 bylaws must conform to the requirements of this section ~~act~~ but
 488 may also address any matter not in conflict with the general
 489 laws of this state.

490 ~~(13)~~ (14) REPEAL.—This section is repealed October 1, 2020
 491 ~~2019,~~ unless reviewed and saved from repeal by the Legislature.
 492 Section 2. This act shall take effect July 1, 2015.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: State Affairs Committee
 2 Representative Combee offered the following:

Amendment (with title amendment)

5 Remove everything after the enacting clause and insert:

6 Section 1. Section 570.83, Florida Statutes, is amended to
7 read:

8 570.83 Cattle Beef Market Development Act; definitions;
 9 Florida Cattle Enhancement Board ~~Beef Council~~, Inc., creation,
 10 purposes, governing board, powers, and duties; ~~referendum on~~
 11 ~~assessments imposed on gross receipts from cattle sales;~~
 12 payments to organizations for services; ~~collecting and refunding~~
 13 ~~assessments; vote on continuing the act;~~ board council bylaws.-

14 (1) SHORT TITLE ~~POPULAR NAME~~.--This section act may be
15 cited as the "Cattle Beef Market Development Act."

16 (2) LEGISLATIVE INTENT.--The Legislature intends by this
17 act to promote the growth of the cattle industry in this state;



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18 to assure the public an adequate and wholesome food supply; to
19 provide for the general economic welfare of producers and
20 consumers of beef and the state; and to provide the ~~beef~~ cattle
21 ~~production and feeding~~ industry of this state with the authority
22 to establish a ~~self-financed,~~ self-governed program to help
23 develop, maintain, and expand the state, national, and foreign
24 markets for beef and beef products that are produced, processed,
25 or manufactured in this state.

26 (3) DEFINITIONS.—As used in this section ~~aet~~, the term:

27 (a) "Beef" or "beef products" means the products of beef
28 intended for human consumption which are derived from any bovine
29 animal, regardless of age, including, but not limited to, veal.

30 ~~(b)(e)~~ "Board" or "Florida Cattle Enhancement Board"
31 "Council" means the Florida Cattle Enhancement Board ~~Beef~~
32 ~~Council~~, Inc.

33 ~~(c)(b)~~ "Cattle" means such animals as are so designated by
34 federal law, including any marketing, promotion, and research
35 orders as are in effect. Unless such federal law provides to the
36 contrary, the term "cattle" includes all bovine animals,
37 regardless of age, including, but not limited to, calves. ~~A cow~~
38 ~~and nursing calf sold together are considered one unit.~~

39 ~~(e)~~ ~~"Collection agent" means a person who sells, offers~~
40 ~~for sale, markets, distributes, trades, or processes cattle that~~
41 ~~have been purchased or acquired from a producer or that are~~
42 ~~marketed on behalf of a producer. The term also includes~~
43 ~~meatpacking firms and their agents that purchase or consign to~~



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44 ~~purchase cattle.~~

45 (d) "Department" means the Department of Agriculture and
46 Consumer Services.

47 ~~(e)~~(f) "Person" means any natural person, partnership,
48 corporation, company, association, society, trust, or other
49 business unit or organization.

50 ~~(f)~~(g) "Producer" means a person that has owned or sold
51 cattle in the previous calendar year or presently owns cattle.

52 (4) FLORIDA CATTLE ENHANCEMENT BOARD ~~BEEF COUNCIL~~, INC.;
53 CREATION; PURPOSES.—

54 (a) There is created the Florida Cattle Enhancement Board
55 ~~Beef Council~~, Inc., a not-for-profit corporation organized under
56 the laws of this state for the purpose of ~~and~~ operating as a
57 direct-support organization to ~~of~~ the department pursuant to
58 this section.

59 ~~(b) The council is authorized to impose an assessment of~~
60 ~~not more than \$1 on each head of cattle sold in the state if the~~
61 ~~imposition of the assessment is approved by referendum pursuant~~
62 ~~to subsection (6). The proceeds of the assessment shall be used~~
63 ~~to fund the activities of the council. The council shall:~~

64 1. ~~Establish the amount of the assessment at not more than~~
65 ~~\$1 per head of cattle.~~

66 2. ~~Develop, implement, and monitor a collection system for~~
67 ~~the assessment.~~

68 3. ~~Coordinate the collection of the assessment with other~~
69 ~~states.~~



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- 70 ~~4. Establish refund procedures.~~
- 71 ~~5. Conduct referenda under subsections (6) and (12).~~
- 72 ~~(c) The council shall:~~
- 73 ~~1. Plan, implement, and conduct programs of promotion,~~
74 ~~research, and consumer information or industry information which~~
75 ~~are designed to strengthen the cattle industry's market position~~
76 ~~in this state and in the nation and to maintain and expand~~
77 ~~domestic and foreign markets and expand uses for beef and beef~~
78 ~~products.~~
- 79 ~~2. Use the proceeds of the assessment for the purpose of~~
80 ~~funding cattle production and beef research, education,~~
81 ~~promotion, and consumer and industry information in this state~~
82 ~~and in the nation.~~
- 83 ~~3. Plan and implement a cattle and beef industry feedback~~
84 ~~program in this state.~~
- 85 ~~4. Coordinate research, education, promotion, industry,~~
86 ~~and consumer information programs with any national programs or~~
87 ~~programs of other states.~~
- 88 ~~5. Develop new uses and markets for beef and beef~~
89 ~~products.~~
- 90 ~~6. Develop and improve methods of distributing beef and~~
91 ~~beef products to the consumer.~~
- 92 ~~7. Develop methods of improving the quality of beef and~~
93 ~~beef products for the benefit of consumers.~~
- 94 ~~8. Inform and educate the public concerning the nutritive~~
95 ~~and economic values of beef and beef products.~~



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96 ~~9. Serve as a liaison within the beef and other food~~
97 ~~industries of the state and elsewhere in matters that would~~
98 ~~increase efficiencies that ultimately benefit both consumers and~~
99 ~~industry.~~

100 ~~10. Buy, sell, mortgage, rent, or improve, in any manner~~
101 ~~that the council considers expedient, real property or personal~~
102 ~~property, or both.~~

103 ~~11. Publish and distribute such papers or periodicals as~~
104 ~~the board of directors considers necessary to encourage and~~
105 ~~accomplish the purposes of the council.~~

106 ~~12. Do all other acts necessary or expedient for the~~
107 ~~administration of the affairs and attainment of the purposes of~~
108 ~~the council.~~

109 ~~13. Approve an annual plan, budget, and audit for the~~
110 ~~council.~~

111 ~~(b)(d)1.~~ The board council may not participate in or
112 intervene in any political campaign on behalf of or in
113 opposition to any candidate for public office. This restriction
114 includes, but is not limited to, a prohibition against
115 publishing or distributing any statements.

116 ~~(c)2. No part of~~ The net receipts of the board may not
117 ~~council shall~~ inure to the benefit of or be distributable to its
118 directors, its officers, or other private persons, except that
119 the board council may pay reasonable compensation for services
120 rendered by staff employees and may make payments and
121 distributions in furtherance ~~of the purposes~~ of this section



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122 ~~act.~~

123 ~~(d)3.~~ Notwithstanding any other provision of law, the
124 board council may not carry on any other activities prohibited
125 for not permitted to be carried on:

126 ~~1.a.~~ By A corporation exempt from federal income tax under
127 s. 501(c)(3) of the Internal Revenue Code of 1986, as amended;
128 or

129 ~~2.b.~~ By A corporation to which contributions are
130 deductible under s. 170(c)(2) of the Internal Revenue Code of
131 1986, as amended.

132 ~~(e)4.~~ Notwithstanding any other statement of the purposes
133 and responsibilities of the board council, the board council may
134 not engage in any activities or exercise any powers that are not
135 in furtherance of its ~~specific and primary~~ purposes.

136 (5) GOVERNING BOARD.—

137 (a) The Florida Cattle Enhancement Board ~~Beef Council,~~
138 ~~Inc.~~, shall be governed by a board of directors composed of 14
139 13 members as follows:

140 ~~1. Eight, including 8~~ representatives of the Florida
141 Cattlemen's Association, of whom one is a representative of the
142 Florida Association of Livestock Markets and one is a practicing
143 order buyer.†

144 ~~2.~~ One a representative of the Dairy Farmers, Inc.†

145 ~~3.~~ One a representative of the Florida CattleWomen, Inc.†

146 ~~4.~~ One a representative of the Florida Farm Bureau
147 Federation.†



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- 148 5. One representative of an allied-industry.
149 6. One representative of the department. representative,
150 ~~and~~
151 7. One representative of the an Institute of Food and
152 ~~Agricultural Sciences representative.~~

153 (b) The initial board of directors shall be appointed by
154 the Commissioner of Agriculture for staggered terms ~~a term~~ of 1
155 year for three members, 2 years for three members, 3 years for
156 four members, and 4 years for four members. Each subsequent
157 vacancy shall also be filled by the Commissioner of Agriculture
158 ~~in accordance with the bylaws of the council with.~~ Thereafter,
159 each ~~board~~ member of the board of directors shall be appointed
160 to serve a 3-year term and may be reappointed to serve an
161 additional consecutive term. A member may not serve more than
162 two consecutive terms. A member must be a resident of this state
163 and must be a producer who has been a producer for at least the
164 5 years immediately preceding the first day of his or her
165 service on the board, except that the representative of the
166 Florida Farm Bureau Federation, the allied-industry
167 representative, the department representative, and the Institute
168 of Food and Agricultural Sciences representative need not be
169 producers. All members of the beef council board of directors
170 ~~positions~~ shall serve without compensation but be unsalaried,
171 ~~however, the board members~~ are entitled to reimbursement as
172 provided in s. 112.061 for travel and other expenses incurred in
173 carrying out ~~the intents and purposes of~~ this section act.



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174 (c) The Florida Cattle Enhancement Board ~~council~~ shall
175 provide for its officers through its bylaws, including the
176 ability to set forth offices and responsibilities and form
177 committees necessary for the implementation of this section ~~act~~.
178 ~~The Commissioner of Agriculture may designate an ex officio~~
179 ~~nonvoting member of the board of directors.~~

180 (d) If a member of the board of directors misses three
181 consecutive, officially called meetings, the board of directors
182 may declare that position vacant.

183 ~~(6) REFERENDUM ON ASSESSMENTS. All producers in this state~~
184 ~~shall have the opportunity to vote in a referendum to determine~~
185 ~~whether the council shall be authorized to impose an assessment~~
186 ~~of not more than \$1 per head on cattle sold in the state. The~~
187 ~~referendum shall pose the question: "Do you approve of an~~
188 ~~assessment program, up to \$1 per head of cattle pursuant to~~
189 ~~section 570.83, Florida Statutes, to be funded through specific~~
190 ~~contributions that are mandatory and refundable upon request?"~~

191 ~~(a) A referendum held under this section must be conducted~~
192 ~~by secret ballot at extension offices of the Institute of Food~~
193 ~~and Agricultural Sciences of the University of Florida or at~~
194 ~~offices of the United States Department of Agriculture with the~~
195 ~~cooperation of the department.~~

196 ~~(b) Notice of a referendum to be held under this act must~~
197 ~~be given at least once in trade publications, the public press,~~
198 ~~and statewide newspapers at least 30 days before the referendum~~
199 ~~is held.~~



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200 ~~(c) Additional referenda may be held to authorize the~~
201 ~~council to increase the assessment to more than \$1 per head of~~
202 ~~cattle. Such referendum shall pose the question: "Do you approve~~
203 ~~of granting the Florida Beef Council, Inc., authority to~~
204 ~~increase the per head of cattle assessment pursuant to section~~
205 ~~570.83, Florida Statutes, from ... (present rate)... to up to a~~
206 ~~maximum of ... (proposed rate)... per head?" Referenda may not be~~
207 ~~held more often than once every 3 years.~~

208 ~~(d) Each cattle producer is entitled to only one vote in a~~
209 ~~referendum held under this section. Proof of identification and~~
210 ~~cattle ownership must be presented before voting.~~

211 ~~(e) A simple majority of those casting ballots shall~~
212 ~~determine any issue that requires a referendum under this~~
213 ~~section.~~

214 ~~(6)(7) POWERS AND DUTIES OF THE BOARD COUNCIL.-~~

215 (a) The board council shall:

216 1. Serve as a liaison within the beef and other food
217 industries of the state and elsewhere in matters that would
218 increase efficiencies that ultimately benefit consumers and
219 industry.

220 2. Buy, sell, mortgage, rent, or improve, in any manner
221 that the board considers expedient, real property or personal
222 property, or both.

223 3. Publish and distribute such papers or periodicals as
224 the board of directors considers necessary to encourage and
225 accomplish the purposes of the Florida Cattle Enhancement Board.



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226 ~~4.1.~~ Receive and disburse funds, ~~as prescribed elsewhere~~
227 ~~in this act,~~ to be used in administering and implementing this
228 section the act.

229 ~~5.2.~~ Maintain a permanent record of its business
230 proceedings.

231 ~~6.3.~~ Maintain a permanent, detailed record of its
232 financial dealings.

233 ~~7.4.~~ Prepare periodic reports and an annual report of its
234 activities for the fiscal year, for review by the cattle beef
235 industry in this state, and file its annual report with the
236 department.

237 ~~8.5.~~ Prepare, for review by the cattle beef industry in
238 this state, periodic reports and an annual accounting for each
239 fiscal year of all receipts and expenditures to be filed with
240 the department, and ~~shall~~ retain a certified public accountant
241 for this purpose.

242 ~~9.6.~~ Appoint a licensed banking institution to serve as
243 the depository for program funds and to handle disbursements of
244 those funds.

245 ~~7.~~ ~~Maintain frequent communication with officers and~~
246 ~~industry representatives at the state and national levels,~~
247 ~~including the department.~~

248 ~~10.8.~~ Maintain an office in this state.

249 (b) The board council may:

250 1. Conduct or contract for scientific research with any
251 accredited university, college, or similar institution, and



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252 enter into other contracts or agreements that will aid in
253 carrying out the purposes of the program, including contracts
254 for the purchase or acquisition of facilities or equipment
255 necessary to carry out the purposes of the program.

256 2. Disseminate reliable information benefiting the
257 consumer and the cattle ~~beef~~ industry on subjects such as, but
258 not limited to, the purchase, identification, care, storage,
259 handling, cookery, preparation, serving, and nutritive value of
260 beef and beef products.

261 3. Provide to government bodies, on request, information
262 relating to subjects of concern to the cattle ~~beef~~ industry, and
263 may act jointly or in cooperation with the state or Federal
264 Government, and agencies thereof, in the development or
265 administration of programs that the board ~~council~~ considers to
266 be consistent with the objectives of the program.

267 4. Sue and be sued as a board ~~council~~ without individual
268 liability of the members for acts of the council when acting
269 within the scope of the powers of this act and in the manner
270 prescribed by the laws of this state.

271 5. Borrow from licensed lending institutions money in
272 amounts that are not cumulatively greater than 50 percent of the
273 board's ~~council's~~ anticipated annual income.

274 ~~6. Maintain a financial reserve for emergency use, the~~
275 ~~total of which must not exceed 50 percent of the council's~~
276 ~~anticipated annual income.~~

277 ~~7. Appoint advisory groups composed of representatives~~



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278 ~~from organizations, institutions, governments, or businesses~~
279 ~~related to or interested in the welfare of the beef industry and~~
280 ~~the consuming public.~~

281 ~~6.8. Employ staff subordinate officers and employees of~~
282 ~~the council, prescribe their duties, and fix their compensation~~
283 ~~and terms of employment.~~

284 ~~7.9. Cooperate with any local, state, regional, or~~
285 ~~nationwide organization or agency engaged in work or activities~~
286 ~~consistent with the objectives of the program.~~

287 ~~10. Cause any duly authorized agent or representative to~~
288 ~~enter upon the premises of any market agency, market agent,~~
289 ~~collection agency, or collection agent and examine or cause to~~
290 ~~be examined by the authorized agent, only books, papers, and~~
291 ~~records that deal with the payment of the assessment provided~~
292 ~~for in this act or with the enforcement of this act.~~

293 ~~8.11. Do all other things necessary to further the intent~~
294 ~~of this act which are not prohibited by law.~~

295 ~~9. Fund cattle production and beef research, education,~~
296 ~~promotion, and consumer and industry information in this state~~
297 ~~and in the nation.~~

298 ~~10. Plan, implement, and conduct programs of promotion,~~
299 ~~research, and consumer information or industry information which~~
300 ~~are designed to strengthen the market position of the cattle~~
301 ~~industry in this state and in the nation and to maintain and~~
302 ~~expand domestic and foreign markets and expand uses for beef and~~
303 ~~beef products.~~



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304 11. Plan and implement a cattle industry feedback program
305 in this state.

306 12. Coordinate research, education, promotion, industry,
307 and consumer information programs with any national programs or
308 programs of other states.

309 ~~(7)(8)~~ ACCEPTANCE OF GRANTS AND GIFTS.—The board council
310 may accept grants, donations, contributions, or gifts from any
311 source if the use of such resources is not restricted in any
312 manner that the board council considers to be inconsistent with
313 the objectives of the program.

314 ~~(8)(9)~~ PAYMENTS TO ORGANIZATIONS.—

315 (a) The board council may pay funds to other organizations
316 for work or services performed which are consistent with the
317 objectives of the program.

318 (b) Before making payments pursuant to ~~described in~~ this
319 subsection, the board council must secure a written agreement
320 that the organization receiving payment will:

321 1. Furnish at least annually, or more frequently on
322 request of the board council, written or printed reports of
323 program activities and reports of financial data that are
324 relative to the board's council's funding of such activities;
325 and

326 2. Agree to have appropriate representatives attend
327 business meetings of the board council as reasonably requested
328 by the chairperson of the board council.

329 (c) The board council may require adequate proof of



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330 security bonding on such ~~said~~ funds to any individual, business,
331 or other organization.

332 ~~(10) COLLECTION OF MONEYS AT TIME OF MARKETING.—~~

333 ~~(a) Each collection agent may deduct from the gross~~
334 ~~receipts of the producer, at the time of sale, the assessment~~
335 ~~imposed by the council.~~

336 ~~(b) The collection agent shall collect all such moneys and~~
337 ~~forward them to the council periodically, at least once a month,~~
338 ~~and The council shall provide appropriate business forms for the~~
339 ~~convenience of the collecting agent in executing this duty.~~

340 ~~(c) The council shall maintain within its financial~~
341 ~~records a separate accounting of all moneys received under this~~
342 ~~section subsection.~~

343 ~~(d) The assessment is due and payable upon the sale of~~
344 ~~cattle in this state. The assessment constitutes a personal debt~~
345 ~~of the producer who is so assessed or who otherwise owes the~~
346 ~~assessment. If a producer fails to remit any properly due~~
347 ~~assessment, the council may bring a civil action against that~~
348 ~~person in the circuit court of any county for the collection~~
349 ~~thereof, and may add a penalty in the amount of 10 percent of~~
350 ~~the assessment owed, the cost of enforcing the collection of the~~
351 ~~assessment, court costs, and reasonable attorney's fees. The~~
352 ~~action shall be tried and judgment rendered as in any other~~
353 ~~cause of action for debts due and payable. All assessments,~~
354 ~~penalties, and enforcement costs are due and payable to the~~
355 ~~council.~~



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356 ~~(e) The council may adopt reciprocal agreements with other~~
357 ~~beef councils or similar organizations relating to moneys~~
358 ~~collected at Florida collection agents on cattle from other~~
359 ~~states and to Florida cattle sold at other state markets.~~

360 ~~(f) The collection agents shall be entitled to deduct 2.5~~
361 ~~percent of the amount collected to retain as a reasonable~~
362 ~~collection allowance prior to remitting the funds to the~~
363 ~~council.~~

364 ~~(11) REFUNDS.—~~

365 ~~(a) A producer who has had moneys deducted from his or her~~
366 ~~gross sales receipts under this act is entitled to a prompt and~~
367 ~~full refund on request.~~

368 ~~(b) The council shall make available to all collection~~
369 ~~agents business forms permitting request for refund, which forms~~
370 ~~are to be submitted by the objecting producer within 45 days~~
371 ~~after the sale transaction takes place.~~

372 ~~(c) A refund claim must include the claimant's signature,~~
373 ~~date of sale, place of sale, number of cattle, and amount of~~
374 ~~assessment deducted, and must have attached thereto proof of the~~
375 ~~assessment deducted.~~

376 ~~(d) If the council has reasonable doubt that a refund~~
377 ~~claim is valid, it may withhold payment and take such action as~~
378 ~~it considers necessary to determine the validity of the claim.~~
379 ~~Any dispute arising under this subsection shall be determined as~~
380 ~~specified in paragraph (10)(d).~~

381 ~~(e) The council shall take action on refund requests~~



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382 ~~within 30 calendar days following the date of receipt of the~~
383 ~~request.~~

384 ~~(f) Only the producer may initiate a request for refund.~~

385 ~~(12) VOTE ON CONTINUING THE ASSESSMENT. Upon the delivery~~
386 ~~by certified mail to the Florida Beef Council office of~~
387 ~~petitions from at least 1,800 producers or 10 percent of~~
388 ~~Florida's producers as determined by the department, whichever~~
389 ~~is less, and stating "Shall the assessment authorized by the~~
390 ~~Beef Market Development Act continue?" the council shall, within~~
391 ~~90 days, conduct a referendum to determine whether a majority of~~
392 ~~the producers voting in the referendum support the continuation~~
393 ~~of the Beef Market Development Act. All signatures must be~~
394 ~~collected within a 12-month period. A referendum held under this~~
395 ~~subsection may not be held more than one time in a 3-year~~
396 ~~period. Qualifications for signature and vote are the same as~~
397 ~~those required in subsection (6).~~

398 ~~(9)(13)~~ BYLAWS.—The Florida Cattle Enhancement Board Beef
399 Council shall, within 90 days after the governing board is
400 appointed ~~this act becomes a law~~, adopt bylaws to carry out the
401 intents and purposes of this section ~~act~~. The ~~These~~ bylaws may
402 be amended with a 30-day notice to governing board members at
403 any regular or special meeting called for such ~~this~~ purpose. The
404 bylaws must conform to the requirements of this section ~~act~~ but
405 may also address any matter not in conflict with the general
406 laws of this state.



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407 ~~(10)-(14)~~ REPEAL.—This section is repealed October 1, 2020
408 ~~2019~~, unless reviewed and saved from repeal by the Legislature.

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

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
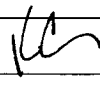
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Remove everything before the enacting clause and insert:
An act relating to the Cattle Market Development Act; amending
s. 570.83, F.S.; renaming the Beef Market Development Act as the
Cattle Market Development Act; renaming the Florida Beef
Council, Inc., as the Florida Cattle Enhancement Board, Inc.;
conforming intent and definitions; removing a provision that
deems a cow and nursing calf sold together as one unit;
providing for the Commissioner of Agriculture to appoint a
voting member rather than an ex officio, nonvoting member to the
governing board of the Cattle Enhancement Board; providing for
staggered terms of governing board members; providing for
initial and subsequent appointment of governing board members;
removing provisions requiring the board to maintain frequent
communication with officers and industry representatives at the
state and national levels; removing provisions providing for a
\$1 per head assessment and referenda; revising the date of the
scheduled repeal of the act; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 985 Maintenance of Agency Final Orders
SPONSOR(S): Eisnaugle
TIED BILLS: IDEN./SIM. **BILLS:** SB 1284

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Rulemaking Oversight & Repeal Subcommittee	12 Y, 0 N, As CS	Rubottom	Rubottom
2) Government Operations Appropriations Subcommittee	9 Y, 0 N	White	Topp
3) State Affairs Committee		Harrington 	Camechis 

SUMMARY ANALYSIS

All agencies covered by Florida's Administrative Procedure Act must maintain most final agency orders and a subject matter index thereof, allowing orders to be publicly accessed for research or copying, or else maintain an electronic database of final orders allowing public users to research and retrieve the orders using common logical search terms. If an electronic database is not used, an agency may satisfy its public access requirement by designating an official reporter to index and publish its final orders. Thus, agency final orders in Florida may be indexed and maintained for retrieval on microfilm in agency offices, published by a reporter, or available online in a searchable electronic database.

Such orders must be maintained as permanent agency records. Implicitly, public access is required indefinitely.

Since 2008, agencies have been permitted to satisfy the requirement for public access by electronically transmitting a copy of its final orders to the Division of Administrative Hearings (DOAH) for access through DOAH's website. A number of large agencies have used the DOAH alternative with satisfaction. DOAH has no legal obligation to maintain its website.

The bill requires all agencies to use the DOAH website for publication of final orders that must be maintained for public access. Other methods of maintaining and accessing pre-existing orders will continue indefinitely. The bill also provides expanded rulemaking authority to the Department of State to coordinate and set standards on transmittal of certified copies of final orders and to assure integrity of the online documents and satisfactory operation of storage and retrieval functions assigned to DOAH.

The bill will ensure that all final agency orders entered after implementation of the bill will be available online in an easily searchable database.

The bill may have a minimal negative fiscal impact on some state agencies that do not presently create a searchable electronic copy of orders. The bill should reduce some agency costs associated with reporting or indexing and maintaining final orders for public access. It is not anticipated that the bill will have any impact on local government funds.

The bill has an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Administrative Procedure Act

The Administrative Procedure Act (APA)¹ regulates administrative rulemaking, administrative enforcement and administrative resolution of disputes arising out of administrative actions of most state agencies and some subdivisions of state government. Administrative actions authorized by law and regulated by the APA include the adoption of a rule, granting or denying a permit or license, an order enforcing a law or rule that assesses a fine, or other discipline and final decisions in administrative disputes or other matters resulting in an agency decision. Such disputes include challenges to the validity of a rule or proposed rule or challenges to agency reliance on unadopted rules,² as well as challenges to other proposed agency actions which affect substantial interests of any party.³

In addition to disputes, agency action occurs when the agency acts on a petition for a declaratory statement⁴ or settles a dispute through mediation.⁵

Agency Final Orders

A final order is the written final decision of an agency or, in particular matters, an administrative law judge, resulting from any such dispute, declaratory statement petition or mediation. In other words, a final order is the written form of any agency action other than adoption of a rule⁶ or an agency policy exempted from the definition of a rule under the APA.⁷ A final order includes all materials explicitly adopted in it, and must be filed with the agency clerk.⁸

The 1974, the APA required agencies to "maintain" all final orders (with certain exceptions) and a subject matter index thereof, allowing orders to be located and publicly accessed for research or copying.⁹ One purpose of the requirement was to enhance public notice of agency policy expressed in precedents.¹⁰ In 1979, the law was amended to allow agencies to satisfy the requirement to maintain all agency orders by designating an official reporter to index and publish its orders.¹¹ Under this provision, agencies may use a third party such as the Florida Administrative Law Reports to index final orders. In practice, the commercial reporters published only select orders.¹² In 1992, APA amendments authorized agencies to satisfy the requirement by maintaining an electronic database of final orders allowing public users to research and retrieve the full text of final orders using common logical search terms.¹³

Today, agency final orders may be maintained in hard copy in agency files, published by a reporter, or made available online in an electronic database. These varied methods make finding agency orders difficult at times. The Ad Hoc Orders Access Committee of the Florida Bar's Administrative Law Section

¹ Sections 120.50-120.81, F.S.

² Section 120.56, F.S.

³ Section 120.569, F.S.

⁴ Section 120.565, F.S.

⁵ Section 120.573, F.S.

⁶ The term "rule" is defined in s. 120.52(16), F.S., and includes most policies apart from statutes that purport to be legally binding. The definition lists a number of express exclusions.

⁷ Section 120.52(7), F.S.

⁸ *Id.*

⁹ Section 120.53(1)(a), F.S.

¹⁰ See *McDonald v. Department of Banking and Finance*, 346 So. 2d 569, 582 (1st DCA 1977).

¹¹ Section 120.53(2)(a), F.S.

¹² F. Scott Boyd, "From the Chair: 'Order, Order!'", Admin. Law Sec. Newsletter, Vol. XXXIV, No. 2, p. 2 (Jan. 2013).

¹³ Section 120.53(1)(a), F.S.

recently surveyed state agencies to gather information on how agencies index final orders and where final orders may be accessed.¹⁴ The survey revealed that some agencies still require a public records request to access their index and copies of final orders, or they simply identify a particular agency employee to contact for access. Such methods are not always in keeping with the information age.

In 2013, the Administrative Law Section of the Florida Bar sponsored a survey of agencies to catalogue how final orders are indexed and listed or maintained and how public access is provided. Eleven agencies specifically require a public records request to obtain or inspect a copy of a final order, others indicated a less formal request process, five had agency specific online databases, and seven agencies identified the DOAH website as their compilation for public access.¹⁵

Preservation of Records

In addition to the maintenance, indexing and access requirements in the APA, Florida's public records laws require agencies to permanently maintain records of agency final orders.¹⁶ Because such orders must be maintained as permanent agency records, public access of final orders is required indefinitely.

Coordination by Department of State

In addition to its supervisory role in the archiving of state records, beginning in 1991, the Department of State (DOS) has exercised power to coordinate the indexing, management, preservation, and accessibility of agency final orders that must be indexed. The DOS has rulemaking authority over the system of indexing that agencies may use, and the storage and retrieval systems used to provide access. Authorized storage and retrieval systems include reporters, microfilm, automated systems or any other system considered appropriate by the DOS. The DOS also has authority to regulate which final orders agencies must index.¹⁷

Division of Administrative Hearings

The Division of Administrative Hearings (DOAH) is a state agency providing Administrative Law Judges (ALJs) to preside over many disputes under the APA and other state laws. DOAH is placed administratively under the Department of Management Services (DMS). However, DOAH is not subject to any control, supervision, or direction by DMS.¹⁸ The director of DOAH, who also serves as the Chief ALJ, has effective administrative control over DOAH, its resources, and operations.¹⁹

Since 2008, agencies have been permitted to satisfy the final order index and maintenance requirement by electronically transmitting a copy of its final orders to DOAH for posting on DOAH's website.²⁰ A number of large agencies use the DOAH alternative.²¹ There does not appear to be any law requiring DOAH to maintain a database accessible for searching orders or other records. However, the DOS has adopted a rule governing the use of a database for maintaining final orders. The rule provides:²²

¹⁴ A copy of the survey results is available in the Rulemaking Oversight & Repeal Subcommittee offices.

¹⁵ Jowanna N. Oates, *Access to Agency Final Orders*, Vol. 34, Admin. Law Sec. Newsletter, No. 4, p. 4 (June 2013). The Oates article contains a chart summarizing responses of about 40 agencies to inquiries about maintenance and access. A copy of the article is available in the Rulemaking Oversight & Repeal Subcommittee offices.

¹⁶ Section 119.021(3), F.S.

¹⁷ Section 120.533, F.S. The rules adopted under this section are found in ch. 1B-32, F.A.C.

¹⁸ Section 120.65(1), F.S. This administrative independence reflects the independent judgment expected of ALJs employed by DOAH.
¹⁹ *Id.*

²⁰ Section 120.53(2)(a), F.S. (The relevant DOAH website address, accessed 3/27/15, is: <https://www.doah.state.fl.us/FLAIO/>.)

²¹ The DOAH website lists the following agencies having orders accessible through DOAH: Department of Agriculture and Consumer Services, Agency for Persons with Disabilities, Department of Children and Family Services, Department of Corrections, Department of Community Affairs, Department of Economic Opportunity, Department of Environmental Protection, Department of Health, Department of Education, DOS, Department of Business and Professional Regulation, Florida Housing Finance Corporation, Office of the Governor, Agency for Health Care Administration, and Department of Highway Safety and Motor Vehicles

²² Chapter 1B-32.002(2)(e), F.A.C.

If an electronic database is used by an agency, it shall allow users to research and retrieve agency orders by searching the text of the order and descriptive information about the order, which shall contain, at a minimum, major subject headings. To promote consistent, reliable indexing, the indexing system for an electronic database shall have fixed fields to ensure common usage of search terms by anyone that uses the system.

Presently, it appears that an agency may not lawfully use DOAH's system unless it can be assured that these requirements are satisfied.

The quoted rule, however, does not appear to directly regulate DOAH. DOAH does not enter final orders on its own behalf, so DOAH is not governed by the requirement to maintain final orders or implementing rules. Final orders entered by ALJs are, as a matter of law, rendered by the agency on whose behalf the ALJ adjudicates a matter.

Effect of Proposed Changes

The bill requires all agencies to transmit certified electronic copies of final orders rendered on or after July 1, 2015, to DOAH for compilation in its searchable database. Agencies must transmit copies within 90 days of the order's rendering. The bill makes the DOAH database the official compilation of administrative final orders rendered after July 1, 2015.

The bill provides that the database must allow users to research and retrieve the full texts of agency final orders by:

- The name of the agency that issued the final order.
- The date the final order was issued.
- The type of final order.
- The subject of the final order.
- Terms contained in the text of the final order.

The bill also deletes language that will be obsolete if final orders are maintained by DOAH, and other language that may be outdated or duplicative of other law or rules governing such records.

The changes in accessibility only affect agency final orders rendered on or after July 1, 2015. Orders indexed and listed through other means and rendered prior to that date must be retained as required under present law. Required indexes and lists will remain available through the prior means of access.

The bill expands the rulemaking authority of DOS to require DOS to coordinate and provide standards and guidelines for transmitting, certifying and maintaining final agency orders in the DOAH database. DOS' authority is specifically extended to DOAH acting in the capacity of official compiler of administrative final orders, notwithstanding the administrative independence of DOAH. DOS also may provide for an alternate official compiler to operate and manage the database in the event that the Administration Commission determines that the performance of DOAH is unsatisfactory.

The bill creates the expectation that, after implementation, all final agency orders rendered on or after July 1, 2015, will be available online in an easily searchable database.

B. SECTION DIRECTORY:

SECTION 1. amends s. 119.021(3), F.S., to conform the public records custodial requirements relating to agency final orders to the other changes in the bill.

SECTION 2. amends s. 120.53, F.S., to require all agencies to transmit certified electronic copies of final orders to DOAH for publication online in an electronic database.

SECTION 3. amends s. 120.533, F.S., to conform to changes in Section 2 and to expand rulemaking authority of DOS.

SECTION 4. amends s. 213.22, F.S., to correct a cross-reference to conform to changes in Section 2.

SECTION 5. provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to impact state revenues.

2. Expenditures:

The bill may have a minimal negative fiscal impact on some state agencies that do not presently create a searchable electronic copy of orders; however, this impact is very minimal and will be absorbed within agency resources. The bill should reduce some agency costs associated with reporting or indexing and maintaining final orders for public access.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill could have a slight positive economic impact on the private sector by offering easy internet access to agency orders that may only be accessible in person under current law.

D. FISCAL COMMENTS:

DOAH indicates that it can maintain all agency final orders on its website and host full public access with current resources, personnel, and equipment. In addition, DMS indicates that this bill may benefit an agency by reducing the administrative burdens of maintaining the final orders and indexes.²³

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

²³ See DMS Legislative Bill Analysis for HB 985, p. 6 (Feb. 25, 2015).

B. RULE-MAKING AUTHORITY:

The bill expands and revises the rulemaking authority of DOS respecting the coordination of maintenance and public access to agency final orders, as well as certification and transmission of final orders to DOAH. It also expands the authority of DOS rules over DOAH in the operation of the online database and the integrity of information maintained.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

The Rulemaking Oversight & Repeal Subcommittee adopted three amendments to HB 985 at its meeting on March 11, 2015. One amendment amended Section 1 to clarify which final orders must be retained for public records purposes. A second amendment clarified that certified copies of orders are to be transmitted to DOAH. The third amendment expanded and revised DOS rulemaking authority.

This Staff Analysis is drafted to the bill as amended by the Subcommittee.

27 department to provide for an alternative official
 28 compiler of agency final orders under certain
 29 circumstances; conforming provisions to changes made
 30 by the act; amending s. 213.22, F.S.; conforming a
 31 cross-reference; providing an effective date.

32
 33 Be It Enacted by the Legislature of the State of Florida:

34
 35 Section 1. Subsection (3) of section 119.021, Florida
 36 Statutes, is amended to read:

37 119.021 Custodial requirements; maintenance, preservation,
 38 and retention of public records.—

39 (3) Agency final orders rendered before July 1, 2015, that
 40 were indexed or listed pursuant to s. 120.53, and agency final
 41 orders rendered on or after July 1, 2015, that must be listed or
 42 copies of which must be transmitted to the Division of
 43 Administrative Hearings ~~orders that comprise final agency action~~
 44 ~~and that must be indexed or listed~~ pursuant to s. 120.53, have
 45 continuing legal significance; therefore, notwithstanding any
 46 other provision of this chapter or any provision of chapter 257,
 47 each agency shall permanently maintain records of such orders
 48 pursuant to the applicable rules of the Department of State.

49 Section 2. Section 120.53, Florida Statutes, is amended to
 50 read:

51 120.53 Maintenance of agency final orders; ~~indexing;~~
 52 ~~listing; organizational information.~~—

53 (1) In addition to maintaining records contained in s.
 54 119.021(3), each agency shall also electronically transmit a
 55 certified text-searchable copy of each agency final order listed
 56 in subsection (2) rendered on or after July 1, 2015, to a
 57 centralized electronic database of agency final orders
 58 maintained by the division. The database must allow users to
 59 research and retrieve the full texts of agency final orders by:

- 60 (a) The name of the agency that issued the final order.
- 61 (b) The date the final order was issued.
- 62 (c) The type of final order.
- 63 (d) The subject of the final order.
- 64 (e) Terms contained in the text of the final order.

65 ~~(a) Each agency shall maintain:~~
 66 ~~1. All agency final orders.~~
 67 ~~2.a. A current hierarchical subject-matter index,~~
 68 ~~identifying for the public any rule or order as specified in~~
 69 ~~this subparagraph.~~

70 ~~b. In lieu of the requirement for making available for~~
 71 ~~public inspection and copying a hierarchical subject-matter~~
 72 ~~index of its orders, an agency may maintain and make available~~
 73 ~~for public use an electronic database of its orders that allows~~
 74 ~~users to research and retrieve the full texts of agency orders~~
 75 ~~by devising an ad hoc indexing system employing any logical~~
 76 ~~search terms in common usage which are composed by the user and~~
 77 ~~which are contained in the orders of the agency or by~~
 78 ~~descriptive information about the order which may not be~~

79 ~~specifically contained in the order.~~

80 (2)e. The agency final orders that must be electronically
 81 transmitted to the centralized electronic database indexed,
 82 ~~unless excluded under paragraph (c) or paragraph (d),~~ include:

83 (a)(I) Each final ~~agency~~ order resulting from a proceeding
 84 under s. 120.57 or s. 120.573.

85 (b)(II) Each final ~~agency~~ order rendered pursuant to s.
 86 120.57(4) which contains a statement of agency policy that may
 87 be the basis of future agency decisions or that may otherwise
 88 contain a statement of precedential value.

89 (c)(III) Each declaratory statement issued by an agency.

90 (d)(IV) Each final order resulting from a proceeding under
 91 s. 120.56 or s. 120.574.

92 (3)3. Each agency shall maintain a list of all final
 93 orders rendered pursuant to s. 120.57(4) that are not required
 94 to be electronically transmitted to the centralized electronic
 95 database which have been excluded from the indexing requirement
 96 ~~of this section, with the approval of the Department of State,~~
 97 because they do not contain statements of agency policy or
 98 statements of precedential value. The list must include the name
 99 of the parties to the proceeding and the number assigned to the
 100 final order.

101 ~~4. All final orders listed pursuant to subparagraph 3.~~

102 (4)(b) Each An agency final order, whether rendered by the
 103 agency or the division, that must be electronically transmitted
 104 to the centralized electronic database or maintained on a list

105 pursuant to subsection (3) must be electronically transmitted to
106 the database or added to the list within 90 days after the final
107 ~~indexed or listed pursuant to paragraph (a) must be indexed or~~
108 ~~listed within 120 days after the order is rendered. Each final~~
109 order that must be electronically transmitted to the database or
110 added to the list ~~indexed or listed pursuant to paragraph (a)~~
111 must have attached a copy of the complete text of any materials
112 incorporated by reference; however, if the quantity of the
113 materials incorporated makes attachment of the complete text of
114 the materials impractical, the final order may contain a
115 statement of the location of such materials and the manner in
116 which the public may inspect or obtain copies of the materials
117 incorporated by reference. ~~The Department of State shall~~
118 ~~establish by rule procedures for indexing final orders, and~~
119 ~~procedures of agencies for indexing orders must be approved by~~
120 ~~the department.~~

121 (5) Nothing in this section relieves an agency from its
122 responsibility for maintaining a subject matter index of final
123 orders rendered before July 1, 2015, and identifying the
124 location of the subject matter index on the agency's website. In
125 addition, an agency may electronically transmit to the
126 centralized electronic database certified copies of all of the
127 final orders that were rendered before July 1, 2015, which were
128 required to be in the subject matter index. The centralized
129 electronic database constitutes the official compilation of
130 administrative final orders rendered on or after July 1, 2015,

131 for each agency.

132 ~~(c) Each agency must receive approval in writing from the~~
 133 ~~Department of State for:~~

134 ~~1. The specific types and categories of agency final~~
 135 ~~orders that may be excluded from the indexing and public~~
 136 ~~inspection requirements, as determined by the department~~
 137 ~~pursuant to paragraph (d).~~

138 ~~2. The method for maintaining indexes, lists, and final~~
 139 ~~orders that must be indexed or listed and made available to the~~
 140 ~~public.~~

141 ~~3. The method by which the public may inspect or obtain~~
 142 ~~copies of indexes, lists, and final orders.~~

143 ~~4. A sequential numbering system which numbers all final~~
 144 ~~orders required to be indexed or listed pursuant to paragraph~~
 145 ~~(a), in the order rendered.~~

146 ~~5. Proposed rules for implementing the requirements of~~
 147 ~~this section for indexing and making final orders available for~~
 148 ~~public inspection.~~

149 ~~(d) In determining which final orders may be excluded from~~
 150 ~~the indexing and public inspection requirements, the Department~~
 151 ~~of State may consider all factors specified by an agency,~~
 152 ~~including precedential value, legal significance, and purpose.~~
 153 ~~Only agency final orders that are of limited or no precedential~~
 154 ~~value, that are of limited or no legal significance, or that are~~
 155 ~~ministerial in nature may be excluded.~~

156 ~~(e) Each agency shall specify the specific types or~~

157 ~~categories of agency final orders that are excluded from the~~
 158 ~~indexing and public inspection requirements.~~

159 ~~(f) Each agency shall specify the location or locations~~
 160 ~~where agency indexes, lists, and final orders that are required~~
 161 ~~to be indexed or listed are maintained and shall specify the~~
 162 ~~method or procedure by which the public may inspect or obtain~~
 163 ~~copies of indexes, lists, and final orders.~~

164 ~~(g) Each agency shall specify all systems in use by the~~
 165 ~~agency to search and locate agency final orders that are~~
 166 ~~required to be indexed or listed, including, but not limited to,~~
 167 ~~any automated system. An agency shall make the search~~
 168 ~~capabilities employed by the agency available to the public~~
 169 ~~subject to reasonable terms and conditions, including a~~
 170 ~~reasonable charge, as provided by s. 119.07. The agency shall~~
 171 ~~specify how assistance and information pertaining to final~~
 172 ~~orders may be obtained.~~

173 ~~(h) Each agency shall specify the numbering system used to~~
 174 ~~identify agency final orders.~~

175 ~~(2)(a) An agency may comply with subparagraphs (1)(a)1.~~
 176 ~~and 2. by designating an official reporter to publish and index~~
 177 ~~by subject matter each agency order that must be indexed and~~
 178 ~~made available to the public, or by electronically transmitting~~
 179 ~~to the division a copy of such orders for posting on the~~
 180 ~~division's website. An agency is in compliance with subparagraph~~
 181 ~~(1)(a)3. if it publishes in its designated reporter a list of~~
 182 ~~each agency final order that must be listed and preserves each~~

183 ~~listed order and makes it available for public inspection and~~
 184 ~~copying.~~

185 ~~(b) An agency may publish its official reporter or may~~
 186 ~~contract with a publishing firm to publish its official~~
 187 ~~reporter; however, if an agency contracts with a publishing firm~~
 188 ~~to publish its reporter, the agency is responsible for the~~
 189 ~~quality, timeliness, and usefulness of the reporter. The~~
 190 ~~Department of State may publish an official reporter for an~~
 191 ~~agency or may contract with a publishing firm to publish the~~
 192 ~~reporter for the agency; however, if the department contracts~~
 193 ~~for publication of the reporter, the department is responsible~~
 194 ~~for the quality, timeliness, and usefulness of the reporter. A~~
 195 ~~reporter that is designated by an agency as its official~~
 196 ~~reporter and approved by the Department of State constitutes the~~
 197 ~~official compilation of the administrative final orders for that~~
 198 ~~agency.~~

199 ~~(c) A reporter that is published by the Department of~~
 200 ~~State may be made available by annual subscription, and each~~
 201 ~~agency that designates an official reporter published by the~~
 202 ~~department may be charged a space rate payable to the~~
 203 ~~department. The subscription rate and the space rate must be~~
 204 ~~equitably apportioned to cover the costs of publishing the~~
 205 ~~reporter.~~

206 ~~(d) An agency that designates an official reporter need~~
 207 ~~not publish the full text of an agency final order that is~~
 208 ~~rendered pursuant to s. 120.57(4) and that must be indexed~~

209 ~~pursuant to paragraph (1)(a), if the final order is preserved by~~
 210 ~~the agency and made available for public inspection and copying~~
 211 ~~and the official reporter indexes the final order and includes a~~
 212 ~~synopsis of the order. A synopsis must include the names of the~~
 213 ~~parties to the order; any rule, statute, or constitutional~~
 214 ~~provision pertinent to the order; a summary of the facts, if~~
 215 ~~included in the order, which are pertinent to the final~~
 216 ~~disposition; and a summary of the final disposition.~~

217 ~~(3) Agency orders that must be indexed or listed are~~
 218 ~~documents of continuing legal value and must be permanently~~
 219 ~~preserved and made available to the public. Each agency to which~~
 220 ~~this chapter applies shall provide, under the direction of the~~
 221 ~~Department of State, for the preservation of orders as required~~
 222 ~~by this chapter and for maintaining an index to those orders.~~

223 ~~(4) Each agency must provide any person who makes a~~
 224 ~~request with a written description of its organization and the~~
 225 ~~general course of its operations.~~

226 Section 3. Section 120.533, Florida Statutes, is amended
 227 to read:

228 120.533 Coordination of the transmittal, indexing, and
 229 listing of agency final orders by Department of State.—The
 230 Department of State shall:

231 (1) Coordinate ~~Administer~~ the coordination of the
 232 transmittal, indexing, management, preservation, and
 233 availability of agency final orders that must be transmitted,
 234 indexed, or listed pursuant to s. 120.53 ~~s. 120.53(1)~~.

235 (2) Provide, ~~by rule,~~ guidelines for ~~the~~ indexing of
 236 agency final orders. More than one system for indexing may be
 237 approved by the Department of State, including systems or
 238 methods in use, or proposed for use, by an agency. More than one
 239 system may be approved for use by a single agency as best serves
 240 the needs of that agency and the public.

241 (3) Provide, ~~by rule,~~ for storage and retrieval systems to
 242 be maintained by agencies pursuant to s. 120.53(5) for indexing,
 243 and making available, ~~agency final~~ orders by subject matter. The
 244 Department of State may authorize ~~approve~~ more than one system,
 245 including systems in use, ~~or proposed for use,~~ by an agency.
 246 Storage and retrieval systems that may be used by an agency
 247 include, without limitation, a designated reporter or reporters,
 248 a microfilming system, an automated system, or any other system
 249 considered appropriate by the Department of State.

250 (4) Provide standards and guidelines for the certification
 251 and electronic transmittal of copies of agency final orders to
 252 the division, as required under s. 120.53, and, to protect the
 253 integrity and authenticity of information publicly accessible
 254 through the electronic database, coordinate and provide
 255 standards and guidelines to ensure the security of copies of
 256 agency final orders transmitted and maintained in the electronic
 257 database by the division under s. 120.53(1).

258 (5)~~(4)~~ For each agency, determine which final orders must
 259 be indexed or transmitted ~~for each agency.~~

260 (6)~~(5)~~ Require each agency to report to the department

261 concerning which types or categories of agency orders establish
 262 precedent for each agency.

263 (7) Adopt rules as necessary to administer its
 264 responsibilities under this section, which shall be binding on
 265 all agencies including the division acting in the capacity of
 266 official compiler of administrative final orders under s.
 267 120.53, notwithstanding s. 120.65. The Department of State may
 268 provide for an alternative official compiler to manage and
 269 operate the division's database and related services if the
 270 Administration Commission determines that the performance of the
 271 division as official compiler is unsatisfactory.

272 Section 4. Subsection (1) of section 213.22, Florida
 273 Statutes, is amended to read:

274 213.22 Technical assistance advisements.—

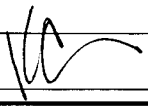
275 (1) The department may issue informal technical assistance
 276 advisements to persons, upon written request, as to the position
 277 of the department on the tax consequences of a stated
 278 transaction or event, under existing statutes, rules, or
 279 policies. After the issuance of an assessment, a technical
 280 assistance advisement may not be issued to a taxpayer who
 281 requests an advisement relating to the tax or liability for tax
 282 in respect to which the assessment has been made, except that a
 283 technical assistance advisement may be issued to a taxpayer who
 284 requests an advisement relating to the exemptions in s.
 285 212.08(1) or (2) at any time. Technical assistance advisements
 286 shall have no precedential value except to the taxpayer who

287 requests the advisement and then only for the specific
 288 transaction addressed in the technical assistance advisement,
 289 unless specifically stated otherwise in the advisement. Any
 290 modification of an advisement shall be prospective only. A
 291 technical assistance advisement is not an order issued pursuant
 292 to s. 120.565 or s. 120.569 or a rule or policy of general
 293 applicability under s. 120.54. The provisions of s. 120.53 ~~s.~~
 294 ~~120.53(1)~~ are not applicable to technical assistance
 295 advisements.

296 Section 5. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1011 Addresses of Legal Residence
SPONSOR(S): Government Operations Subcommittee; Spano
TIED BILLS: IDEN./SIM. BILLS: SB 1360

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	12 Y, 0 N, As CS	Toliver	Williamson
2) State Affairs Committee		Toliver LT	Camechis 

SUMMARY ANALYSIS

Current law requires the Department of State to prescribe by rule a uniform statewide voter registration application. The voter registration application must be designed to elicit certain information from an applicant. A voter registration application must contain a person's legal residence in order to be considered complete; however, the term legal residence is not defined within the Florida Election Code.

Supervisors of elections (supervisors) act as the receiver and custodian of voter registrations within their county. Supervisors must maintain a list of valid residential street addresses for the purpose of verifying the legal addresses of voters residing within their county.

The bill defines the term "address of legal residence" as the legal residence of a person replete with all information necessary to distinguish one residence from another, such as apartment numbers, lot numbers, room numbers, or dormitory room numbers. It requires the voter registration application to include the applicant's address of legal residence in order to be considered complete. Finally, the bill requires supervisors to include within their list of valid residential street addresses all information necessary to differentiate one residence from another.

The bill does not appear to have a fiscal impact on state government, but may have an insignificant fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida Voter Registration Act (FVRA)¹ delineates the qualifications and requirements necessary for a person to register to vote in Florida.² In order to be a registered voter in Florida, a person must be at least 18 years of age, a citizen of the United States, a legal resident of Florida, a legal resident of the county in which the person seeks to be registered, and register pursuant to the Florida Election Code.³

The Department of State must prescribe by rule a uniform statewide voter registration application.⁴ The uniform statewide voter registration application must be designed to elicit certain information from the applicant.⁵ A voter registration application is considered complete if it contains the following information necessary to establish the applicant's eligibility:⁶

- The applicant's name, legal residence address,⁷ and date of birth.
- A mark in the checkbox affirming the applicant is a citizen of the United States.
- The applicant's current and valid Florida driver license number or identification number, or if the applicant does not have a Florida driver's license or identification card, then the last four numbers of his or her social security number.⁸
- A mark in the checkbox affirming that the applicant has not been convicted of a felony or that, if convicted, has had his or her civil rights restored.
- A mark in the checkbox affirming that the applicant has not been adjudicated mentally incapacitated with respect to voting or that, if so adjudicated, has had his or her right to vote restored.
- The applicant's signature or a digital signature transmitted by the Department of Highway Safety and Motor Vehicles.

The term "legal residence" is not defined in the Florida Election Code;⁹ however, the term has been defined in case law.¹⁰ A legal residence "is the place where a person has fixed an abode with the present intention of making it their permanent home."¹¹ According to the Florida Supreme Court a "legal residence consists of the concurrence of both fact and intention."¹²

Supervisors of elections (supervisors) act as the receiver and custodian of new voter registrations, as well as the receiver and custodian of any changes in the status of current

¹ Part II, ch. 97, F.S.

² See ss. 97.041-97.105, F.S.

³ Section 97.041(1)(a), F.S.

⁴ Section 97.052(1), F.S.; Fla. Admin. Code R. 1S-2.040 incorporating form DS-DE 39.

⁵ See s. 97.052(2), F.S.

⁶ Section 97.053(5)(a), F.S.

⁷ The Florida Voter Registration Application, incorporated by the Division of Election into rule, has distinct sections for an applicant's: street address, apt/lot/unit number, city, county, and zip code. Fla. Admin. Code R. 1S-2.040 incorporating form DS-DE 39.

⁸ If an applicant has not been issued a current and valid Florida driver license, identification card, or social security number, the applicant must affirm this fact in the manner prescribed in the uniform statewide voter registration application.

⁹ "No provision of the Florida Election Code defines legal residency. However, this office and Florida courts have consistently construed legal residence to mean a permanent residence, domicile, or permanent abode, rather than a residence that is temporary." Op. Div. of Elections, DE 93-05.

¹⁰ *Minick v. Minick*, 149 So. 483 (Fla. 1933).

¹¹ *Id.*

¹² *Bloomfield v. City of St. Petersburg Beach*, 82 So.2d 364 (Fla. 1955).

registered electors within their respective counties.¹³ Each supervisor must maintain a list of valid residential street addresses¹⁴ for the purpose of verifying the legal addresses of voters residing within his or her county.¹⁵

Effect of the Bill

The bill defines the term “address of legal residence” for purposes of the Florida Election Code. It defines “address of legal residence” to mean the legal residential address of the elector and includes all information necessary to differentiate one residence from another, including, but not limited to, a distinguishing apartment, suite, lot, room, or dormitory room number or other identifier.

The bill requires the voter registration application to include the applicant’s address of legal residence in order to be considered complete.

Lastly, the bill requires supervisors to include within their list of valid residential addresses, to the maximum extent practicable, information necessary to differentiate one address from another, such as an apartment, suite, lot, room, or dormitory room number.

B. SECTION DIRECTORY:

Section 1: Amends s. 97.021, F.S., defining the term “address of legal residence.”

Section 2: Amends s. 98.053, F.S., adding address of legal residence to the requirements for a complete voter registration application.

Section 3: Amends s. 98.015, F.S., requiring supervisors to include any information necessary to distinguish one address from another within their list of valid street addresses.

Section 4: Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to impact state government revenues.

2. Expenditures:

The bill does not appear to impact state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to impact local government revenues.

¹³ Section 98.015(3), F.S.

¹⁴ “Each county Supervisor shall submit electronically, at least monthly, by the 10th of each month, to the Division of Elections to the FVRS [Florida Voter Registration System] an uploaded index of valid residential street addresses so that the legal addresses on application can be verified as valid at the time of registering or updating a registration record.” Fla. Admin. Code R 1S-2.039(12)(a).

¹⁵ Section 98.015(12), F.S.

2. Expenditures:

Supervisors may experience a cost associated with revising their list of valid residential addresses to include information such as an apartment, suite, lot, room, or dormitory room number; however, it is likely the cost will be insignificant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of State may be required to revise its rule codifying the Florida voter registration application. The bill does not appear to require any additional rulemaking authority for the Department of State.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2015, the Government Operations Subcommittee adopted one amendment and reported the bill favorably with a committee substitute. The amendment removes redundant language that restates the definition of "address of legal residence."

This analysis is drafted to the committee substitute as approved by the Government Operations Subcommittee.

1 A bill to be entitled
 2 An act relating to addresses of legal residence;
 3 amending s. 97.021, F.S.; defining the term "address
 4 of legal residence"; amending s. 97.053, F.S.;
 5 requiring a voter registration application to include
 6 the applicant's address of legal residence; amending
 7 s. 98.015, F.S.; providing that a list of valid
 8 addresses maintained by a supervisor of elections
 9 include certain additional distinguishing information;
 10 providing an effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:
 13

14 Section 1. Subsections (3) through (44) of section 97.021,
 15 Florida Statutes, are renumbered as subsections (4) through
 16 (45), respectively, and a new subsection (3) is added to that
 17 section, to read:

18 97.021 Definitions.—For the purposes of this code, except
 19 where the context clearly indicates otherwise, the term:

20 (3) "Address of legal residence" means the legal
 21 residential address of the elector and includes all information
 22 necessary to differentiate one residence from another,
 23 including, but not limited to, a distinguishing apartment,
 24 suite, lot, room, or dormitory room number or other identifier.

25 Section 2. Paragraph (a) of subsection (5) of section
 26 97.053, Florida Statutes, is amended to read:

27 | 97.053 Acceptance of voter registration applications.—
 28 | (5)(a) A voter registration application is complete if it
 29 | contains the following information necessary to establish the
 30 | applicant's eligibility pursuant to s. 97.041, including:
 31 | 1. The applicant's name.
 32 | 2. The applicant's address of legal residence ~~address~~.
 33 | 3. The applicant's date of birth.
 34 | 4. A mark in the checkbox affirming that the applicant is
 35 | a citizen of the United States.
 36 | 5.a. The applicant's current and valid Florida driver
 37 | license number or the identification number from a Florida
 38 | identification card issued under s. 322.051, or
 39 | b. If the applicant has not been issued a current and
 40 | valid Florida driver license or a Florida identification card,
 41 | the last four digits of the applicant's social security number.
 42 |
 43 | In case an applicant has not been issued a current and valid
 44 | Florida driver license, Florida identification card, or social
 45 | security number, the applicant shall affirm this fact in the
 46 | manner prescribed in the uniform statewide voter registration
 47 | application.
 48 | 6. A mark in the checkbox affirming that the applicant has
 49 | not been convicted of a felony or that, if convicted, has had
 50 | his or her civil rights restored.
 51 | 7. A mark in the checkbox affirming that the applicant has
 52 | not been adjudicated mentally incapacitated with respect to

53 | voting or that, if so adjudicated, has had his or her right to
54 | vote restored.

55 | 8. The original signature or a digital signature
56 | transmitted by the Department of Highway Safety and Motor
57 | Vehicles of the applicant swearing or affirming under the
58 | penalty for false swearing pursuant to s. 104.011 that the
59 | information contained in the registration application is true
60 | and subscribing to the oath required by s. 3, Art. VI of the
61 | State Constitution and s. 97.051.

62 | Section 3. Subsection (12) of section 98.015, Florida
63 | Statutes, is amended to read:

64 | 98.015 Supervisor of elections; election, tenure of
65 | office, compensation, custody of registration-related documents,
66 | office hours, successor, seal; appointment of deputy
67 | supervisors; duties.-

68 | (12) Each supervisor shall maintain a list of valid
69 | residential street addresses for purposes of verifying the legal
70 | addresses of voters residing in the supervisor's county. To the
71 | maximum extent practicable, the list shall include information
72 | necessary to differentiate one residence from another,
73 | including, but not limited to, a distinguishing apartment,
74 | suite, lot, room, or dormitory room number or other identifier.
75 | The supervisor shall make all reasonable efforts to coordinate
76 | with county 911 service providers, property appraisers, the
77 | United States Postal Service, or other agencies as necessary to
78 | ensure the continued accuracy of such list. The supervisor shall

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

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79 | provide the list of valid residential addresses to the statewide
80 | voter registration system in the manner and frequency specified
81 | by rule of the department.

82 | Section 4. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1287 Public Records/Veterinary Medical Practice
SPONSOR(S): Business & Professions Subcommittee, Renuart and others
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 716

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	11 Y, 0 N, As CS	Haston	Luczynski
2) State Affairs Committee		Williamson	amechis
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Animal medical records generated by licensed veterinarians are not public records; however, the records are confidential and protected from disclosure under the law regulating licensed veterinarians. Animal medical records are public records when generated by an individual practicing in conjunction with a state college of veterinary medicine located in Florida and accredited by the American Veterinary Medical Association Council on Education.

The bill creates a public record exemption for certain animal medical records held by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education. It provides for retroactive application of the public record exemption. In addition, the bill authorizes the release of the confidential and exempt animal medical records to another governmental entity.

The public records exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a statement of public necessity as required by the State Constitution.

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

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 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:

Current Situation

Public Records Law

Article 1, 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.

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.

Public Record Exemptions

The Legislature 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

Furthermore, the Open Government Sunset Review Act² 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:³

- 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 provisions; or
- Protects trade or business secrets.

The Open Government Sunset Review Act requires automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁴

Animal Medical Records

Animal medical records generated by licensed veterinarians are not public records; however, the records are confidential and protected from disclosure under the law regulating licensed veterinarians, except in certain limited circumstances.⁵ Animal medical records are public records when generated by an individual practicing in conjunction with a state college of veterinary medicine located in Florida and accredited by the American Veterinary Medical Association Council on Education.

Effect of Proposed Changes

The bill creates a public record exemption for certain animal medical records held by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on

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

² See s. 119.15, F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 119.15(3), F.S.

⁵ Section 474.2165, F.S.

Education. It provides that the following records are confidential and exempt⁶ from public record requirements:

- Medical records generated that relate to diagnosing the medical condition of an animal, the medical treatment of an animal, or performing a manual procedure for the diagnosis of or treatment for the pregnancy, fertility, or infertility of an animal.
- Any such medical records that are transferred by a previous record owner.

The confidential and exempt animal medical records may be disclosed to a governmental entity in the performance of its duties and responsibilities.

The bill provides for retroactive application of the public record exemption.⁷

The public record exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a statement of public necessity as required by the State Constitution, which provides that the privacy of medical records relating to the treatment of animals is a public necessity warranting exemption from public records requirements.

B. SECTION DIRECTORY:

Section 1. Creates s. 474.2167, F.S., to create a public record exemption for animal medical records held by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education.

Section 2. Provides a statement of public necessity.

Section 3. Provides an effective date of July 1, 2015.

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.

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 statute. See Attorney General Opinion 85-62 (August 1, 1985).

⁷ The Supreme Court of Florida ruled that a public record exemption does not apply retroactively unless the legislation clearly expresses intent that such exemption is to be applied as such. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So. 2d 373 (Fla. 2001).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may create a minimal fiscal impact on certain state colleges of veterinary medicine because staff responsible for complying with public record requests could require training related to the creation of the public record exemption. In addition, those state colleges 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 state college.

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 animal medical records held by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education. As such, 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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 17, 2015, the Business & Professions Subcommittee considered a strike-all amendment and reported the bill favorably as a committee substitute. The adopted strike-all amendment made the following changes to the filed version of the bill:

- Formatted the bill as a public records exemption;
- Provided an exemption from public records requirements for animal medical records held by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education.

The staff analysis is drafted to reflect the committee substitute as approved by the Business & Professions Subcommittee.

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 474.2167, F.S.; providing an exemption from public
 4 records requirements for medical records related to
 5 the medical condition and treatment of an animal by an
 6 accredited state college of veterinary medicine and
 7 for records transferred by a previous records owner in
 8 connection with specified transactions; authorizing
 9 certain disclosure of such information; providing
 10 applicability; providing for future legislative review
 11 and repeal of the exemption; providing a statement of
 12 public necessity; providing an effective date.

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

15
 16 Section 1. Section 474.2167, Florida Statutes, is created
 17 to read:

18 474.2167 Confidentiality of animal medical records.-
 19 (1) The following records held by a state college of
 20 veterinary medicine and accredited by the American Veterinary
 21 Medical Association Council on Education are confidential and
 22 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 23 Constitution:

24 (a) Any medical record generated that relates to
 25 diagnosing the medical condition of an animal; prescribing,
 26 dispensing, or administering drugs, medicine, appliances,

27 applications, or treatment of any nature for the prevention,
 28 cure, or relief of a wound, fracture, bodily injury, or disease
 29 thereof to an animal; or performing a manual procedure for the
 30 diagnosis of or treatment for the pregnancy, fertility, or
 31 infertility of an animal.

32 (b) Any such medical record that is transferred by a
 33 previous records owner in connection with a transaction of
 34 official business by a state college of veterinary medicine and
 35 accredited by the American Veterinary Medical Association
 36 Council on Education.

37 (2) Records made confidential and exempt by this section
 38 may be disclosed to a governmental entity in the performance of
 39 its duties and responsibilities.

40 (3) This exemption applies to records described in
 41 subsection (1) held before, on, or after the effective date of
 42 this exemption.

43 (4) This section is subject to the Open Government Sunset
 44 Review Act in accordance with s. 119.15 and shall stand repealed
 45 on October 2, 2020, unless reviewed and saved from repeal
 46 through reenactment by the Legislature.

47 Section 2. The Legislature finds that it is a public
 48 necessity that any medical record generated that relates to
 49 diagnosing the medical condition of an animal; prescribing,
 50 dispensing, or administering drugs, medicine, appliances,
 51 applications, or treatment of any nature for the prevention,
 52 cure, or relief of a wound, fracture, bodily injury, or disease

53 thereof to any animal; or performing a manual procedure for the
 54 diagnosis of or treatment for the pregnancy, fertility or
 55 infertility of an animal that is held by a state college of
 56 veterinary medicine and accredited by the American Veterinary
 57 Medical Association Council on Education be made confidential
 58 and exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
 59 Article I of the State Constitution. The Legislature also finds
 60 that it is a public necessity that any such medical record that
 61 is transferred by a previous records owner in connection with a
 62 transaction of official business by a state college of
 63 veterinary medicine and accredited by the American Veterinary
 64 Medical Association Council on Education and that is held by
 65 such college be made confidential and exempt from public records
 66 requirements. The Legislature finds that the release of such
 67 medical records will compromise the confidentiality protections
 68 otherwise afforded to animals treated by licensed veterinarians
 69 and the owners or agents of such animals. The Legislature also
 70 finds that such owners or agents have the right to privacy of
 71 the medical records of their animals. The Legislature further
 72 finds that the privacy concerns that result from the release of
 73 such animal medical records outweigh any public benefit that may
 74 be derived from the disclosure of such information.

75 Section 3. This act shall take effect July 1, 2015.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: State Affairs Committee
 2 Representative Renuart offered the following:

Amendment

5 Remove lines 39-71 and insert:
 6 its duties and responsibilities and may be disclosed pursuant to
 7 s. 474.2165.

8 (3) The exemption from public records requirements under
 9 subsection (1) applies to animal medical records held before,
 10 on, or after the effective date of this exemption.

11 (4) This section is subject to the Open Government Sunset
 12 Review Act in accordance with s. 119.15 and shall stand repealed
 13 on October 2, 2020, unless reviewed and saved from repeal
 14 through reenactment by the Legislature.

15 Section 2. The Legislature finds that it is a public
 16 necessity that a medical record that relates to diagnosing the
 17 medical condition of an animal; prescribing, dispensing, or



Amendment No.

18 administering drugs, medicine, appliances, applications, or
19 treatment of whatever nature for the prevention, cure, or relief
20 of a wound, fracture, bodily injury, or disease of an animal; or
21 performing a manual procedure for the diagnosis of or treatment
22 for pregnancy or fertility or infertility of an animal, which is
23 held by a state college of veterinary medicine that is
24 accredited by the American Veterinary Medical Association
25 Council on Education, be made confidential and exempt from s.
26 119.07(1), Florida Statutes, and s. 24(a), Article I of the
27 State Constitution. The Legislature also finds that it is a
28 public necessity that any such medical record that is
29 transferred by a previous records owner in connection with the
30 transaction of official business by a state college of
31 veterinary medicine that is accredited by the American
32 Veterinary Medical Association Council on Education and that is
33 held by such state college be made confidential and exempt from
34 s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the
35 State Constitution. The Legislature also finds that it is a
36 public necessity that this exemption apply to such animal
37 medical records held by such a state college of veterinary
38 medicine before, on, or after the effective date of the
39 exemption. The Legislature finds that the release of such animal
40 medical records compromises the confidentiality protections
41 otherwise afforded the owners of such animals treated by
42 licensed veterinarians in this state pursuant to chapter 474,
43 Florida Statutes. The Legislature finds that the owners of

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Amendment No.

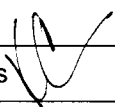
44 animals have the right to the privacy of the medical records of
45 their animals. The Legislature finds that this exemption permits
46 a state college of veterinary medicine accredited by the
47 American Veterinary Medical Association Council on Education to
48 effectively and efficiently carry out its mission to educate
49 students in veterinary medicine. Without this exemption this
50 mission would be significantly impaired. The Legislature further

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 1333 Firefighters' Relief and Pension Fund of the City of Pensacola, Escambia County

SPONSOR(S): Local Government Affairs Subcommittee; Ingram

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	13 Y, 0 N, As CS	Darden	Miller
2) State Affairs Committee		Harrington	Camechis 
3) Local & Federal Affairs Committee			

SUMMARY ANALYSIS

The Firefighters' Relief and Pension Fund of the City of Pensacola (Fund) was established by the Legislature in 1941. Each firefighter employed by the City of Pensacola is a fund participant.

The bill amends the formula utilized for calculating cost of living increases and retirement benefits for certain members. The bill makes changes to the structure of automatic retirement provisions. The bill provides additional benefits for widow(er)s and dependents. The bill provides additional protections for benefits from the legal process. In addition, the bill creates definitions and removes definitions that are no longer in use.

The bill is projected to decrease the City of Pensacola's annual contributions to the Fund by \$579,595 in Fiscal Year 2015-2016 and 2016-2017. The bill is also expected to reduce the Fund's Unfunded Actuarial Accrued Liability by \$3,374,292. The changes made by this bill are the result of a collective bargaining agreement between the City of Pensacola and International Association of Firefighters Local 707.

This bill will take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Firefighter Pensions: Marvin B. Clayton Firefighters Pension Trust Fund Act

Local firefighter pension plans¹ in are governed by ch. 175, F.S., the Marvin B. Clayton Firefighters Pension Trust Fund Act (Clayton Act).² Originally enacted in 1939, the Clayton Act encouraged cities to create firefighter pension plans by providing access to premium tax revenues. The Clayton Act sets forth minimum benefits and standards for municipal firefighter pensions, which cannot be reduced by municipalities; however, the benefits provided by a local law plan may vary from the provisions in the Clayton Act so long as the minimum standards are met.³

Firefighters Relief and Pension Fund of the City of Pensacola

The Firefighters' Relief and Pension Fund of the City of Pensacola (Fund or Plan) was established by the Legislature in 1941.⁴ The act governing the Fund was most recently amended in 2000.⁵ As of September 30, 2014, the Plan has 93 active members, 160 retired members, and 21 members in DROP.⁶ As of September 30, 2013, the Fund had \$106,296,804 in total assets and \$16,161,541 in unfunded actuarial accrued liability.⁷ Normal retirement age is 52 years of age for those with at least ten years of service, and any age for those with at least 26 years of service.⁸

The Fund currently assumes eight percent annual growth on its assets.⁹ During the most recent fiscal year report on file with the Department of Management Services, the Fund returned 8.60 percent growth in the actuarial value of its assets and 13.90 percent growth in the market value of its assets.¹⁰

Basis of Compensation

The Plan calculates average monthly earnings for determining retirement benefits by looking at the two best years of the last five of service.¹¹ Members receive a pension amount equal to:¹²

- 75 percent of the first \$200.00 of compensation;
- 70 percent of the next \$100.00 of compensation;
- 65 percent of any compensation over the above amounts.

Firefighters reaching 26 years of service receive 75 percent of their final average monthly compensation.

¹ See Department of Management Services, *Local Government Annual Reports*, Appendix I, available at http://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/local_retirement_section/local_government_annual_reports (accessed 3/27/15) (chart showing retirement plans offered by municipalities in the state) (herein DMS Local Government Reports).

² S. 175.025, F.S.

³ S. 175.021(2), F.S.

⁴ Ch. 41-21483, Laws of Fla.

⁵ Ch. 2000-468, Laws of Fla.

⁶ DMS Local Government Reports, p. 13 of Appendix F.

⁷ DMS Local Government Reports, p. 15 of Appendix A.

⁸ DMS Local Government Reports, p. 50 of Appendix B.

⁹ DMS Local Government Reports, p. 16 of Appendix E.

¹⁰ *Id.*

¹¹ Ch. 41-21483, s. 5(a), Laws of Fla., as amended.

¹² *Id.*

Cost of Living Increases

The Plan provides for a cost of living increase since July 1, 1999 equal to the lesser of the increase in the Bureau of Labor Statistics' Consumer Price Index U (CPI-U) or three percent.¹³

Automatic Retirement

The Plan requires mandatory retirement at age 70 for firefighters.¹⁴ If the firefighter dies and the firefighter's surviving spouse is the firefighter's sole designated beneficiary, distributions to the surviving spouse must begin by December 31 of the calendar year immediately following the calendar year in which the firefighter died, or the calendar year in which the firefighter would have reached 70 1/2 years of age, whichever is later.¹⁵ Payments to the spouse increase by an annual percentage rate that does not exceed an index of all prices issued by the Bureau of Labor Statistics.¹⁶

Retirement after Ten Years of Service

A firefighter with at least 10 years of service is eligible for pension benefits as long as he or she has not withdrawn his or her contributions from the Fund or, if he or she has withdrawn his or her contributions, returned the contributions with eight percent interest per year from the date of withdrawal.¹⁷ The amount of this benefit is equal to the amount provided in ch. 41-21483, s. 5(a), Laws of Florida, as amended, multiplied by his or her number of years of service.¹⁸

Benefits to Widows, Widowers, and Dependents

Upon the death of a retired firefighter, his or her widow(er) is entitled to a pension benefit equal to 75 percent of what the pensioner would have been entitled to if he or she had retired as of the date of death, considering the retired firefighter's years of service and amount of compensation, but without regard to his or her age.¹⁹ A widow(er) who married the firefighter after retirement and less than three years before the pensioner's death is not entitled to benefits.²⁰

If a person eligible for benefits under the Plan is survived by one or more legitimate children, each child is entitled to a share of the benefits.²¹ If a widow(er) survives, the child receives benefits equal to 12 percent of the firefighter's annual salary and the benefits are paid to the child's parent or guardian, to use for the child's benefit.²² If a widow(er) remarries or does not survive, the child receives benefits equal to 18 percent of the firefighter's annual salary.²³ The child benefit terminates at 18 years of age and the total sum of these benefits may not exceed 65 percent of the prevailing wage for the rank the deceased firefighter held at the time of his or her death.²⁴

Any benefits provided by the Fund to a widow(er) terminate upon the recipient's death.²⁵ The benefits provided also terminate upon remarriage, unless the deceased firefighter is preceded by one or more legitimate children, who may then be entitled to 10 dollars per month for each child, in no event to

¹³ Ch. 41-21483, s. 6(a), Laws of Fla., as amended.

¹⁴ Ch. 41-21483, s. 8, Laws of Fla., as amended.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Ch. 41-21483, s. 10, Laws of Fla., as amended.

¹⁸ *Id.*

¹⁹ Ch. 41-21483, s. 13(a), Laws of Fla., as amended.

²⁰ Ch. 41-21483, s. 13(b), Laws of Fla., as amended.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Ch. 41-21483, s. 15, Laws of Fla., as amended.

exceed 40 dollars a month for support as a family.²⁶ Pension benefits terminated by remarriage may be restored by the Board of Trustees of the Fund (Fund Board), if the marriage ends due to death or divorce.²⁷

Protection from Legal Process

Pensions, contributions, and other benefits under the Fund are exempted from state, county, and municipal tax.²⁸ These benefits are not subject to execution, attachment, or any other form of legal process.²⁹ The benefits are also unassignable.³⁰ State law requires local law plans such as the Fund to protect member benefits from the legal process.³¹

Rollover Contributions

Fund members or their deceased surviving spouse may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan, at a time and in a manner selected by the Fund's administrator.³² "Eligible rollover distribution" and "eligible retirement plan" are not currently defined in the act.

Effect of Proposed Changes

Financial Overview

The Economic Impact Statement submitted with the bill states the bill is projected to decrease the City of Pensacola's annual contributions to the Fund by \$579,595 in Fiscal Year 2015-2016 and 2016-2017.³³ The bill is also expected to reduce the Fund's Unfunded Actuarial Accrued Liability by \$3,374,292.³⁴

The changes made by this bill are the result of a collective bargaining agreement between the City of Pensacola and International Association of Firefighters Local 707.

Basis of Compensation

The average monthly earnings formula changes under the bill for firefighters with less years of service. For firefighters with twenty or more years of service as of the effective date of this act, the current formula of looking at the best two of the last five years remains in place. For those with less than 20 years of service as of the effective date of the act, the calculation for average monthly earnings will look to the last five years of service in their entirety.

The bill also provides a pension benefit for firefighters who have reached the age of 50 and have at least 10 years of continuous service. These members are entitled to pension benefits, reduced by three percent for every year the firefighter's retirement date precedes 55 years of age and actuarially adjusted to account for the earlier commencement of benefits.

The bill provides that firefighters disabled in the line of duty are entitled to the greater of their accrued benefit or 42 percent of average monthly salary. This benefit is paid to the firefighter for the greater of 10 years or the remainder of his or her life. Firefighters with at least 10 years of service who suffer a total and permanent disability outside the line of duty would receive the greater of their accrued benefits or 25 percent of their average monthly salary.

²⁶ *Id.*

²⁷ Ch. 41-21483, s. 13(a), Laws of Fla., as amended.

²⁸ Ch. 41-21483, s. 19, Laws of Fla., as amended.

²⁹ *Id.*

³⁰ *Id.*

³¹ S. 175.241, F.S.

³² Ch. 41-21483, s. 28, Laws of Fla., as amended.

³³ Economic Impact Statement for HB 1333 (2015).

³⁴ *Id.*

The bill provides a floor of two percent of average final compensation times the firefighter's years of credited service as the amount payable when a firefighter dies on or after the normal retirement date. If a firefighter dies after his or her normal retirement date, but before collecting benefits for 10 years and is not survived by a spouse, the bill provides that the monthly benefit is paid to his or her beneficiary(s) for the remainder of the 10 year period. The bill contains a substantively similar provision if a firefighter is working after his or her normal retirement date, but has not yet retired. In that case, the firefighter's pension is calculated as if the date of death was the retirement date.

The bill also allows a firefighter to select from a menu of alternative retirement income streams or benefits of equivalent actuarial value, such as:

- A larger monthly amount, payable only for the firefighter's lifetime;
- A lower monthly amount payable for the joint lifetime of the firefighter and a joint beneficiary;
- Any other amount or form that the Fund Board sees as best meeting the circumstances of the retired firefighter.

A firefighter may change the selected joint beneficiary but only with approval from the Fund Board. If the payment of benefits to the firefighter and the joint beneficiary have already commenced, the joint beneficiary must still be alive at the time of the change. The firefighter does not need the consent of the joint beneficiary to make the change, but the Fund Board may request evidence of the joint beneficiary's health status. After the selection of a new joint beneficiary, the Fund Board will recalculate benefits payment to provide actuarial equivalence. The bill provides that if no designated beneficiary survives the firefighter, the death benefit shall be paid to the estate of the firefighter as an actuarial equivalent lump sum.

The bill states that the spousal benefits for any firefighter hired on or after the effective date of this act are equal to the benefit payment options provided under the Florida Retirement System for Special Risk Class, elected as follows:

- A monthly benefit payment to the firefighter for the firefighter's lifetime only;
- A decreased monthly benefit payment for the firefighter's lifetime or ten years (if the firefighter dies before 10 years, the Fund pays the benefit to beneficiary for the remainder of the 10 years);
- A decreased monthly benefit payment during the joint lifetime of a firefighter and a joint annuitant, continuing for the lifetime of both parties in the same amount; or
- A decreased monthly benefit payment during the joint lifetime of a firefighter and a joint annuitant, continuing for the lifetime of both parties, but paying the surviving party an amount equal to 66 and two-thirds percent the amount payable during the joint lifetime.

The bill provides that if a firefighter dies before his or her normal retirement date, no retirement benefit will be paid, but beneficiaries will be entitled to the death benefits provided by ss. 13 or 14 of the Plan. If a designated beneficiary or joint pensioner dies before the firefighter's retirement date, benefits will revert to the default plan, as if the previous election had not been made, unless the firefighter makes a new beneficiary selection within 90 days of the death of the previous beneficiary.

Cost of Living Increases

The bill amends the fund's annual cost of living increase to:

- Retired before the effective date of this act: Lesser of CPI-U or three percent.
- Hired before the effective date of the act, but retired after the effective date of the act: Lesser of CPI-U or two percent.
- Hired on or after the effective date of the act: Lesser of CPI-U or 1.25 percent.

Automatic Retirement

The bill makes several changes of the act's automatic retirement provisions. The bill requires all Fund distributions to be made in compliance with Section 401(a)(9) of the Internal Revenue Code and the regulations promulgated thereunder.

The bill also sets distribution dates in the event the firefighter dies before distributions begin. It provides:

- If the firefighter's surviving spouse is not the firefighter's sole beneficiary, distributions begin by December 31 of the calendar year immediately following the calendar year in which the firefighter died.
- If there is no designated beneficiary as of September 30 of the year following the firefighter's death, the firefighter's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the firefighter's death.
- If the firefighter's surviving spouse was the firefighter's sole beneficiary, and the surviving spouse dies after the firefighter, but before distributions began, distributions must occur as if the surviving spouse were the firefighter.

The bill provides that a firefighter can request distribution of his or her interest in the form of an annuity or in a lump sum before distributions begin. If the distribution is made as an annuity, annuity payments must be received on a periodic basis with intervals no longer than one year apart and the distribution period cannot be longer than would be provided under other annuity provisions of the act. Payments under the annuity may either be non-increasing or will only increase:

- At an annual percentage rate that does not exceed an index of all prices issued by the Bureau of Labor Statistics;
- To the extent of the reduction in the amount of firefighter's payments to provide a survivor benefit to a beneficiary, where the beneficiary named has died or has been removed as the beneficiary;
- To provide cash refunds of firefighter contributions upon the firefighter's death; or
- To pay increased benefits as result of a Fund amendment.

The bill limits the benefits payable to a non-spouse beneficiary of a joint and survivor annuity to those that could have been payable to the firefighter under IRS regulations. If anyone other than firefighter's spouse is the sole designated beneficiary, a fixed-period annuity may not last for a period longer than would have been possible for the firefighter under IRS regulations. If the annuity begins before the firefighter reaches the age of 70, the distribution period is calculated based on age 70, then modified based on the distribution start year. If the firefighter's spouse is the sole designated beneficiary, a period annuity can extend to the longer of the firefighter's distribution period or the distribution period for a joint life and last survivor annuity.

The bill also establishes minimum distributions where the firefighter dies before the distribution date. The firefighter's entire interest is distributed to beneficiaries over a period not exceeding:

- If the annuity starting date is before the first distribution is required, the life expectancy of the designated beneficiary, determined using the beneficiary's age in the calendar year immediate preceding the calendar year of the firefighter's death.
- If the annuity starting date is after the first distribution is required, the life expectancy of the designated beneficiary, determined using the beneficiary's age in the calendar year in the year that contains the annuity's starting date.

Retirement after Ten Years of Service

The bill states the normal retirement age for purposes of the Fund is when a firefighter has reached 52 years of age and has at least 10 years of service, or has completed 25 years of service regardless of age. The bill states that a firefighter's pension is fully vested upon reaching normal retirement age.

Death Benefits for Survivors

The bill enables a retired firefighter to change his or her designation of a joint annuitant or beneficiary up to two times without approval by the Fund Board. Upon making this change, the Fund Board calculates the actuarial value that would have been paid to the previous beneficiary and calculates an actuarial equivalent for the new beneficiary. The retiree is responsible for the cost of this calculation and the request must be made in writing.

Benefits to Widows, Widowers, and Dependents

The bill provides that if the sum of the pension benefits received by the firefighter and his or her widow(er) was less than 10 years, the firefighter's pension benefits are paid to a beneficiary or beneficiaries of the firefighter's choice for the remainder of the 10 year period. This designation of a beneficiary must be made in writing and approved before by the Fund Board before the firefighter's death. The benefits provided by this provision are voided by the widow(er)'s remarriage.

Protection of Legal Process

The bill states that the sole purpose of Fund assets is to provide benefits for firefighters and their beneficiaries. The bill states that no amendment to the act creating the Fund may divert the Fund's assets for other purposes, including making the Fund's assets property of the City of Pensacola.

The bill adds additional protections for Plan benefits from the legal process. It provides that benefits are not subject to execution, garnishment, attachment, bankruptcy or other insolvency law, or any other process of law. The bill provides that benefits cannot be subject to assignment, pledge, or hypothecation.

The bill removes language protecting benefits from state, county, or municipal taxes.

Rollover Contributions

A distributee (firefighter, surviving spouse, the firefighter's spouse or former spouse entitled to benefits under a court order, and non-spouse beneficiaries for plan years beginning on or after January 1, 2007) may elect to have any or all of an eligible rollover distribution paid directly to an eligible retirement plan. The bill defines the term "eligible retirement plans" as including individual retirement accounts (IRA), individual retirement annuities, annuity plans, annuity contracts, deferred-compensation plans established under 26 U.S.C. 457, and Roth IRAs (for distributions made after December 31, 2007). If the distributee fails elect a distribution to an eligible retirement plan for a mandatory distribution greater than \$1,000, the Fund Board will pay the distribution into an IRA of its choice.

Other Provisions

The bill adds an introductory section to the beginning of the act, explaining the purpose of the Fund and its compliance with various federal regulations.

The bill contains a provision requiring the Fund to credit Fund members for qualified military service subject to the provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 and the Heroes Earnings Assistance and Relief Tax Act of 2008, as of the effective dates of those laws.

The bill adds definitions for accrued benefit, actuarial equivalent, code, limitation year, plan, plan year, regulations, and years of service. The bill also amends the definitions of compensation, salary, and earnings, and removes several definitions no longer used in the act.

The bill provides that the maximum benefit a firefighter or other beneficiary may receive under the Plan is limited to the extent necessary to comply with provisions of the Internal Revenue Code.³⁵

The bill provides that if the Fund is terminated for any reason, the benefits accrued by any member up to that point are immediately vested. The Fund Board is responsible for selecting the method used to distribute the benefits. If the Fund's assets are insufficient to cover the value of the vested benefits, the City of Pensacola is responsible for providing the difference. If the Plan's assets are in excess of the amount required to fund vested benefits, the City of Pensacola receives the excess funds. If the Fund Board or the City of Pensacola have not complied with these provisions within 24 months, DMS must terminate the plan in accordance with s. 175.361, F.S.

The bill states a firefighter or his or her beneficiary is required to forfeit benefits provided by the Fund to the extent mandated by the Florida Constitution or state law. Any forfeited funds are applied to reduce the City of Pensacola's contribution to the Fund.

B. SECTION DIRECTORY:

Section 1: Amends provisions of Ch. 1941-21483, Laws of Florida, governing the Firefighters' Relief and Pension Fund of the City of Pensacola.

Section 2: Provides the bill shall take effect upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? February 16, 2015

WHERE? The *Pensacola News Journal*, a daily newspaper published in Escambia County, Florida.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 25, 2015, the Local Government Affairs Subcommittee adopted a technical amendment and reported the bill favorably as a committee substitute. The amendment clarifies several provisions of the act take effect upon the bill becoming a law.

This analysis is drawn to the bill as amended.

27 Florida, are amended, subsections (h) through (o) are added to
 28 section 5, subsection (d) is added to section 13, and sections
 29 31, 32, and 33 are added to that section, to read:

30 Section 1. Establishment of the Firefighters' Relief and
 31 Pension Fund and the Board of Trustees of the Firefighters'
 32 Relief and Pension Fund.—

33 (a) The City of Pensacola previously established the
 34 Firefighters' Relief and Pension Fund, a defined benefit pension
 35 plan intended to meet the applicable requirements of section
 36 401(a) of the Code, which provides for retirement, disability
 37 and death benefits for eligible firefighters. The Firefighters'
 38 Relief and Pension Fund is a governmental plan within the
 39 meaning of section 414(d) of the Code and, as such, is exempt
 40 from the Employee Retirement Income Security Act of 1974, as
 41 amended.

42 (b) There is hereby created in and for the City of
 43 Pensacola a Board of Trustees of the Firefighters' Relief and
 44 Pension Fund consisting of five members, two of whom, unless
 45 otherwise prohibited by law, shall be legal residents of the
 46 municipality, who shall be appointed by the legislative body of
 47 the municipality, and two of whom shall be firefighters of the
 48 municipality who shall be elected by a majority of the
 49 firefighters whose names appear on the rolls as members of the
 50 fire department of the municipality. The fifth member shall be
 51 chosen by a majority of the previous four members as provided
 52 for herein, and such person's name shall be submitted to the

53 legislative body of the municipality. Upon receipt of the fifth
 54 person's name, the legislative body of the municipality shall,
 55 as a ministerial duty, appoint such person to the board of
 56 trustees as its fifth member. The fifth member shall have the
 57 same rights as each of the other four members appointed or
 58 elected as herein provided. The existing fifth member's term
 59 will end on December 31, 1992, with the new appointee, who may
 60 be the same person, to commence his or her term on January 1,
 61 1993. The fifth member shall serve as a trustee for a period of
 62 2 years, and may succeed himself or herself in office. Each
 63 resident member shall serve as trustee for a period of 2 years,
 64 unless sooner replaced by the legislative body at whose pleasure
 65 he or she shall serve, and may succeed himself or herself as a
 66 trustee. One existing resident member's term will end on
 67 December 31, 1991, with the new appointee, who may be the same
 68 person, to commence his or her term on January 1, 1992. The
 69 other existing resident member's term will end on December 31,
 70 1992, with the new appointee, who may be the same person, to
 71 commence his or her term on January 1, 1993. The terms of the
 72 resident members will continue in this staggered fashion. Each
 73 firefighter member shall serve as trustee for a period of 2
 74 years, unless he or she sooner leaves the employment of the
 75 municipality as a firefighter, whereupon his or her successor
 76 shall be chosen in the same manner as an original appointment.
 77 One existing firefighter member's term will end on December 31,
 78 1991, with the new appointee, who may be the same person, to

79 | commence his or her term on January 1, 1992. The other existing
 80 | firefighter member's term will end on December 31, 1992, with
 81 | the new appointee, who may be the same person, to commence his
 82 | or her term on January 1, 1993. The terms of the firefighter
 83 | members will continue in this staggered fashion. Each
 84 | firefighter member may succeed himself or herself in office. The
 85 | board of trustees shall meet at least quarterly each year. The
 86 | trustees shall by a majority vote elect a chairperson and a
 87 | secretary. The trustees shall not receive any compensation as
 88 | such, but shall receive expenses and per diem as may be provided
 89 | by ordinance, consistent with Florida law. The board of trustees
 90 | hereby created shall perform all of the duties and enjoy all of
 91 | the rights and powers, heretofore by law or ordinance vested in
 92 | the pension board of the City of Pensacola and shall be and
 93 | constitute a legal entity with the power to bring and defend
 94 | lawsuits of every kind, nature, and description. The city
 95 | attorney of each municipality shall give advice to the board of
 96 | trustees in all matters pertaining to its duties in the
 97 | administration of the municipal firefighter's pension trust fund
 98 | whenever requested; and the city attorney shall represent and
 99 | defend the board as its attorney in all suits and actions at law
 100 | or in equity that may be brought against it and bring all suits
 101 | and actions in its behalf that may be required or determined
 102 | upon by the board. However, if the board of trustees so elects,
 103 | it may employ independent legal counsel at the pension fund's
 104 | expense for the purposes contained herein, together with such

105 other professional, technical, or other advisers as the board
 106 deems necessary. The Firefighters' ~~Firemen's~~ Relief and Pension
 107 Fund heretofore created shall continue to exist exclusively for
 108 the purposes provided by this and related legislation, and the
 109 responsibility for the administration and proper operation
 110 thereof and for effectuating the provisions of law relating
 111 thereto is vested in said board of trustees.

112 Section 5. Basis for compensation.—The pension of all
 113 persons entitled thereto, as hereinafter specified, shall be
 114 computed upon the basis of their compensation and their years of
 115 service in accordance with the following tables:

116 (a) For those participants with 20 or more years of
 117 service as of the effective date of this act, such compensation
 118 shall be calculated by the selection from the last 5 years of
 119 service immediately preceding retirement of the best 2 of said
 120 years, thereby to arrive at the average monthly earnings of such
 121 firefighter. For those participants with less than 20 years of
 122 service as of the effective date of this act, such compensation
 123 shall be calculated by the last 5 years of credited service,
 124 thereby to arrive at the average monthly earnings of such
 125 firefighter. Based upon such average monthly rate, a pension
 126 shall be paid according to the following table, to wit:

- 127 (i) 75 % upon the first \$200.00 of compensation
 128 70 % upon the next \$100.00 of compensation
 129 65 % upon any additional amount; or
 130 (ii) If an employee retires on a normal pension benefit

131 after July 1, 1999, with 25 years of service or more, the
 132 employee shall receive a benefit equal to 75 percent of his or
 133 her final average monthly compensation.

134 (h) Any firefighter who has attained the age of 50 years
 135 and has served as a firefighter for the City of Pensacola for a
 136 period of 10 continuous years, upon application to the Board of
 137 Trustees of the Firefighters' Relief and Pension Fund, shall be
 138 retired on a pension as provided in Part 1 (Charter and Related
 139 Special Acts), Subpart B (Related Special Acts), article VI,
 140 section 5(a) of the Code of the City of Pensacola, Florida;
 141 however, the amount of such pension shall be reduced by 3
 142 percent for each year by which the firefighter's age at
 143 retirement precedes the age of 55 and, further, the amount of
 144 such monthly benefit shall be actuarially reduced to take into
 145 account the firefighter's younger age and the earlier
 146 commencement of such benefits.

147 (i) If after 10 years of service a firefighter suffers a
 148 total and permanent disability which is other than in the line
 149 of duty and the firefighter retires, the firefighter's monthly
 150 benefit shall be the accrued normal retirement benefit but shall
 151 not be less than 25 percent of the firefighter's average monthly
 152 salary at the time of disability.

153 (j) The benefit payable to a firefighter who retires from
 154 the service of the city due to total and permanent disability as
 155 a direct result of a disability that occurred in the line of
 156 duty shall be the accrued normal retirement benefit, payable for

157 10 years certain and life, but shall not be less than 42 percent
 158 of the firefighter's average monthly salary at the time of
 159 disability.

160 (k) The amount of monthly retirement income payable to a
 161 firefighter who retires on or after the firefighter's normal
 162 retirement date shall be, at a minimum, an amount equal to the
 163 number of the firefighter's years of credited service multiplied
 164 by 2 percent of the firefighter's average final compensation as
 165 a firefighter.

166 (l) In the event that a firefighter dies after retirement
 167 but before the firefighter has received retirement benefits for
 168 a period of 10 years, the same monthly benefit will be paid to
 169 the beneficiary or beneficiaries designated by the firefighter
 170 for the balance of such 10-year period when the firefighter is
 171 not survived by a widow or widower entitled to receive spousal
 172 benefits. Such beneficiary designation must be in writing and
 173 received and approved by the trustees before the firefighter's
 174 death.

175 (m) If a firefighter continues in the service of the city
 176 beyond the firefighter's normal retirement date and dies before
 177 the firefighter's date of actual retirement, without either
 178 leaving a widow or widower entitled to received spousal benefits
 179 or affirmatively electing to receive an alternate form of
 180 retirement income permissible under the Plan, monthly retirement
 181 income payments will be made for a period of 10 years to the
 182 beneficiary or beneficiaries designated by the firefighter as if

183 the firefighter had retired on the date on which the
 184 firefighter's death occurred. Such beneficiary designation must
 185 be in writing and received and approved by the trustees before
 186 the firefighter's death.

187 (n) (1) In lieu of the amount and form of retirement income
 188 payable in the event of normal or early retirement as specified
 189 above in this section, a firefighter, upon written request to
 190 the board of trustees, before receiving any retirement income or
 191 benefit from the Plan, and subject to the approval of the board
 192 of trustees, may elect to receive a retirement income or benefit
 193 of equivalent actuarial value as calculated under s. 175.162,
 194 Florida Statutes, payable in accordance with one of the
 195 following options:

196 a. A retirement income of a larger monthly amount, payable
 197 to the firefighter for his or her lifetime only.

198 b. A retirement income of a modified monthly amount,
 199 payable to the firefighter during the joint lifetime of the
 200 firefighter and a joint pensioner designated by the firefighter,
 201 and following the death of either of them, 100 percent, 75
 202 percent, 66 2/3 percent, or 50 percent of such monthly amounts
 203 payable to the survivor for the lifetime of the survivor.

204 c. Such other amount and form of retirement payment or
 205 benefits as, in the opinion of the board of trustees, will best
 206 meet the circumstances of the retired firefighter.

207 1. The firefighter, upon electing any option under this
 208 section, will designate the joint pensioner or beneficiary (or

209 beneficiaries) to receive the benefit, if any, payable under the
 210 Plan in the event of his or her death and will have the power to
 211 change such designation from time to time, but any such change
 212 shall be deemed a new election and will be subject to approval
 213 by the board of trustees. Such designation will name a joint
 214 pensioner or one or more primary beneficiaries where applicable.
 215 If a firefighter has elected an option with a joint pensioner or
 216 beneficiary and his or her retirement income benefits have
 217 commenced, the firefighter may thereafter change the designated
 218 joint pensioner or beneficiary, but only if the board of
 219 trustees consents to such change and if the joint pensioner last
 220 previously designated by the firefighter is alive when the
 221 firefighter files with the board of trustees a request for such
 222 change.

223 2. The consent of a firefighter's joint pensioner or
 224 beneficiary to any such change shall not be required.

225 3. The board of trustees may request such evidence of the
 226 good health of the joint pensioner that is being removed as it
 227 may require, and the amount of the retirement income payable to
 228 the firefighter upon designation of a new joint pensioner shall
 229 be actuarially redetermined, taking into account the age and sex
 230 of the former joint pensioner, the new joint pensioner, and the
 231 firefighter. Each such designation will be made in writing on a
 232 form prepared by the board of trustees and upon completion will
 233 be filed with the board of trustees. In the event that no
 234 designated beneficiary survives the firefighter, such benefits

235 as are payable in the event of the death of the firefighter
 236 subsequent to his or her retirement shall be paid as provided in
 237 subsection (o).

238 (2) For firefighters hired on or after the effective date
 239 of this act, the spousal benefits shall be equal to such benefit
 240 payment options as provided by the Florida Retirement System for
 241 the Special Risk Class, elected as follows:

242 a. A monthly benefit payment to the firefighter for the
 243 firefighter's lifetime only.

244 b. A decreased monthly benefit to the firefighter for the
 245 firefighter's lifetime or 10 years certain. If the firefighter
 246 dies before receiving the benefit for 10 years, the beneficiary
 247 will receive the same monthly benefit for the remainder of the
 248 10 years.

249 c. A decreased monthly benefit during the joint lifetime
 250 of both the firefighter and his or her joint annuitant and
 251 which, after the death of either, shall continue during the
 252 lifetime of the survivor in the same amount.

253 d. A decreased monthly benefit payable during the joint
 254 lifetime of the firefighter and his or her joint annuitant and
 255 which, after the death of either, shall continue during the
 256 lifetime of the survivor in an amount equal to 66 2/3 percent of
 257 the amount that was payable during the joint lifetime of the
 258 firefighter and his or her joint annuitant.

259 (3) Retirement income payments made under the option
 260 elected in accordance with this section shall be subject to the

261 following limitations:

262 a. If a firefighter dies before his or her normal
263 retirement date or early retirement date, whichever first
264 occurs, no retirement benefit will be payable under the option
265 to any person, but the benefits, if any, will be determined
266 under section 13 or section 14 of the Plan or s. 175.201,
267 Florida Statutes, as the case may be.

268 b. If the designated beneficiary (or beneficiaries) or
269 joint pensioner dies before the firefighter's retirement under
270 the Plan, the option elected will be canceled automatically, and
271 a retirement income of the normal form and amount will be
272 payable to the firefighter upon retirement as if the election
273 had not been made, unless a new election is made in accordance
274 with this section or a new beneficiary is designated by the
275 firefighter before retirement and within 90 days after the death
276 of the beneficiary.

277 c. If both the retired firefighter and the beneficiary (or
278 beneficiaries) designated by him or her die before the full
279 payment has been effected under any option providing for
280 payments for a period certain and life thereafter, made pursuant
281 to section (1)(c) above, the board of trustees may, in its
282 discretion, direct that the actuarial equivalent value of the
283 remaining payments be paid in a lump sum and in accordance with
284 subsection (o).

285 d. If a firefighter continues beyond his or her normal
286 retirement date and dies before actual retirement and while an

287 option made pursuant to this section is in effect, monthly
288 retirement income payments will be made, or a retirement benefit
289 will be paid, under the option to a beneficiary (or
290 beneficiaries) designated by the firefighter in the amounts or
291 amounts computed as if the firefighter had retired under the
292 option on the date on which the death occurred.

293 (4) No firefighter may make any change in his or her
294 retirement option after the date of cashing or depositing the
295 first retirement check.

296 (o)(1) Each firefighter may, on a form provided for that
297 purpose, signed and filed with the board of trustees, designate
298 a choice of one or more persons, named sequentially or jointly,
299 as his or her beneficiary (or beneficiaries) to receive the
300 benefit, if any, which may be payable in the event of his or her
301 death, and each designation may be revoked by such firefighter
302 by signing and filing with the board of trustees a new
303 designation-of-beneficiary form. A firefighter may change his or
304 her beneficiary at any time.

305 (2) If no beneficiary is named in the manner provided by
306 paragraph (1), or if no beneficiary designated by the
307 firefighter survives him or her, the death benefit, if any,
308 which may be payable under the Plan with respect to such
309 deceased firefighter shall be paid by the board of trustees to
310 the estate of such deceased firefighter, provided that the board
311 of trustees, in its discretion, may direct that the actuarial
312 equivalent value of the remaining monthly income payments be

313 paid in a lump sum. Any payment made to any person pursuant to
 314 this section shall operate as a complete discharge of all
 315 obligations under the Plan with regard to the deceased
 316 firefighter and any other persons with rights under the Plan and
 317 shall not be subject to review by anyone but shall be final,
 318 binding, and conclusive on all persons ever interested
 319 hereunder.

320 (3) If a firefighter has elected an option with a joint
 321 pensioner and retirement income benefits have commenced, the
 322 firefighter may transfer, change the designated beneficiary at
 323 any time but may only change the joint pensioner twice.

324 Section 6. Increase in benefits due to consumer price
 325 index increases.-

326 (a) A cost-of-living increase in benefits paid pursuant to
 327 this act shall be given effective July 1, 1999, for those
 328 retired before the effective date of this act and shall be paid
 329 annually thereafter. Each annual increase shall have an
 330 effective date of July 1. All such increases shall be equal to
 331 but no greater than the annual increase in the Consumer Price
 332 Index (U) issued by the United States Department of Labor,
 333 provided that such increase shall in no event be greater than 3
 334 percent per year. The annual CPI (U) period to be used for
 335 calculation of any increase shall end in March of the year of
 336 the July 1 increase. The increase in the CPI (U) shall be the
 337 change in the values from April 1 to March 31. In the event the
 338 United States Department of Labor ceases to issue a CPI (U), the

339 board shall utilize a current CPI index that is the functional
 340 equivalent.

341 (b) A cost-of-living increase in benefits paid pursuant to
 342 this act shall be given to those participants hired before the
 343 effective date of this act and who retire on or after the
 344 effective date of this act and shall be paid annually
 345 thereafter. Each annual increase shall have an effective date of
 346 July 1. All such increases shall be equal to but no greater than
 347 the annual increase in the Consumer Price Index (U) issued by
 348 the United States Department of Labor, provided that such
 349 increase shall in no event be greater than 2 percent per year.
 350 The annual CPI (U) period to be used for calculation of any
 351 increase shall end in March of the year of the July 1 increase.
 352 The increase in the CPI (U) shall be the change in the values
 353 from April 1 to March 31. In the event the United States
 354 Department of Labor ceases to issue a CPI (U), the board shall
 355 utilize a current CPI index that is the functional equivalent.

356 (c) A cost-of-living increase in benefits paid pursuant to
 357 this act shall be given for those hired on or after the
 358 effective date of this act and shall be paid annually
 359 thereafter. Each annual increase shall have an effective date of
 360 July 1. All such increases shall be equal to but no greater than
 361 the annual increase in the Consumer Price Index (U) issued by
 362 the United States Department of Labor, provided that such
 363 increase shall in no event be greater than 1.25 percent per
 364 year. The annual CPI (U) period to be used for calculation of

365 any increase shall end in March of the year of the July 1
 366 increase. The increase in the CPI (U) shall be the change in the
 367 values from April 1 to March 31. In the event the United States
 368 Department of Labor ceases to issue a CPI (U), the board shall
 369 utilize a current CPI index that is the functional equivalent.

370 (d)~~(b)~~ After June 22, 1974, no person shall transfer
 371 creditable service from another retirement system into the
 372 Firefighters' Relief and Pension Fund.

373 (e)~~(e)~~ The City of Pensacola, by ordinance, may permit but
 374 not require members of the Firefighters' Relief and Pension Fund
 375 who are eligible, to participate in a Deferred Retirement Option
 376 Plan (DROP). The ordinance may include members who are eligible
 377 to retire and to receive retirement benefits to remain in the
 378 active service of the city until a contractually fixed
 379 termination date and to have accumulated for the employee's
 380 account from the date the contract is made all benefits which
 381 the employee would be eligible to begin receiving on that date
 382 and to have those accumulated benefits held for the benefit of
 383 the employee until the employee separates from active service.
 384 Such ordinance may provide for forfeiture of the accumulated
 385 benefits or other penalty if the employee does not comply with
 386 the contract. However, if the employee complies in all respects
 387 with the terms of the contract, the employee shall receive all
 388 retirement benefits the employee would be entitled to under this
 389 act upon the employee's actual retirement from the active
 390 service of the city.

391 Section 8. Automatic retirement.—

392 (a) Any firefighter subject to the provisions of this act
 393 attaining the age of seventy (70) years shall be automatically
 394 retired and shall cease to draw his or her compensation as such
 395 employee, but shall become immediately entitled to the pension
 396 or benefits provided hereby. In the event of doubt as to the
 397 attainment of such age, the Civil Service Board shall make
 398 inquiry and determine such fact after due notice to interested
 399 parties; provided that the provisions of this section shall not
 400 become operative until January 1, 1960, the former law remaining
 401 in effect until such date.

402 (b) Notwithstanding anything in the Firefighters' Relief
 403 and Pension Fund to the contrary, all distributions under the
 404 Firefighters' Relief and Pension Fund shall comply with Section
 405 401(a) (9) of the Code and the Regulations thereunder, as
 406 prescribed by the Commissioner in Revenue Rulings, Notices, and
 407 other guidance published in the Internal Revenue Bulletin, to
 408 the extent that said provisions apply to governmental plans
 409 under Section 414(d) of the Code, and shall be made in
 410 accordance with the following requirements:

411 (1) Time and manner of distribution.—

412 a. Required beginning date.—The firefighter's entire
 413 interest will be distributed, or begin to be distributed, to the
 414 firefighter no later than the firefighter's required beginning
 415 date.

416 b. Death of firefighter before distributions begin.—If the

417 firefighter dies before distributions begin, the firefighter's
 418 entire interest will be distributed, or begin to be distributed,
 419 no later than as follows:

420 1. If the firefighter's surviving spouse is the
 421 firefighter's sole designated beneficiary, then~~7~~ distributions
 422 to the surviving spouse will begin by December 31 of the
 423 calendar year immediately following the calendar year in which
 424 the firefighter died, or by December 31 of the calendar year in
 425 which the firefighter would have attained age 70½, if later.

426 2. If the firefighter's surviving spouse is not the
 427 firefighter's sole designated beneficiary, then distributions to
 428 the designated beneficiary will begin by December 31 of the
 429 calendar year immediately following the calendar year in which
 430 the firefighter died.

431 3. If there is no designated beneficiary as of September
 432 30 of the year following the year of the firefighter's death,
 433 the firefighter's entire interest will be distributed by
 434 December 31 of the calendar year containing the fifth
 435 anniversary of the firefighter's death.

436 4. If the firefighter's surviving spouse is the
 437 firefighter's sole designated beneficiary and the surviving
 438 spouse dies after the firefighter's but before distributions to
 439 the surviving spouse begin, this section (1)b., other than
 440 section (1)b.1., will apply as if the surviving spouse were the
 441 firefighter.

442

443 For purposes of this section and section (4) of this Section 8,
 444 distributions are considered to begin on the firefighter's
 445 required beginning date or, if section (1)b.4. applies, the date
 446 distributions are required to begin to the surviving spouse
 447 under section (1)b.1. If annuity payments irrevocably commence
 448 to the firefighter before the firefighter's required beginning
 449 date or to the firefighter's surviving spouse before the date
 450 distributions are required to begin to the surviving spouse
 451 under section (1)b.1., the date distributions are considered to
 452 begin is the date distributions actually commence.

453 c. Form of distribution.—Unless the firefighter's interest
 454 is distributed in the form of an annuity purchased from an
 455 insurance company or in a single sum on or before the required
 456 beginning date, as of the first distribution calendar year,
 457 distributions will be made in accordance with sections (2), (3),
 458 and (4) of this Section 8. If the firefighter's interest is
 459 distributed in the form of an annuity purchased from an
 460 insurance company, distributions thereunder will be made in
 461 accordance with the requirements of section 401(a)(9) of the
 462 Code.

463 (2) Determination of amount to be distributed each year.—

464 a. General annuity requirements.—If the interest is paid
 465 in the form of annuity distributions under the Firefighters'
 466 Relief and Pension Fund, payments under the annuity will satisfy
 467 the following requirements:

468 1. The annuity distributions will be paid in periodic

469 payments made at intervals not longer than 1 year;
 470 2. The distribution period will be over a life (or lives)
 471 or over a period certain not longer than the period described in
 472 section (3) or (4) of this Section 8;
 473 3. Once payments have begun over a period certain, the
 474 period certain will not be changed even if the period certain is
 475 shorter than the maximum permitted; and
 476 4. Payments will either be non-increasing or increase only
 477 as follows:
 478 A. By an annual percentage increase that does not exceed
 479 the annual percentage increase in a cost-of-living index that is
 480 based on prices of all items and issued by the Bureau of Labor
 481 Statistics;
 482 B. To the extent of the reduction in the amount of the
 483 firefighter's payments to provide for a survivor benefit upon
 484 death, but only if the beneficiary whose life was being used to
 485 determine the distribution period described in section (3) dies
 486 or is no longer the firefighter's beneficiary pursuant to a
 487 qualified domestic relations order within the meaning of section
 488 414(p) of the Code;
 489 C. To provide cash refunds of firefighter contributions
 490 upon the firefighter's death; or
 491 D. To pay increased benefits that result from a
 492 Firefighters' Relief and Pension Fund amendment.
 493 b. Amount required to be distributed by required beginning
 494 date.—The amount that must be distributed on or before the

495 firefighter's required beginning date or, if the firefighter
 496 dies before distributions begin, the date distributions are
 497 required to begin under section (1)b.1. or (1)b.2. is the
 498 payment that is required for one payment interval. The second
 499 payment need not be made until the end of the next payment
 500 interval even if that payment interval ends in the next calendar
 501 year. Payment intervals are the periods for which payments are
 502 received, e.g., bimonthly, monthly, semiannually, or annually.
 503 All of the firefighter's benefit accruals as of the last day of
 504 the first distribution calendar year will be included in the
 505 calculation of the amount of the annuity payments for payment
 506 intervals ending on or after the firefighter's required
 507 beginning date.

508 c. Additional accruals after first distribution calendar
 509 year.—Any additional benefits accruing to the firefighter in a
 510 calendar year after the first distribution calendar year will be
 511 distributed beginning with the first payment interval ending in
 512 the calendar year immediately following the calendar year in
 513 which such amount accrues.

514 (3) Requirements for annuity distributions that commence
 515 during the firefighter's lifetime.—

516 a. Joint life annuities where the beneficiary is not the
 517 firefighter's spouse.—If the firefighter's interest is being
 518 distributed in the form of a joint and survivor annuity for the
 519 joint lives of the firefighter and a nonspouse beneficiary,
 520 annuity payments to be made on or after the firefighter's

521 required beginning date to the designated beneficiary after the
 522 firefighter's death must not at any time exceed the applicable
 523 percentage of the annuity payment for such period that would
 524 have been payable to the firefighter using the table set forth
 525 in Q&A-2 of section 1.401(a)(9)-6T of the Regulations. If the
 526 form of distribution combines a joint and survivor annuity for
 527 the joint lives of the firefighter and a nonspouse beneficiary
 528 and a period certain annuity, the requirement in the preceding
 529 sentence will apply to annuity payments to be made to the
 530 designated beneficiary after the expiration of the period
 531 certain.

532 b. Period certain annuities.—Unless the firefighter's
 533 spouse is the sole designated beneficiary and the form of
 534 distribution is a period certain and no life annuity, the period
 535 certain for an annuity distribution commencing during the
 536 firefighter 's lifetime may not exceed the applicable
 537 distribution period for the firefighter under the Uniform
 538 Lifetime Table set forth in section 1.401(a)(9)-9 of the
 539 Regulations for the calendar year that contains the annuity
 540 starting date. If the annuity starting date precedes the year in
 541 which the firefighter reaches age 70, the applicable
 542 distribution period for the firefighter is the distribution
 543 period for age 70 under the Uniform Lifetime Table set forth in
 544 section 1.401(a)(9)-9 of the Regulations plus the excess of 70
 545 over the age of the firefighter as of the firefighter's birthday
 546 in the year that contains the annuity starting date. If the

547 firefighter's spouse is the firefighter's sole designated
 548 beneficiary and the form of distribution is a period certain and
 549 no life annuity, the period certain may not exceed the longer of
 550 the firefighter's applicable distribution period, as determined
 551 under this section (3)b., or the joint life and last survivor
 552 expectancy of the firefighter and the firefighter's spouse as
 553 determined under the Joint and Last Survivor Table set forth in
 554 section 1.401(a)(9)-9 of the Regulations, using the
 555 firefighter's and spouse's attained ages as of the firefighter's
 556 and spouse's birthdays in the calendar year that contains the
 557 annuity starting date.

558 (4) Requirements for minimum distributions where the
 559 firefighter dies before date distributions begin.—

560 a. Firefighter survived by designated beneficiary.—Except
 561 as provided in the Firefighters' Relief and Pension Fund, if the
 562 firefighter dies before the date distribution of his or her
 563 interest begins and there is a designated beneficiary, the
 564 firefighter's entire interest will be distributed, beginning no
 565 later than the time described in section (1)b.1. or (1)b.2.,
 566 over the life of the designated beneficiary or over a period
 567 certain not exceeding:

568 1. Unless the annuity starting date is before the first
 569 distribution calendar year, the life expectancy of the
 570 designated beneficiary determined using the beneficiary's age as
 571 of the beneficiary's birthday in the calendar year immediately
 572 following the calendar year of the firefighter's death; or

573 2. If the annuity starting date is before the first
 574 distribution calendar year, the life expectancy of the
 575 designated beneficiary determined using the beneficiary's age as
 576 of the beneficiary's birthday in the calendar year that contains
 577 the annuity starting date.

578 b. No designated beneficiary.—If the firefighter dies
 579 before the date distributions begin and there is no designated
 580 beneficiary as of September 30th of the year following the year
 581 of the firefighter's death, distribution of the firefighter's
 582 entire interest will be completed by December 31 of the calendar
 583 year containing the fifth anniversary of the firefighter's
 584 death.

585 c. Death of surviving spouse before distributions to
 586 surviving spouse begin.—If the firefighter dies before the date
 587 distribution of his or her interest begins, the firefighter's
 588 surviving spouse is the firefighter's sole designated
 589 beneficiary, and the surviving spouse dies before distributions
 590 to the surviving spouse begin, this section (4) will apply as if
 591 the surviving spouse were the firefighter, except that the time
 592 by which distributions must begin will be determined without
 593 regard to subsection (1)b.1. of this Section 8.

594 (5) Definitions.—For purposes of this Section 8, the
 595 following definitions shall apply:

596 a. Designated beneficiary.—The individual who is
 597 designated as the beneficiary in accordance with the
 598 Firefighters' Relief and Pension Fund and is the designated

599 beneficiary under section 401(a)(9) of the Code and section
 600 1.401(a)(9)-1, Q&A-4, of the Regulations.

601 b. Distribution calendar year.—A calendar year for which a
 602 minimum distribution is required. For distributions beginning
 603 before the firefighter's death, the first distribution calendar
 604 year is the calendar year immediately preceding the calendar
 605 year which contains the firefighter's required beginning date.
 606 For distributions beginning after the firefighter's death, the
 607 first distribution calendar year is the calendar year in which
 608 distributions are required to begin pursuant to subsection (1)b.
 609 of this Section 8.

610 c. Life expectancy.—Life expectancy as computed by use of
 611 the Single Life Table in section 1.401(a)(9)-9 of the Treasury
 612 regulations.

613 d. Required beginning date.—April 1 of the calendar year
 614 following the later of: the calendar year in which the
 615 firefighter attains age 70½; or the calendar year in which the
 616 firefighter retires from employment with the City of Pensacola.

617 Section 10. Retirement after 10 years' service.—If any
 618 firefighter of the City of Pensacola shall, after serving as
 619 such for a period of 10 full years or becoming otherwise
 620 eligible for retirement, cease to be such firefighter for any
 621 cause and shall not make withdrawal of all his or her
 622 contributions to the Firefighters' Relief and Pension Fund as
 623 provided by law, or having withdrawn the same, shall return it
 624 with 8 percent interest from the date of such withdrawal, he or

625 she shall be eligible to receive the benefits equal to the
 626 amount provided in section 5(a), multiplied by the number of
 627 years of service; for this purpose only the number of years of
 628 service can be no more than 25 and divided by 25 years upon
 629 attaining the age of 52 years or becoming eligible for
 630 retirement by length of service or otherwise; his or her spouse
 631 and children shall in the event of his or her death be likewise
 632 so entitled. For purposes of the Firefighters' Relief and
 633 Pension Fund, a firefighter who has attained age 52 and
 634 completed 10 years of service or completed 25 years of service
 635 will have attained normal retirement age. Each firefighter's
 636 benefit shall become 100-percent vested upon attaining normal
 637 retirement age.

638 Section 13. Death benefits for survivors.--

639 (d) Notwithstanding any provisions of the Firefighters'
 640 Relief and Pension Fund to the contrary, a retired firefighter
 641 may change his or her designation of joint annuitant or
 642 beneficiary up to two times, as provided in s. 175.333, Florida
 643 Statutes, without the approval of the board of trustees or the
 644 current joint annuitant or beneficiary. The retiree is not
 645 required to provide proof of the good health of the joint
 646 annuitant or beneficiary being removed, and the joint annuitant
 647 or beneficiary being removed need not be living. Upon change of
 648 a retiree's joint annuitant or beneficiary in accordance with
 649 this subsection, the amount of the benefit payable to the
 650 retiree shall be actuarially redetermined to take into account

651 the age and sex of the former annuitant or beneficiary, the new
 652 annuitant or beneficiary, and the retiree to ensure that the
 653 benefit paid is the actuarial equivalent of the present value of
 654 the retiree's then-current benefit at the time of the change.
 655 Any such retiree shall pay the actuarial recalculation expenses.
 656 Each request for a change shall be made in writing to the board
 657 of trustees.

658 Section 15. Benefits to widows, widowers, and dependents.-
 659 If a widow or widower receiving a pension under any of the
 660 provisions of this act dies, his or her pension shall cease;
 661 however, if such death occurs before such widow or widower, as
 662 the case may be, and the retiree, collectively, having received
 663 retirement benefits for a period of less than 10 years, the same
 664 benefit will be paid to the beneficiary or beneficiaries
 665 designated by the retiree for the balance of such 10-year
 666 period. Such beneficiary designation must be in writing and
 667 received and approved by the board of trustees before the
 668 retiree's death. The remarriage of a widow or widower receiving
 669 a pension under any of the provisions of this act shall cause
 670 such pension benefit to cease. If a widow or widower enjoying a
 671 pension under any of the provisions of this act shall die, her
 672 or his pension shall cease, and if she or he shall remarry while
 673 enjoying any such pension, then and in the latter event, her or
 674 his pension shall cease and shall not be paid to such widow or
 675 widower; provided, however, in the event the deceased
 676 firefighter shall be survived by one or more legitimate children

677 under the age of eighteen years at the time the widow or widower
 678 shall remarry, the pension board may, in its discretion, grant
 679 an amount for the support and maintenance of said child or
 680 children until said child or children become eighteen years of
 681 age, not to exceed ten dollars (\$10.00) per month for each
 682 child, in no event to exceed the sum of forty dollars (\$40.00
 683 ~~\$40,00~~) per month for any one family.

684 Section 19. Protection of benefits from legal process.-

685 (a) Notwithstanding any other provision of the
 686 Firefighters' Relief and Pension Fund to the contrary, Plan
 687 assets will not be used for, or diverted to, a purpose other
 688 than the exclusive benefit of firefighters or their
 689 beneficiaries. No amendment may authorize or permit any portion
 690 of the Firefighters' Relief and Pension Fund assets to be used
 691 for or diverted to a purpose other than the exclusive benefit of
 692 firefighters or their beneficiaries, except to the extent such
 693 assets are used to pay administrative expenses of the
 694 Firefighters' Relief and Pension Fund. In addition, an amendment
 695 to the Firefighters' Relief and Pension Fund may not cause or
 696 permit any portion of the assets held under the Firefighters'
 697 Relief and Pension Fund to revert to or become property of the
 698 city, except as otherwise permitted under the Plan or otherwise
 699 permitted by law.

700 (b) The right of any firefighter or any beneficiary to any
 701 benefits under the Firefighters' Relief and Pension Fund or any
 702 other right accrued or accruing to any persons under this Plan

703 shall not be subject to execution, garnishment, attachment, the
 704 operation of any bankruptcy or insolvency law, or any other
 705 process of law whatever and shall not be subject to assignment,
 706 pledge, or hypothecation unless expressly authorized in the
 707 Firefighters' Relief and Pension Fund. ~~The pensions and other~~
 708 ~~benefits accrued or accruing to any person under this pension~~
 709 ~~plan and the accumulated contributions and the cash securities~~
 710 ~~in the funds created under this plan are exempted from any~~
 711 ~~state, county, or municipal tax and shall not be subject to~~
 712 ~~execution or attachment or to any legal process whatsoever, and~~
 713 ~~shall be unassignable.~~

714 Section 28. Rollover distributions.-

715 (a) Notwithstanding any other provision of the
 716 Firefighters' Relief and Pension Fund to the contrary, a
 717 distributee may elect, at the time and in the manner prescribed
 718 by the board of trustees, to have any portion or all of an
 719 eligible rollover distribution paid directly to an eligible
 720 retirement plan specified by the distributee in a direct
 721 rollover. For purposes of this section, the following
 722 definitions shall apply:

723 (1) "Distributee" means a firefighter or former
 724 firefighter, the firefighter's surviving spouse, and the
 725 firefighter's spouse or former spouse who is the alternate payee
 726 under a court order, who is entitled to receive a portion of the
 727 firefighter's benefit. Effective for plan years beginning on and
 728 after January 1, 2007, a nonspouse beneficiary may elect to

729 directly rollover an eligible distribution to an IRA, a Roth
 730 IRA, or an individual retirement annuity under section 408(b) of
 731 the Code that is established on behalf of the designated
 732 beneficiary as an inherited IRA, pursuant to section 402(c)(11)
 733 of the Code. In order to be able to roll over the distribution,
 734 the distribution otherwise must satisfy the definition of
 735 eligible rollover distribution. In addition, the determination
 736 of any required minimum distribution under section 401(a)(9) of
 737 the Code that is ineligible for rollover shall be made in
 738 accordance with IRS guidance.

739 (2) "Eligible retirement plan" means an IRA described in
 740 section 408(a) of the Code, an individual retirement annuity
 741 described in section 408(b) of the Code, an annuity plan
 742 described in section 403(a) of the Code, an annuity contract
 743 described in section 403(b) of the Code, an eligible plan under
 744 section 457 of the Code that agrees to separately account for
 745 such transferred amounts and which is maintained by a state, a
 746 political subdivision of a state, or an agency or
 747 instrumentality of a state or political subdivision of a state,
 748 or a qualified trust described in section 401(a) of the Code
 749 that accepts the distributee's eligible rollover distribution.
 750 For distributions made after December 31, 2007, an eligible
 751 retirement plan shall include a Roth IRA as defined under
 752 section 408A of the Code.

753 (3) "Eligible rollover distribution" means any
 754 distribution of all or any portion of the firefighter's benefit,

755 except that an eligible rollover distribution does not include
 756 any distribution that is one of a series of substantially equal
 757 periodic payments (not less frequently than annually) made for
 758 the life (or life expectancy) of the distributee or the joint
 759 lives (or joint life expectancies) of the distributee and the
 760 distributee's designated beneficiary, or for a specified period
 761 of 10 years or more; any distribution to the extent such
 762 distribution is required under section 401(a)(9) of the Code;
 763 the portion of any distribution that is not includible in gross
 764 income (determined without regard to the exclusion for net
 765 unrealized appreciation with respect to employer securities);
 766 and any distribution made to satisfy section 415 of the Code.

767 (4) "Direct rollover" means a payment by the Firefighters'
 768 Relief and Pension Fund to the eligible retirement plan
 769 specified by the firefighter.

770 (b) In the event a mandatory distribution is greater than
 771 \$1,000, and a distributee fails to elect to have such
 772 distribution paid directly to an eligible retirement plan
 773 specified by the distributee in a direct rollover or to receive
 774 the distribution directly, the board of trustees will pay the
 775 distribution in a direct rollover to an individual retirement
 776 account ("IRA") designated by the board of trustees. For purpose
 777 of the preceding sentence, a mandatory distribution is a
 778 distribution that constitutes an eligible rollover distribution
 779 that is made without the firefighter's consent. See section 12
 780 of the Plan for an example of a potential mandatory

781 ~~distribution. Notwithstanding any provision of the Firefighters'~~
 782 ~~Relief and Pension Fund to the contrary that would otherwise~~
 783 ~~limit a firefighter's or retired firefighter's election (or such~~
 784 ~~deceased individual's surviving spouse's election) under this~~
 785 ~~fund, such firefighter or retired firefighter, or such deceased~~
 786 ~~individual's surviving spouse, may elect, at the time and in the~~
 787 ~~manner prescribed by the plan administrator, to have any portion~~
 788 ~~of an eligible rollover distribution paid directly to an~~
 789 ~~eligible retirement plan specified by such pensioner in a direct~~
 790 ~~rollover.~~

791 Section 29. Additional benefits required by law.—

792 (a) To the extent that the City of Pensacola, as an
 793 employer of firefighters and Firefighters' Relief and Pension
 794 Fund ~~plan~~ sponsor, may be required by law to provide additional
 795 benefits to firefighters employed by the city, or their
 796 beneficiaries, those additional benefits may be provided by
 797 ordinance.

798 (b) Notwithstanding any other provision of the
 799 Firefighters' Relief and Pension Fund to the contrary,
 800 contributions, benefits, and service credit with respect to
 801 qualified military service, as defined in section 414(u) of the
 802 Code, shall be provided in accordance with section 414(u) of the
 803 Code, the Uniformed Services Employment and Reemployment Rights
 804 Act of 1994 ("USERRA"), and the Heroes Earnings Assistance and
 805 Relief Tax Act of 2008 ("HEART Act") and shall be effective as
 806 of the dates indicated in USERRA and the HEART Act.

807 Section 30. Definitions.—The following words and phrases
 808 have the following meanings:

809 (a) "Accrued benefit" means the monthly benefit payable at
 810 normal retirement age, as determined under the Firefighters'
 811 Relief and Pension Fund's formula.

812 (b) "Actuarial equivalent" means, for Plan Years before
 813 October 1, 2013, the equality in the value of the aggregate
 814 amount to be received under different forms of payment, computed
 815 on the basis of the 1971 Group Annuity Mortality Table and an
 816 interest rate equal to 8 percent per annum. Notwithstanding the
 817 foregoing, with respect to disability retirement, "actuarial
 818 equivalent" means equality in the value of the aggregate amount
 819 to be received under different forms of payment, computed on the
 820 basis of the SSA-74 Mortality Table and an interest rate equal
 821 to 8 percent per annum. For Plan Years beginning on and after
 822 October 1, 2013, "actuarial equivalent" means, unless otherwise
 823 specified herein, the equality in the value of the aggregate
 824 amount to be received under different forms of payment computed
 825 on the basis of the RP 2000 Combined Healthy Mortality Table and
 826 an interest rate equal to 8 percent per annum.

827 (c) "Code" means the Internal Revenue Code of 1986.

828 (d)~~(a)~~ "Compensation," "salary," and "earnings" mean the
 829 wages paid to a firefighter, for those with 10 or more years of
 830 service as of the effective date of this act a maximum of 300
 831 hours annual overtime pay, for those with less than 10 years of
 832 service as of the effective date of this act a maximum of 200

833 hours annual overtime pay, for those hired on or after the
 834 effective date of this act no longevity pay, overtime pay,
 835 station or watch captain pay, special duty pay, in-service sick
 836 leave redemption pay (when paid), bonuses, lump-sum payments not
 837 paid at termination, inclusive of employee-elective salary
 838 reductions or deferrals to any salary reduction, deferred
 839 compensation, or tax-sheltered annuity program authorized under
 840 the Internal Revenue Code if the firefighter would receive those
 841 reductions or deferrals if he or she were not participating in
 842 such program, and any other payments required by law to be
 843 included in pension calculations. Compensation for any plan year
 844 shall not exceed the annual compensation limit under section
 845 401(a)(17) of the Code, as in effect on the first day of the
 846 plan year. This limit shall be adjusted by the Secretary of the
 847 Treasury to reflect increases in the cost of living, as provided
 848 in section 401(a)(17)(B) of the Code; however, the dollar
 849 increase in effect on January 1 of any calendar year is
 850 effective for the plan year beginning in such calendar year. If
 851 a Plan determines compensation over a plan year that contains
 852 less than 12 calendar months (a "short plan year"), then the
 853 compensation limit for such short plan year is equal to the
 854 compensation limit for the calendar year in which the short plan
 855 year begins multiplied by the ratio obtained by dividing the
 856 number of full months in the short plan year.

857 (e)-(b) "Deferred Retirement Option Plan" or "DROP" means a
 858 retirement option in which a firefighter may elect to

859 participate, under which a firefighter may retire for all
 860 purposes of the plan and defer receipt of retirement benefits
 861 into a DROP account while continuing employment with the city.

862 ~~(c) "Direct rollover" means a payment by the Firefighters'~~
 863 ~~Relief and Pension Fund to the eligible retirement plan~~
 864 ~~specified by the firefighter or retired firefighter or such~~
 865 ~~deceased individual's surviving spouse.~~

866 ~~(d) "Eligible retirement plan" means an individual~~
 867 ~~retirement account described in section 408(a) of the Internal~~
 868 ~~Revenue Code of 1986, an individual retirement annuity described~~
 869 ~~in section 408(b) of the Internal Revenue Code of 1986, an~~
 870 ~~annuity plan described in section 403(a) of the Internal Revenue~~
 871 ~~Code of 1986, or a qualified trust described in section 401(a)~~
 872 ~~of the Internal Revenue Code of 1986 that accepts the~~
 873 ~~firefighter's or retired firefighter's eligible rollover~~
 874 ~~distribution. However, in the case of an eligible rollover~~
 875 ~~distribution to the surviving spouse of a deceased firefighter~~
 876 ~~or deceased retired firefighter, an eligible retirement plan is~~
 877 ~~an individual retirement account or individual retirement~~
 878 ~~annuity.~~

879 ~~(e) "Eligible rollover distribution" means any~~
 880 ~~distribution of all or any portion of the balance to the credit~~
 881 ~~of the firefighter or retired firefighter, except that an~~
 882 ~~eligible rollover distribution does not include: any~~
 883 ~~distribution that is one of a series of substantially equal~~
 884 ~~periodic payments (not less frequently than annually) made for~~

885 ~~the life (or life expectancy) of the firefighter or retired~~
 886 ~~firefighter or the joint lives (or joint life expectancies) of~~
 887 ~~the firefighter or retired firefighter and such individual's~~
 888 ~~designated beneficiary, or for a specified period of ten years~~
 889 ~~or more; any distribution to the extent such distribution is~~
 890 ~~required under section 401(a)(9) of the Internal Revenue Code of~~
 891 ~~1986; and the portion of any distribution that is not includable~~
 892 ~~in gross income.~~

893 (f) "Enrolled actuary" means an actuary who is enrolled
 894 under Subtitle C of Title III of the Employee Retirement Income
 895 Security Act of 1974 and who is a member of the Society of
 896 Actuaries or the American Academy of Actuaries.

897 (g) "Firefighter" ~~or "firefighter"~~ means any person
 898 employed by the City of Pensacola fire department who is
 899 certified as a firefighter as a condition of employment in
 900 accordance with s. the provisions of Section 633.35, Florida
 901 Statutes, and whose duty it is to extinguish fires, to protect
 902 life, or to protect property.

903 (h) "Limitation year" means the plan year.

904 (i) "Plan" means the Firefighters' Relief and Pension
 905 Fund.

906 (j) "Plan year" means the 12-month period ending on
 907 September 30.

908 (k) "Regulations" means the Treasury Regulations adopted
 909 by the Department of Treasury.

910 (l)~~(h)~~ "Retiree" or "retired firefighter" means a

911 firefighter who has entered retirement status. A firefighter who
 912 enters a DROP created by the City of Pensacola for firefighters
 913 shall be considered a retiree for all purposes of the
 914 Firefighters' Relief and Pension Fund.

915 (m) ~~(i)~~ "Retirement" means a firefighter's separation from
 916 city employment as a firefighter with the immediate eligibility
 917 for receipt of benefits under the Firefighters' Relief and
 918 Pension Fund, including entry into a Deferred Retirement Option
 919 Plan.

920 (n) "Years of service" means the aggregate number of years
 921 of service, and fractional parts of a year of service, of any
 922 firefighter, omitting intervention years and fractional parts of
 923 years when such firefighter may not have been employed by the
 924 City of Pensacola as a firefighter. Service shall include
 925 military service, as provided in paragraph (1) below, and shall
 926 not include credit for any other type of service.

927 (1) In determining the creditable service of any
 928 firefighter, credit for up to 5 years of the time spent in the
 929 military service of the Armed Forces of the United States shall
 930 be added to the years of actual service if:

931 a. The firefighter is in the active employ of the city
 932 before such service and leaves a position, other than a
 933 temporary position, for the purpose of voluntary or involuntary
 934 service in the Armed Forces of the United States.

935 b. The firefighter is entitled to reemployment under the
 936 provisions of the Uniformed Services Employment and Reemployment

937 Rights Act.

938 c. The firefighter returns to his or her employment as a
 939 firefighter of the city within 1 year after the date of his or
 940 her release from such active service.

941 (2) In addition to service credits awarded for military
 942 service leave under subsection (1) above, any member of the Plan
 943 who served in the Armed Forces of the United States as described
 944 under chapter 2009-97, Laws of Florida, shall be entitled to
 945 purchase service credits for such service or employment by
 946 contributing as provided in 2. below an amount which is
 947 determined to be the full actuarial cost of the service credits
 948 purchased. Once the member is vested but not yet retired or
 949 entered into DROP, the member may purchase a maximum of 5 years
 950 of any combination of the aforementioned qualifying noncity
 951 service.

952 1. The contribution required of the employee to purchase
 953 service credits for prior military service or prior employment
 954 as a firefighter may be made in one lump sum installment or by
 955 rollover from a qualified plan.

956 2. The contribution is an actuarially determined amount of
 957 the employee's pensionable current annual compensation at the
 958 time of the buy-back for each year purchased.

959

960 A member who is receiving or will receive a pension benefit for
 961 military or prior firefighter service in any other pension plan
 962 supported by public funds, excluding a military pension, may not

963 use or buy back credited service for the City of Pensacola
 964 Firefighters' Relief and Pension Fund.

965 Section 31. Maximum pension.—The benefits otherwise
 966 payable to a firefighter or a beneficiary under the
 967 Firefighters' Relief and Pension Fund, and, where relevant, the
 968 benefits of a firefighter, shall be limited to the extent
 969 required by section 415 of the Code. To the extent applicable,
 970 section 415 of the Code is incorporated by reference into the
 971 Firefighters' Relief and Pension Fund. For this purpose, the
 972 "limitation year" is set forth in section 30(h).

973 Section 32. Plan termination.—Upon termination of the
 974 Firefighters' Relief and Pension Fund for any reason, or upon
 975 written notice to the board of trustees that contributions
 976 thereunder are being permanently discontinued, the rights of all
 977 firefighters to benefits accrued to the date of such termination
 978 and the amounts credited to a firefighter's account, if
 979 applicable, are vested. Upon termination, the Firefighters'
 980 Relief and Pension Fund shall be distributed in accordance with
 981 the following procedures:

982 (a) The board of trustees shall determine the date of
 983 distribution and the asset value required to the Firefighters'
 984 Relief and Pension Fund all the vested benefits after taking
 985 into account the expenses of such distribution. The board shall
 986 inform the City of Pensacola if additional assets are required,
 987 in which event the City of Pensacola shall continue to

988 financially support the Firefighters' Relief and Pension Fund
 989 until all vested benefits have been funded.

990 (b) The board of trustees shall determine the method of
 991 distribution of the asset value, whether distribution shall be
 992 by payment in cash, by the maintenance of another or substituted
 993 trust fund, by the purchase of insured annuities, or otherwise,
 994 for each firefighter entitled to benefits under the
 995 Firefighters' Relief and Pension Fund as specified in subsection
 996 (c).

997 (c) The board of trustees shall distribute the asset value
 998 as of the date of termination in the manner set forth in this
 999 subsection, on the basis that the amount required to provide any
 1000 given retirement income is the actuarially equivalent single sum
 1001 value of such retirement income, except that if the method of
 1002 distribution determined under subsection (b) involves the
 1003 purchase of an insured annuity, the amount required to provide
 1004 the given retirement income is the single premium payable for
 1005 such annuity. The actuarial equivalent single sum value may not
 1006 be less than the firefighter's accumulated contributions to the
 1007 Firefighters' Relief and Pension Fund, with interest if provided
 1008 by the Firefighters' Relief and Pension Fund, less the value of
 1009 any benefits previously paid to the firefighter from the
 1010 Firefighters' Relief and Pension Fund.

1011 (d) If there is asset value remaining after the full
 1012 distribution specified in subsection (c), and after the payment
 1013 of any expenses incurred with such distribution, such excess

1014 shall be returned to the City of Pensacola, less return to the
 1015 state of the state's contributions, provided that if the excess
 1016 is less than the total contributions made by the City of
 1017 Pensacola and the state to date of termination of the
 1018 Firefighters' Relief and Pension Fund, such excess shall be
 1019 divided proportionately to the total contributions made by the
 1020 City of Pensacola and the state.

1021 (e) The board of trustees shall distribute, in accordance
 1022 with subsection (b), the amounts determined under subsection
 1023 (c).

1024
 1025 If, after 24 months after the date the Firefighters' Relief and
 1026 Pension Fund terminated or the date the board of trustees
 1027 received written notice that the contributions thereunder were
 1028 being permanently discontinued, the City of Pensacola or the
 1029 Board of Trustees of the Firefighters' Relief and Pension Fund
 1030 has not complied with all the provisions in this section, the
 1031 Department of Management Services shall effect the termination
 1032 of the Firefighters' Relief and Pension Fund in accordance with
 1033 s. 175.361, Florida Statutes.

1034 Section 33. Forfeitures.—

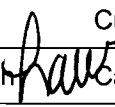
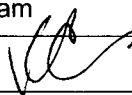
1035 (a) A firefighter or such firefighter's beneficiary shall
 1036 forfeit all benefits provided by the Firefighters' Relief and
 1037 Pension Fund to the extent provided by the State Constitution or
 1038 the Florida Statutes.

1039 (b) Forfeitures arising from any cause whatsoever under
1040 the Firefighters' Relief and Pension Fund shall not be applied
1041 to increase the benefits any firefighter would otherwise receive
1042 under the Firefighters' Relief and Pension Fund at any time
1043 before the termination of the Firefighters' Relief and Pension
1044 Fund or the complete discontinuance of contributions hereunder.
1045 Forfeitures shall be applied to reduce the contributions under
1046 the Firefighters' Relief and Pension Fund in the current or
1047 subsequent years by the City of Pensacola.

1048 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7103 PCB CRJS 15-04 Public Records/Juvenile Criminal History Records
SPONSOR(S): Criminal Justice Subcommittee, Pritchett
TIED BILLS: **IDEN./SIM. BILLS:** SB 1316

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	13 Y, 0 N	Cox	Cunningham
1) State Affairs Committee		Williamson 	Camechis 
2) Judiciary Committee			

SUMMARY ANALYSIS

Section 985.04(1), F.S., specifies that all records obtained under ch. 985, F.S., as a result of a juvenile being involved in the juvenile justice system, are confidential. However, s. 985.04(2), F.S., creates exceptions if the juvenile is:

- Taken into custody for a violation of law which, if committed by an adult, would be a felony;
- Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors; or
- Transferred to the adult system.

Section 943.053, F.S., allows a juvenile's criminal history information to be disseminated in the same manner as that of an adult.

A recent ruling by Florida's First District Court of Appeal highlighted the inconsistency that exists between s. 985.04(1), F.S., (making most juvenile records confidential) and s. 943.053, F.S. (allowing a juvenile's record to be disseminated in the same manner as that of an adult). The bill addresses these inconsistencies by:

- Making the records of juveniles who have been found to have committed three or more misdemeanors confidential and exempt (currently they are not);
- Ensuring that the list of juvenile records that are not confidential and exempt under s. 985.04(2), F.S., is identical to the list of juvenile records deemed not to be confidential and exempt under s. 943.053, F.S.;
- Requiring the Florida Department of Law Enforcement (FDLE) to release juvenile criminal history records in a manner that takes into account the records' confidential and exempt status; and
- Specifying how FDLE must release juvenile criminal history records.

The bill provides that the exemptions repeal on October 2, 2020, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

FDLE reports that the bill may have a minimal fiscal impact on the department, which can be absorbed. See the fiscal section of this bill analysis.

The bill is effective 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 or expanded public record or public meeting exemption. The bill expands current public record exemptions; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

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 Art. I, s. 24 of the State Constitution provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption (public necessity statement), and is no broader than necessary to accomplish its purpose.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:³

- 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 Open Government Sunset Review Act requires the automatic repeal of a public records exemption on October 2nd of the fifth year after its creation or substantial amendment, unless reenacted by the Legislature.⁴ The Act also requires specified questions to be considered during the review process.

Confidential Information of Juveniles

Section 985.04(1), F.S., provides that all records obtained under ch. 985, F.S., resulting from a juvenile's involvement in the juvenile justice system, are confidential. However, several exceptions to the confidentiality of these records are provided. For example, s. 985.04(2), F.S., provides in part that the name, photograph, address, and crime or arrest report of certain juveniles is not confidential and exempt from s. 119.07(1), F.S., solely because of the juvenile's age, if the juvenile is:

- Taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
- Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors;
- Transferred to the adult system under ss. 985.557, 985.56, F.S., or 985.556, F.S.;
- Taken into custody by a law enforcement officer for a violation of law subject to s. 985.557(2)(b) or (d), F.S.; or
- Transferred to the adult system but sentenced to the juvenile system under s. 985.565, F.S.

¹ FLA. CONST. art. I, s. 24(c).

² See s. 119.15, F.S.

³ s. 119.15(6)(b), F.S.

⁴ s. 119.15(3), F.S.

Criminal Justice Information Program

Section 943.05, F.S., creates the Criminal Justice Information Program (CJIP) within the Florida Department of Law Enforcement (FDLE) to act as the state's central criminal justice information⁵ repository. Law enforcement agencies, clerks of the court, the Department of Corrections (DOC), and the Department of Juvenile Justice (DJJ) are required to submit specified information on offenders they have had contact with for inclusion in CJIP.⁶ This information can then be transmitted between criminal justice agencies.⁷

Currently, s. 943.051, F.S., requires state, county, municipal, or other law enforcement agencies to capture and electronically submit to FDLE the fingerprints, palm prints, and facial images of:

- Each adult person charged with or convicted of a felony, misdemeanor, or violation of a comparable ordinance;
- A juvenile who is charged with or found to have committed an offense which, if committed by an adult, would be a felony; or
- A minor who is charged with or found to have committed an enumerated offense, unless the minor is issued a civil citation pursuant to s. 985.12, F.S.

Dissemination of Criminal History Information under Chapter 943, F.S.

Criminal history information⁸ compiled by CJIP may be released to criminal justice agencies, noncriminal justice agencies, and the private sector upon request in accordance with s. 943.053, F.S. Criminal justice agencies are provided criminal history information free of charge on a priority basis.⁹ With some exceptions, noncriminal justice agencies and persons in the private sector are charged \$24 per name submitted.¹⁰

Currently, s. 943.053, F.S., allows a juvenile's criminal history information to be disseminated in the same manner as that of an adult.¹¹ The statute is silent as to the release of a juvenile's information, which has been made confidential pursuant to s. 985.04, F.S.

G.G. v. FDLE

In *G.G. v. FDLE*,¹² a juvenile with no prior criminal history record was arrested for petit theft – a first degree misdemeanor. Several weeks after the arrest, G.G.'s attorney received G.G.'s criminal history information from FDLE, and discovered that it included information relating to the petit theft arrest.¹³ G.G. filed suit, claiming that the petit theft information should be confidential and exempt pursuant to s. 985.04(1), F.S.¹⁴ The trial court disagreed, holding that s. 943.053(3), F.S., creates an exception to confidentiality established for juvenile criminal history records in s. 985.04(1), F.S.¹⁵

⁵ Section 943.045(12), F.S., provides that the term "criminal justice information" means information on individuals collected or disseminated as a result of arrest, detention, or the initiation of a criminal proceeding by criminal justice agencies, including arrest record information, correctional and release information, criminal history record information, conviction record information, offender registration information, identification record information, and wanted persons record information. The term does not include statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable. The term does not include criminal intelligence information or criminal investigative information.

⁶ s. 943.052, F.S.

⁷ s. 985.051, F.S.

⁸ Section 943.045(5), F.S., defines the term "criminal history information" as information collected by criminal justice agencies on persons, which information consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof. The term does not include identification information, such as biometric records, if the information does not indicate involvement of the person in the criminal justice system.

⁹ s. 943.053(3)(a), F.S.

¹⁰ s. 943.053(30)(b), F.S. The guardian ad litem program; vendors of the Department of Children and Families, DJJ, and the Department of Elderly Affairs; the Department of Agriculture and Consumer Services; and other qualified entities are charged a lesser amount.

¹¹ s. 943.053(3)(a), F.S.

¹² 97 So. 3d 268 (Fla. 1st DCA 2012).

¹³ *Id.* at 269.

¹⁴ *Id.*

¹⁵ *Id.*

On appeal, the First District Court of Appeal reversed the trial court's decision and held that FDLE's authority to disseminate criminal justice information under s. 943.053(3), F.S., is expressly limited by s. 985.04, F.S., which, with very few exceptions, makes juvenile records confidential.¹⁶

FDLE – Release of Juvenile Information since G.G.

As noted above, s. 985.04(1), F.S., makes the majority of juvenile records confidential. However, s. 985.04(2), F.S., creates exceptions to the confidentiality requirements for records if the juvenile is:

- Taken into custody for a violation of law which, if committed by an adult, would be a felony;
- Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors; or
- Transferred to the adult system.

In an effort to comply with the ruling in *G.G. v. FDLE*, FDLE is ensuring that only the above-described records are released. However, because of programming limitations¹⁷ and incomplete reporting of juvenile disposition information,¹⁸ FDLE reports that they are unable to accurately and fairly assess whether a juvenile has been found by a court to have committed three or more misdemeanors.¹⁹ As such, FDLE currently only releases juvenile records to private entities and non-criminal justice agencies if the juvenile is:

- Taken into custody or charged with a crime that would be a felony if committed by an adult; and
- Treated as adults.²⁰

Effect of the Bill

The ruling in *G.G. v. FDLE* highlighted the inconsistency that exists between s. 985.04(1), F.S., (making the majority of juvenile records confidential) and s. 943.053, F.S. (allowing a juvenile's criminal history information to be disseminated in the same manner as that of an adult). The bill addresses these inconsistencies by:

- Ensuring that the specified juvenile records deemed not to be confidential and exempt under s. 943.053, F.S., are identical to the juvenile records deemed not to be confidential and exempt under s. 985.04, F.S.; and
- Requiring FDLE to release juvenile criminal history records in a manner that takes into account the confidential and exempt status of the record.

Section 985.04, F.S.

The bill amends s. 985.04(1), F.S., clarifying that juvenile records obtained under ch. 985, F.S., are confidential and exempt (rather than just confidential),²¹ and provides that the public record exemption applies retroactively.

¹⁶ *Id.* at 273.

¹⁷ FDLE cites that there would be extensive programming changes required to ensure that the records of juveniles found to have committed three or more misdemeanors were available for dissemination. FDLE Analysis.

¹⁸ Disposition, or charge outcome, reporting for juvenile arrests was not legislatively mandated until July 1, 2008. This has resulted in much lower arrest-disposition reporting rates for juveniles. (The juvenile reporting rate for all arrests is currently 48.5 percent, while the adult rate is 72.2 percent.) FDLE Analysis.

¹⁹ FDLE Analysis.

²⁰ FDLE Analysis, p. 3.

²¹ 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 85-62 Fla. Op. Att'y Gen. (August 1, 1985).

The bill also amends s. 985.04(2), F.S., to specify that the following juvenile records are not confidential and exempt:

- Records where a juvenile has been taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
- Records where a juvenile has been charged with a violation of law which, if committed by an adult, would be a felony;
- Records where a juvenile has been found to have committed an offense which, if committed by an adult, would be a felony; or
- Records where a juvenile has been transferred to adult court pursuant to part X of ch. 985, F.S.

Notably, the bill removed language specifying that the records of juveniles who have been found to have committed three or more misdemeanor violations are not confidential and exempt. These records will now be confidential and exempt.

Section 943.053, F.S.

The bill amends s. 943.053, F.S., so that the list of juvenile records deemed not to be confidential and exempt under s. 985.04(2), F.S., is identical to the list of juvenile records deemed not to be confidential and exempt under s. 943.053, F.S. Because the language regarding three or more misdemeanors is not included on the list, FDLE will no longer be tasked with determining whether the juvenile had three or more misdemeanors before releasing such records to the private sector and noncriminal justice agencies.

The bill further amends s. 943.053, F.S., establish a separate process for the dissemination of *juvenile* criminal history information. Under this process, juvenile criminal history information, including the information that is confidential and exempt, is available to:

- A criminal justice agency for criminal justice purposes on a priority basis and free of charge;
- The person to whom the record relates, or his or her attorney;
- The parent, guardian, or legal custodian of the person to whom the record relates, provided such person has not reached the age of majority, been emancipated by a court, or been legally married; or
- An agency or entity specified in ss. 943.0585(4) or 943.059(4), F.S.,²² for the purposes specified therein, and to any person within such agency or entity who has direct responsibility for employment, access authorization, or licensure decisions.

Juvenile criminal history information that is not confidential and exempt may be released to the private sector and noncriminal justice agencies upon tender of fees and in the same manner that criminal history information relating to adults is released.

The bill provides that juvenile records deemed confidential and exempt under the provisions of s. 943.053, F.S., which are released by the sheriff, DOC, or DJJ to private entities under contract with each entity retain their confidential status upon release to these private entities.

The bill repeals all new public records exemptions provided for in the bill on October 2, 2020, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.²³

Lastly, the bill makes conforming changes to ss. 496.4101 and 943.056, F.S., to reflect changes made in the act.

²² These sections require persons who are seeking employment with specified agencies (e.g., DCF, Department of Health, DJJ) to acknowledge their criminal history record, even if such record has been sealed or expunged.

²³ FLA. CONST. art. I, s. 24(c).

B. SECTION DIRECTORY:

Section 1. Amends s. 985.04, F.S., relating to oaths; records; confidential information.

Section 2. Amends s. 943.053, F.S., relating to dissemination of criminal justice information; fees.

Section 3. Amends s. 496.4101, F.S., relating to licensure of professional solicitors and certain employees thereof.

Section 4. Amends s. 943.056, F.S., relating to criminal history records; access, review, and challenge.

Section 5. Provides a public necessity statement.

Section 6. Provides an effective date of upon becoming a law.

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:

FDLE reports that the Computerized Criminal History System requires an update to comply with the ruling or to implement the bill, which will require 891 hours of programming at \$85 dollars per hour for a total of \$75,877.²⁴ Additionally, the bill may require staff training related to the expansion of the public records exemption, which will likely result in an insignificant fiscal impact to FDLE. These costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.²⁵

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

²⁴ FDLE Analysis, p. 6.

²⁵ *Id.*

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, section 24(c) of the Florida 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; therefore, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida 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; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the Florida 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's expanded public records 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 provides that all criminal history information relating to juveniles, must be provided upon tender of fees and in the manner prescribed by rules of the FDLE.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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A bill to be entitled
An act relating to public records; amending s. 985.04,
F.S.; specifying that certain confidential information
obtained under chapter 985, F.S., relating to juvenile
justice, is exempt from public records requirements;
providing applicability; revising applicability of
public records requirements with respect to the arrest
records of certain juvenile offenders; providing for
future review and repeal of such applicability
provisions; amending s. 943.053, F.S.; providing an
exemption from public records requirements for
juvenile information compiled by the Criminal Justice
Information Program from intrastate sources; providing
exceptions; providing for future review and repeal of
the exemption; providing for release by the Department
of Law Enforcement of the criminal history information
of a juvenile which has been deemed confidential and
exempt under certain circumstances; amending ss.
496.4101 and 943.056, F.S.; conforming provisions to
changes made by the act; providing a statement of
public necessity; providing an effective date.

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

Section 1. Subsections (1) and (2) of section 985.04,
Florida Statutes, are amended to read:

27 985.04 Oaths; records; confidential information.—

28 (1) (a) Except as provided in subsections (2), (3), (6),
 29 and (7) and s. 943.053, all information obtained under this
 30 chapter in the discharge of official duty by any judge, any
 31 employee of the court, any authorized agent of the department,
 32 the Florida Commission on Offender Review, the Department of
 33 Corrections, the juvenile justice circuit boards, any law
 34 enforcement agent, or any licensed professional or licensed
 35 community agency representative participating in the assessment
 36 or treatment of a juvenile is confidential and exempt from s.
 37 119.07(1) and s. 24(a), Art. I of the State Constitution. This
 38 exemption applies to information obtained before, on, or after
 39 the effective date of this exemption.

40 (b) Such confidential and exempt information ~~and~~ may be
 41 disclosed only to the authorized personnel of the court, the
 42 department and its designees, the Department of Corrections, the
 43 Florida Commission on Offender Review, law enforcement agents,
 44 school superintendents and their designees, any licensed
 45 professional or licensed community agency representative
 46 participating in the assessment or treatment of a juvenile, and
 47 others entitled under this chapter to receive that information,
 48 or upon order of the court.

49 (c) Within each county, the sheriff, the chiefs of police,
 50 the district school superintendent, and the department shall
 51 enter into an interagency agreement for the purpose of sharing
 52 information about juvenile offenders among all parties. The

53 agreement must specify the conditions under which summary
 54 criminal history information is to be made available to
 55 appropriate school personnel, and the conditions under which
 56 school records are to be made available to appropriate
 57 department personnel. Such agreement shall require notification
 58 to any classroom teacher of assignment to the teacher's
 59 classroom of a juvenile who has been placed in a probation or
 60 commitment program for a felony offense. The agencies entering
 61 into such agreement must comply with s. 943.0525, and must
 62 maintain the confidentiality of information that is otherwise
 63 exempt from s. 119.07(1), as provided by law.

64 (2) Notwithstanding any other provisions of this chapter,
 65 the name, photograph, address, and crime or arrest report of a
 66 child:

67 (a) Taken into custody ~~if the child has been taken into~~
 68 ~~custody~~ by a law enforcement officer for a violation of law
 69 which, if committed by an adult, would be a felony;

70 (b) Charged with a violation of law which, if committed by
 71 an adult, would be a felony;

72 (c) Found to have committed an offense which, if committed
 73 by an adult, would be a felony; or

74 (d) Transferred to adult court pursuant to part X,

75 ~~(b) Found by a court to have committed three or more~~
 76 ~~violations of law which, if committed by an adult, would be~~
 77 ~~misdemeanors;~~

78 ~~(e) Transferred to the adult system under s. 985.557,~~

79 ~~indicted under s. 985.56, or waived under s. 985.556;~~
 80 ~~(d) Taken into custody by a law enforcement officer for a~~
 81 ~~violation of law subject to s. 985.557(2)(b) or (d); or~~
 82 ~~(e) Transferred to the adult system but sentenced to the~~
 83 ~~juvenile system under s. 985.565~~

84
 85 are ~~shall~~ not be considered confidential and exempt from s.
 86 119.07(1) solely because of the child's age.

87 (d) This subsection is subject to the Open Government
 88 Sunset Review Act in accordance with s. 119.15 and shall stand
 89 repealed on October 2, 2020, unless reviewed and saved from
 90 repeal through reenactment by the Legislature.

91 Section 2. Subsections (3), (8), (9), and (10) of section
 92 943.053, Florida Statutes, are amended to read:

93 943.053 Dissemination of criminal justice information;
 94 fees.—

95 (3)(a) Criminal history information, ~~including information~~
 96 relating to an adult ~~minors~~, compiled by the Criminal Justice
 97 Information Program from intrastate sources shall be available
 98 on a priority basis to criminal justice agencies for criminal
 99 justice purposes free of charge. After providing the program
 100 with all known personal identifying information, persons in the
 101 private sector and noncriminal justice agencies may be provided
 102 criminal history information upon tender of fees as established
 103 in this subsection and in the manner prescribed by rule of the
 104 Department of Law Enforcement. ~~Any access to criminal history~~

105 ~~information by the private sector or noncriminal justice~~
 106 ~~agencies as provided in this subsection shall be assessed~~
 107 ~~without regard to the quantity or category of criminal history~~
 108 ~~record information requested.~~

109 (b)1. Criminal history information relating to a juvenile
 110 compiled by the Criminal Justice Information Program from
 111 intrastate sources shall be released as provided in this
 112 section. Such information is confidential and exempt from s.
 113 119.07(1) and s. 24(a), Art. I of the State Constitution, unless
 114 such juvenile has been:

115 a. Taken into custody by a law enforcement officer for a
 116 violation of law which, if committed by an adult, would be a
 117 felony;

118 b. Charged with a violation of law which, if committed by
 119 an adult, would be a felony;

120 c. Found to have committed an offense which, if committed
 121 by an adult, would be a felony; or

122 d. Transferred to adult court pursuant to part X of
 123 chapter 985,

124
 125 and provided the criminal history record has not been expunged
 126 or sealed under any law applicable to such record.

127 2. This paragraph is subject to the Open Government Sunset
 128 Review Act in accordance with s. 119.15 and shall stand repealed
 129 on October 2, 2020, unless reviewed and saved from repeal
 130 through reenactment by the Legislature.

131 (c)1. Criminal history information relating to juveniles,
 132 including criminal history information consisting in whole or in
 133 part of information that is confidential and exempt under
 134 paragraph (b), shall be available to:

135 a. A criminal justice agency for criminal justice purposes
 136 on a priority basis and free of charge;

137 b. The person to whom the record relates, or his or her
 138 attorney;

139 c. The parent, guardian, or legal custodian of the person
 140 to whom the record relates, provided such person has not reached
 141 the age of majority, been emancipated by a court, or been
 142 legally married; or

143 d. An agency or entity specified in s. 943.0585(4) or s.
 144 943.059(4), for the purposes specified therein, and to any
 145 person within such agency or entity who has direct
 146 responsibility for employment, access authorization, or
 147 licensure decisions.

148 2. After providing the program with all known personal
 149 identifying information, the criminal history information
 150 relating to a juvenile which is not confidential and exempt
 151 under this subsection may be released to the private sector and
 152 noncriminal justice agencies not specified in s. 943.0585(4) or
 153 s. 943.059(4) in the same manner as provided in paragraph (a).
 154 Criminal history information relating to a juvenile which is not
 155 confidential and exempt under this subsection is the entire
 156 criminal history information relating to a juvenile who

157 | satisfies any of the criteria listed in sub-subparagraphs
158 | (b)1.a. through (b)1.d., except for any portion of such
159 | juvenile's criminal history record which has been expunged or
160 | sealed under any law applicable to such record.

161 | 3. All criminal history information relating to juveniles,
162 | other than that provided to criminal justice agencies for
163 | criminal justice purposes, shall be provided upon tender of fees
164 | as established in this subsection and in the manner prescribed
165 | by rule of the Department of Law Enforcement.

166 | (d) The fee for access to criminal history information by
167 | the private sector or a noncriminal justice agency shall be
168 | assessed without regard to the size or category of criminal
169 | history record information requested.

170 | (e)~~(b)~~ The fee per record for criminal history information
171 | provided pursuant to this subsection and s. 943.0542 is \$24 per
172 | name submitted, except that the fee for the guardian ad litem
173 | program and vendors of the Department of Children and Families,
174 | the Department of Juvenile Justice, and the Department of
175 | Elderly Affairs shall be \$8 for each name submitted; the fee for
176 | a state criminal history provided for application processing as
177 | required by law to be performed by the Department of Agriculture
178 | and Consumer Services shall be \$15 for each name submitted; and
179 | the fee for requests under s. 943.0542, which implements the
180 | National Child Protection Act, shall be \$18 for each volunteer
181 | name submitted. The state offices of the Public Defender shall
182 | not be assessed a fee for Florida criminal history information

183 or wanted person information.

184 (8) Notwithstanding ~~the provisions of~~ s. 943.0525, and any
 185 user agreements adopted pursuant thereto, and notwithstanding
 186 the confidentiality of sealed records as provided for in s.
 187 943.059 and juvenile records as provided for in paragraph
 188 (3)(b), the sheriff of any county that has contracted with a
 189 private entity to operate a county detention facility pursuant
 190 to ~~the provisions of~~ s. 951.062 shall provide that private
 191 entity, in a timely manner, copies of the Florida criminal
 192 history records for its inmates. The sheriff may assess a charge
 193 for the Florida criminal history records pursuant to ~~the~~
 194 ~~provisions of~~ chapter 119. Sealed records and confidential
 195 juvenile records received by the private entity under this
 196 section remain confidential and exempt from ~~the provisions of~~ s.
 197 119.07(1).

198 (9) Notwithstanding ~~the provisions of~~ s. 943.0525, and any
 199 user agreements adopted pursuant thereto, and notwithstanding
 200 the confidentiality of sealed records as provided for in s.
 201 943.059 and juvenile records as provided for in paragraph
 202 (3)(b), the Department of Corrections shall provide, in a timely
 203 manner, copies of the Florida criminal history records for
 204 inmates housed in a private state correctional facility to the
 205 private entity under contract to operate the facility pursuant
 206 to ~~the provisions of~~ s. 944.105. The department may assess a
 207 charge for the Florida criminal history records pursuant to ~~the~~
 208 ~~provisions of~~ chapter 119. Sealed records and confidential

209 | juvenile records received by the private entity under this
 210 | section remain confidential and exempt from ~~the provisions of~~ s.
 211 | 119.07(1).

212 | (10) Notwithstanding ~~the provisions of~~ s. 943.0525 and any
 213 | user agreements adopted pursuant thereto, and notwithstanding
 214 | the confidentiality of sealed records as provided for in s.
 215 | 943.059 or of juvenile records as provided for in paragraph
 216 | (3)(b), the Department of Juvenile Justice or any other state or
 217 | local criminal justice agency may provide copies of the Florida
 218 | criminal history records for juvenile offenders currently or
 219 | formerly detained or housed in a contracted juvenile assessment
 220 | center or detention facility or serviced in a contracted
 221 | treatment program and for employees or other individuals who
 222 | will have access to these facilities, only to the entity under
 223 | direct contract with the Department of Juvenile Justice to
 224 | operate these facilities or programs pursuant to ~~the provisions~~
 225 | ~~of~~ s. 985.688. The criminal justice agency providing such data
 226 | may assess a charge for the Florida criminal history records
 227 | pursuant to ~~the provisions of~~ chapter 119. Sealed records and
 228 | confidential juvenile records received by the private entity
 229 | under this section remain confidential and exempt from ~~the~~
 230 | ~~provisions of~~ s. 119.07(1). Information provided under this
 231 | section shall be used only for the criminal justice purpose for
 232 | which it was requested and may not be further disseminated.

233 | Section 3. Paragraph (b) of subsection (3) of section
 234 | 496.4101, Florida Statutes, is amended to read:

235 496.4101 Licensure of professional solicitors and certain
 236 employees thereof.-

237 (3)

238 (b) Fees for state and federal fingerprint processing and
 239 fingerprint retention fees shall be borne by the applicant. The
 240 state cost for fingerprint processing is that authorized in s.
 241 943.053(3)(e) ~~943.053(3)(b)~~ for records provided to persons or
 242 entities other than those specified as exceptions therein.

243 Section 4. Subsection (1) of section 943.056, Florida
 244 Statutes, is amended to read:

245 943.056 Criminal history records; access, review, and
 246 challenge.-

247 (1) For purposes of verification of the accuracy and
 248 completeness of a criminal history record, the Department of Law
 249 Enforcement shall provide, in the manner prescribed by rule,
 250 such record for review upon verification, by fingerprints, of
 251 the identity of the requesting person. If a minor, or the parent
 252 or legal guardian of a minor, requests a copy of the minor's
 253 criminal history record, the Department of Law Enforcement shall
 254 provide such copy, including any portions of the record which
 255 may be confidential under s. 943.053(3)(b), for review upon
 256 verification, by fingerprints, of the identity of the minor. The
 257 providing of such record shall not require the payment of any
 258 fees, except those provided for by federal regulations.

259 Section 5. The Legislature finds that it is a public
 260 necessity that the criminal history information of juveniles,

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261 who have not been adjudicated delinquent of a felony or who have
262 been found only to have committed misdemeanor offenses and
263 certain criminal history information relating to a juvenile
264 compiled by the Criminal Justice Information Program be made
265 confidential and exempt from s. 119.07(1), Florida Statutes, and
266 s. 24(a), Article I of the State Constitution under ss. 985.04
267 and 943.053, Florida Statutes. Many individuals who have either
268 completed their sanctions and received treatment or who were
269 never charged in the juvenile justice system have found it
270 difficult to obtain employment. The presence of an arrest or a
271 misdemeanor record in these individuals' juvenile past and
272 certain criminal history information relating to a juvenile
273 compiled by the Criminal Justice Information Program creates an
274 unnecessary barrier to becoming productive members of society,
275 thus frustrating the rehabilitative purpose of the juvenile
276 system. The Legislature therefore finds that it is in the best
277 interest of the public that individuals with juvenile
278 misdemeanor records are given the opportunity to become
279 contributing members of society. Therefore, prohibiting the
280 unfettered release of juvenile misdemeanor records and certain
281 criminal history information relating to a juvenile compiled by
282 the Criminal Justice Information Program is of greater
283 importance than any public benefit that may be derived from the
284 full disclosure and release of such arrest records and
285 information.

286 Section 6. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7107 PCB CRJS 15-06 Pub. Rec./Expunged and Sealed Criminal History Records
SPONSOR(S): Criminal Justice Subcommittee, Latvala
TIED BILLS: HB 7105 **IDEN./SIM. BILLS:** SB 1612

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	13 Y, 0 N	Cox	Cunningham
1) State Affairs Committee		Williamson	Camechis
2) Judiciary Committee			

SUMMARY ANALYSIS

Currently, every person seeking to expunge or seal a record must obtain a certificate of eligibility from the Florida Department of Law Enforcement (FDLE) and then petition a court to expunge or seal the record. When a court orders a criminal history record expunged, criminal justice agencies other than FDLE must physically destroy the record. Only FDLE may retain expunged records. When the court orders a record sealed, it is not destroyed, but access is limited to specified entities. Expunged and sealed records are confidential and exempt from public records requirements, and it is a first degree misdemeanor to divulge their existence.

House Bill 7105, which is tied to this bill, makes substantial changes to Florida's expunge and seal laws by creating nonjudicial processes for the expunction and sealing of criminal history records. The bill retains the court-ordered expunction process, but limits its application to the expunction of a record related to a case where a court issued a withhold of adjudication. House Bill 7105 also expands the types of records that may be expunged or sealed.

This bill makes records expunged or sealed pursuant to House Bill 7105 confidential and exempt from public records requirements. The bill provides that the exemptions repeal on October 2, 2020, 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 does not appear to have a fiscal impact on state or local government.

The bill takes effect on the same date as House Bill 7105 or similar legislation relating to expunging and sealing of criminal history records takes effect, 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 current public record exemptions; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

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 Art. I, s. 24 of the State Constitution, provided the exemption passes by a two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption (public necessity statement), and is no broader than necessary to accomplish its purpose.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:³

- 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 Open Government Sunset Review Act requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁴ The Act also requires specified questions to be considered during the review process.

Sealing and Expunging Criminal History Records

Sections 943.0585 and 943.059, F.S., set forth procedures for expunging and sealing criminal history records.⁵ Currently, every person seeking to expunge or seal a record must obtain a certificate of eligibility from the Florida Department of Law Enforcement (FDLE) and then petition a court to expunge or seal the record.⁶ When a court orders a criminal history record to be expunged, criminal justice agencies other than FDLE must physically destroy the record.⁷ Only FDLE may retain expunged records.⁸ When the court orders a record to be sealed, it is not destroyed, but access is limited to specified entities.⁹

¹ FLA. CONST. art. I, s. 24(c).

² See s. 119.15, F.S.

³ s. 119.15(6)(b), F.S.

⁴ s. 119.15(3), F.S.

⁵ A "criminal history record," for this purpose, is any nonjudicial record maintained by a criminal justice agency containing criminal history information. "Criminal history information" means information collected by criminal justice agencies on persons, which information consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof. The term does not include identification information, such as biometric records, if the information does not indicate involvement of the person in the criminal justice system. s. 943.045(5) and (6), F.S.

⁶ ss. 943.0585 and 943.059, F.S.

⁷ s. 943.0585(4), F.S.

⁸ *Id.*

⁹ s. 943.059(4), F.S.

Records that are expunged under s. 943.0585, F.S., are confidential and exempt from public records requirements and are not available to any person or entity except as provided by a court order.¹⁰ In contrast, records that are sealed under s. 943.059, F.S., are also confidential and exempt from public records requirements, but are available to specified entities.¹¹

Persons who have had their record expunged or sealed may lawfully deny or fail to acknowledge arrests in the record, except when applying for certain types of employment, petitioning the court for an expunge or seal, or when they are a defendant in a criminal prosecution.¹²

Currently, a person may only expunge or seal one record, may not expunge or seal any record that resulted in a conviction, and may not expunge or seal a record if he or she has previous convictions. Additionally, only the court can order a record to be expunged or sealed.

House Bill 7105

House Bill 7105, which is tied to this bill, makes substantial changes to Florida's expunge and seal laws by creating nonjudicial processes for the expunction and sealing of criminal history records. The bill retains the court-ordered expunction process, but limits its application to the expunction of a record related to a case where a court issued a withhold of adjudication.

House Bill 7105 expands the types of records that may be expunged or sealed by:

- Creating s. 943.0584, F.S., which permits a person to obtain an unlimited number of "nonjudicial expunctions" for records that resulted in a no-information, a dismissal, a dismissal based on the lawful self-defense exception, or a not-guilty verdict, regardless of whether the person has previous misdemeanor or felony convictions;
- Amending ss. 943.0585 and 943.059, F.S., to permit a person to obtain one court-ordered expunction or "nonjudicial sealing" of a record that resulted in a withhold of adjudication, regardless of whether the person has a previous misdemeanor conviction; and
- Amending s. 943.059, F.S., to permit a person to obtain one "nonjudicial sealing" of a record that resulted in a conviction for a specified "nonviolent misdemeanor," regardless of whether the person has a previous misdemeanor conviction.

Effect of the Bill

The bill makes records expunged or sealed pursuant to House Bill 7105 confidential and exempt¹³ from public records requirements. The bill provides that the exemptions repeal on October 2, 2020, 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. 943.0584, F.S., relating to nonjudicial expunction of criminal history records.

Section 2. Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.

Section 3. Amends s. 943.059, F.S., relating to nonjudicial sealing of criminal history records.

¹⁰ s. 943.0585(4)(c), F.S.

¹¹ s. 943.059(4)(c), F.S.

¹² ss. 943.0585(4)(a) and 943.059(4)(a), F.S.

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

Section 4. Provides a public necessity statement.

Section 5. Provides an effective date to be the same as that of House Bill 7105 or similar legislation, 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:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take 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, section 24(c) of the Florida 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 public record exemptions; therefore, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands public record exemptions; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the Florida 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 public record exemptions do 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 the need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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A bill to be entitled

An act relating to public records; amending s. 943.0584, F.S., relating to nonjudicial expunction of criminal history records; providing an exemption from public records requirements for specified records that have been approved for nonjudicial expunction; amending s. 943.0585, F.S., relating to court-ordered expunction of criminal history records; providing an exemption from public records requirements for criminal history records related to a withhold of adjudication that have been expunged; amending s. 943.059, F.S., relating to nonjudicial sealing of criminal history records; providing an exemption from public records requirements for record related to a withhold of adjudication or nonviolent misdemeanor conviction that has been approved for a nonjudicial sealing; providing for future legislative review and repeal of the exemptions; 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 (6) of section 943.0584, Florida Statutes, as created by HB 7105, is amended to read:

943.0584 Nonjudicial expunction of criminal history

27 records.—

28 (6) EFFECT OF NONJUDICIAL EXPUNCTION.—

29 (a) A criminal history record of an adult or a minor
 30 described in subsection (2) which is approved for nonjudicial
 31 expunction by the department pursuant to this section is
 32 confidential and exempt from the provisions of s. 119.07(1) and
 33 s. 24(a), Art. I of the State Constitution.

34 (b) A confidential and exempt criminal history record
 35 expunged under this section shall have the same effect, and such
 36 record may be disclosed by the department in the same manner, as
 37 a record expunged under s. 943.0585.

38 (c) This subsection is subject to the Open Government
 39 Sunset Review Act in accordance with s. 119.15 and shall stand
 40 repealed on October 2, 2020, unless reviewed and saved from
 41 repeal through reenactment by the Legislature.

42 Section 2. Paragraphs (b), (c), and (d) of subsection (7)
 43 of section 943.0585, Florida Statutes, as amended by HB 7105,
 44 are redesignated as paragraphs (c), (d), and (f), respectively,
 45 new paragraphs (b) and (e) are added to that subsection, and
 46 present paragraph (c) is amended, to read:

47 943.0585 Court-ordered expunction of criminal history
 48 records.—

49 (7) EFFECT OF EXPUNCTION.—

50 (b)1. A criminal history record that is ordered expunged
 51 under this section and that is retained by the department is
 52 confidential and exempt from the provisions of s. 119.07(1) and

53 | s. 24(a), Art. I of the State Constitution and is not available
 54 | to any person or entity except upon order of a court of
 55 | competent jurisdiction. A criminal justice agency may retain a
 56 | notation indicating compliance with an order to expunge.

57 | 2. This paragraph is subject to the Open Government Sunset
 58 | Review Act in accordance with s. 119.15 and shall stand repealed
 59 | on October 2, 2020, unless reviewed and saved from repeal
 60 | through reenactment by the Legislature.

61 | (d)~~(e)~~ Subject to the exceptions in paragraph (c) ~~(b)~~, a
 62 | person who has been granted an expunction under this section, s.
 63 | 943.0584, former s. 893.14, former s. 901.33, or former s.
 64 | 943.058 may not be held under any law of this state to commit
 65 | perjury or to be otherwise liable for giving a false statement
 66 | by reason of such person's failure to recite or acknowledge an
 67 | expunged criminal history record.

68 | (e)1. Information relating to the existence of an expunged
 69 | criminal history record which is provided in accordance with
 70 | paragraph (c) is confidential and exempt from the provisions of
 71 | s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

72 | 2. The existence of a confidential and exempt criminal
 73 | history record expunged under this section may be disclosed by
 74 | the department to the entities set forth in subparagraphs (c)1.,
 75 | 4., 5., 6., 7., and 8. for their respective licensing, access
 76 | authorization, and employment purposes, and to criminal justice
 77 | agencies for their respective criminal justice purposes. It is
 78 | unlawful for any employee of an entity set forth in

79 subparagraphs (c)1., 4., 5., 6., 7., or 8. to disclose
 80 information relating to the existence of an expunged criminal
 81 history record of a person seeking employment, access
 82 authorization, or licensure with such entity or contractor,
 83 except to the person to whom the criminal history record relates
 84 or to persons having direct responsibility for employment,
 85 access authorization, or licensure decisions.

86 3. A person who violates this paragraph commits a
 87 misdemeanor of the first degree, punishable as provided in s.
 88 775.082 or s. 775.083.

89 4. This paragraph is subject to the Open Government Sunset
 90 Review Act in accordance with s. 119.15 and shall stand repealed
 91 on October 2, 2020, unless reviewed and saved from repeal
 92 through reenactment by the Legislature.

93 Section 3. Paragraphs (a), (b), and (c) of subsection (7)
 94 of section 943.059, Florida Statutes, as amended by HB 7105, are
 95 redesignated as paragraphs (b), (c), and (e), respectively, new
 96 paragraphs (a) and (d) are added to that subsection, and present
 97 paragraph (b) is amended, to read:

98 943.059 Nonjudicial sealing of criminal history records.—

99 (7) EFFECT OF SEALING.—

100 (a)1. Any criminal history record of an adult or a minor
 101 described in paragraph (2)(a) which is approved for nonjudicial
 102 sealing by the department pursuant to this section is
 103 confidential and exempt from the provisions of s. 119.07(1) and
 104 s. 24(a), Art. I of the State Constitution.

105 | 2. A confidential and exempt criminal history record may
 106 | be disclosed by the department to:

107 | a. The person who is the subject of the record or to the
 108 | subject's attorney.

109 | b. To a criminal justice agency in the furtherance of its
 110 | lawful duties and responsibilities, which include conducting a
 111 | criminal history background check for approval of firearms
 112 | purchases or transfers as authorized by state or federal law.

113 | c. To a judge in the state courts system for the purpose
 114 | of assisting in case-related decisionmaking responsibilities as
 115 | set forth in s. 943.053(5).

116 | d. To those entities set forth in subparagraphs (c)1., 4.,
 117 | 5., 6., 8., 9., and 10. for their respective licensing, access
 118 | authorization, and employment purposes.

119 | 3. This paragraph is subject to the Open Government Sunset
 120 | Review Act in accordance with s. 119.15 and shall stand repealed
 121 | on October 2, 2020, unless reviewed and saved from repeal
 122 | through reenactment by the Legislature.

123 | (c)(b) Subject to the exceptions in paragraph (b) ~~(a)~~, a
 124 | person who has been granted a sealing under this section, former
 125 | s. 893.14, former s. 901.33, or former s. 943.058 may not be
 126 | held under any provision of law of this state to commit perjury
 127 | or to be otherwise liable for giving a false statement by reason
 128 | of such person's failure to recite or acknowledge a sealed
 129 | criminal history record.

130 | (d) Information relating to the existence of a sealed

131 | criminal history record which is provided in accordance with
 132 | paragraph (b) is confidential and exempt from the provisions of
 133 | s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
 134 | except that the department shall disclose the sealed criminal
 135 | history record to the entities set forth in subparagraphs (b)1.,
 136 | 4., 5., 6., 8., 9., and 10. for their respective licensing,
 137 | access authorization, and employment purposes, and to criminal
 138 | justice agencies for their respective criminal justice purposes.
 139 | It is unlawful for any employee of an entity set forth in
 140 | subparagraphs (b)1., 4., 5., 6., 8., 9., or 10. to disclose
 141 | information relating to the existence of a sealed criminal
 142 | history record of a person seeking employment, access
 143 | authorization, or licensure with such entity or contractor,
 144 | except to the person to whom the criminal history record relates
 145 | or to persons having direct responsibility for employment,
 146 | access authorization, or licensure decisions. A person who
 147 | violates this paragraph commits a misdemeanor of the first
 148 | degree, punishable as provided in s. 775.082 or s. 775.083.


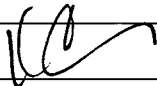
149 | Section 4. The Legislature finds that it is a public
 150 | necessity that the criminal history records of an adult or minor
 151 | that have been expunged or sealed pursuant to s. 943.0584, s.
 152 | 943.0585, or s. 943.059, Florida Statutes, be made confidential
 153 | and exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
 154 | Article I of the State Constitution. Many people whose
 155 | prosecutions have been abandoned, were found not guilty
 156 | subsequent to a jury trial, or who have completed any sanctions

157 | imposed by the court in the criminal or juvenile justice system
 158 | have found it difficult to obtain employment. The presence of a
 159 | criminal history record in these individuals' past creates an
 160 | unnecessary barrier to becoming productive members of society
 161 | and can jeopardize individuals' ability to achieve a safe
 162 | livelihood. The Legislature therefore finds that it is in the
 163 | best interest of the public that persons are given the
 164 | opportunity to become contributing members of society.

165 | Section 5. This act shall take effect on the same date
 166 | that HB 7105 or similar legislation relating to expunging and
 167 | sealing of criminal history records takes effect, if such
 168 | legislation is adopted in the same legislative session or an
 169 | extension thereof and becomes a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7129 PCB GVOPS 15-08 OGSR/Child Abuse Death Review Committees
SPONSOR(S): Government Operations Subcommittee, Fant
TIED BILLS: **IDEN./SIM. BILLS:** SB 7032

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

SUMMARY ANALYSIS

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

Current law establishes the State Child Abuse Death Review Committee and local child abuse death review committees within the Department of Health. The committees must review the facts and circumstances of all deaths of children from birth through 18 that occurred in the state and are reported to the central abuse hotline of the Department of Children and Families. The state committee must prepare an annual statistical report on the incidence and causes of death resulting from child abuse in the state.

Current law provides a public record exemption for the State Child Abuse Death Review Committee and local child abuse death review committees. The public record exemption protects any information held by the committees that reveals the identity of the surviving siblings, family members, or others living in the home of the deceased child. Information made confidential or exempt that is obtained by the committees must retain its confidential or exempt status. Current law also provides a public meeting exemption for the committees. Specifically, those portions of a meeting of a committee that discuss confidential and exempt information are exempt from the public meeting requirements. The closed meeting must be recorded, and the recording must be maintained by the committee. The recordings of a closed portion of a meeting are exempt from public record requirements.

The bill reenacts the public record and public meeting exemptions for the state and local committees. It expands the current exemptions to protect the name of the deceased child whose death has been reported to the central abuse hotline, but determined not to be the result of abuse or neglect, as well as the identity of the surviving siblings, family members, and others living in the home of the deceased child. The bill narrows the current exemption when the death has occurred as the result of verified abuse or neglect to only protect the identity of the surviving siblings. As a result, the bill extends the repeal date from October 2, 2015, to October 2, 2020. It also provides a public necessity statement as required by the State Constitution.

The bill appears to have a minimal fiscal impact on the state, but does not appear to have a fiscal impact on local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

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

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

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

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

Child Abuse Death Review Committees

Current law establishes the State Child Abuse Death Review Committee (state committee) and local child abuse death review committees (local committees) within the Department of Health (DOH).⁴ The state and local committees must review the facts and circumstances of all deaths of children, from birth through age 18, that occur in Florida and are reported to the central abuse hotline of the Department of Children and Families (DCF).⁵ Prior to 2014, the state and local committees reviewed the deaths of children that were the result of verified child abuse or neglect, rather than all child deaths that were reported to the hotline.⁶

The state committee must prepare an annual statistical report on the incidence and causes of death resulting from child abuse in the state during the prior calendar year. The report must include recommendations for state and local action, including specific policy, procedural, regulatory, or statutory changes, and any other recommended preventive action.

¹ Section 119.15, F.S.

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

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

⁴ Section 383.402, F.S.

⁵ Section 383.402(1), F.S.

⁶ In 2014, the Legislature expanded the jurisdiction of the state and local committees. Rather than solely reviewing deaths that have resulted from verified abuse or neglect, the committees must now review all deaths that have been reported to the child abuse hotline. Chapter 2014-224, L.O.F.

⁷ Section 383.402(3)(c), F.S.

The state and local committees have broad access to any information related to the deceased child or the child's family that is necessary to carry out their duties, including:⁸

- Medical, dental, or mental health treatment records;
- Records in the possession of a state agency or political subdivision; and
- Records of law enforcement that are not part of an active investigation.

Records typically obtained by the state and local committees include, among others: death and birth certificates; medical examiner reports; law enforcement reports; criminal history reports; first responder reports; physician, hospital, or substance abuse and mental health records; and the DCF case file.⁹ In order to protect the rights of the child and the child's parents or other persons responsible for the child's welfare, all records held by DCF concerning reports of child abuse are confidential and exempt¹⁰ from public records requirements.¹¹ However, if the child's death was found to be the result of verified abuse or neglect, the case file is no longer protected in its entirety.¹²

Public Record and Public Meeting Exemptions under Review

Current law provides public record and public meeting exemptions for the state and local committees.¹³

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 the state committee or a local committee is confidential and exempt from public records requirements.¹⁴ In addition, confidential and exempt information obtained by the state or a local committee retains its confidential or exempt status.¹⁵

Portions of meetings of the state or local committees where confidential or exempt information is discussed is exempt from public meetings requirements.¹⁶ The committee must record the closed portion of the meeting and maintain the recording.¹⁷ The recording of the closed portion of the meeting is exempt from public records requirements.¹⁸

The state and local committees may share with each other any relevant confidential or exempt information regarding case reviews.¹⁹ Any person who knowingly or willfully violates the public record exemption commits a misdemeanor of the first degree.²⁰

⁸ Section 383.402(8) & (9), F.S.

⁹ Email from Bryan Wendel, Office of Legislative Planning, Florida Dept. of Health, (August 25, 2014) (on file with the Government Operations Subcommittee).

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 statute. See Attorney General Opinion 85-62 (August 1, 1985).

¹¹ Section 39.202(1), F.S.

¹² Section 39.202(2)(o), F.S. If the death is the result of verified abuse or neglect, the information identifying the person reporting the abuse, abandonment, or neglect must not be released. In addition, any information otherwise made confidential or exempt by law must not be released.

¹³ The public record and public meeting exemptions for the state and local committees were first enacted in 1999. Chapter 1999-210, L.O.F.; codified as s. 383.410, F.S. The exemptions were repealed in 2004 as a result of the automatic repeal provisions in the Act. The exemptions were enacted again in 2005, and renewed in 2010 with changes. Chapters 2005-190 and 2010-40, L.O.F. In 2010, the Legislature amended the provisions to require the committees to record the closed meetings, and created a public record exemption for the recordings of those meetings. *Id.*

¹⁴ Section 383.412(2)(a), F.S.

¹⁵ Section 383.412(2)(b), F.S.

¹⁶ Section 383.412(3)(a), F.S.

¹⁷ *Id.*

¹⁸ Section 383.412(3)(b), F.S.

¹⁹ Section 383.412(4), F.S.

Pursuant to the Open Government Sunset Review Act, the public record and public meeting exemptions will repeal on October 2, 2015, unless reenacted by the Legislature.²¹

During the 2014 interim, subcommittee staff met multiple times with staff from DOH and DCF as part of the Open Government Sunset Review process. As part of the discussions with DOH and DCF, staff from the departments were asked if they recommended that the Legislature repeal the public record and public meeting exemptions under review, reenact the exemptions, or reenact the exemptions with changes. Both agencies recommended reenacting the exemptions with changes to ensure protection of information identifying a deceased child whose death has been reported to the central abuse hotline but determined not to be the result of abuse or neglect. This recommended change would align the public record exemption for the state and local committees with the public record exemption afforded DCF.

Effect of the Bill

The bill reenacts, with changes, the public record and public meeting exemptions for the state and local committees. The bill:

- Narrows the current public record exemption for identifying information related to cases of verified abuse and neglect to only protect information that identifies the surviving siblings of a deceased child whose death was the result of verified abuse or neglect.
- Expands the public record exemption to include information held by the state and local committees that reveals the identity of a deceased child whose death has been reported to the central abuse hotline but determined not to be the result of abuse or neglect, as well as the identity of the surviving siblings, family members, and others living in the home of the deceased child.
- Expands the public meeting exemption to include those portions of meetings of the state committee or local committee wherein confidential and exempt information is discussed regarding a deceased child whose death is reported to the central abuse hotline but determined not to be the result of abuse or neglect.

The bill authorizes the state and local committees to release the confidential and exempt information to a governmental agency in the furtherance of its official duties and responsibilities, or a person or entity authorized by DOH to use such information for bona fide research or statistical purposes. A person or entity who is authorized to obtain such information for research or statistical purposes must enter into a privacy and security agreement with DOH, comply with all laws and rules governing the use of the information, and treat any identifying information as confidential.

Because the bill expands the current exemptions to protect the name and other specified information relating to a deceased child whose death has been reported to the central abuse hotline but determined not to be the result of abuse or neglect, the bill extends the repeal date from October 2, 2015, to October 2, 2020. It also provides a public necessity statement as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1 amends s. 383.412, F.S., relating to public record and public meeting exemptions for child abuse death review committees.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of upon becoming a law.

²⁰ Section 383.412(5), F.S. A misdemeanor of the first degree is punishable by imprisonment not to exceed one year or a fine not to exceed \$1,000.

²¹ Section 383.412(6), F.S.

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 may create a minimal fiscal impact on DOH because staff responsible for complying with the public records requests could require training related to the expansion of the public record exemption. The costs, however, would be absorbed as they are part of the day-to-day responsibilities of the department. In addition, there may be minimal fiscal costs associated with the requirement to record the closed portion of a state committee or local committee meeting during which confidential and exempt information is discussed.

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 expands the public record and public meeting exemptions; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands the public record and public meeting exemptions; 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 public record exemption to protect information held by state and local committees that identifies the name of a deceased child and other specified information whose death has been reported to the central abuse hotline, but determined not to be the result of verified abuse or neglect. 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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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A bill to be entitled
 An act relating to a review under the Open Government
 Sunset Review Act; amending s. 383.412, F.S., relating
 to an exemption from public records and public meeting
 requirements for child abuse death review committees;
 removing the public records exemption for information
 held by the State Child Abuse Death Review Committee
 or a local committee that reveals the identity of
 family members or others living in the home of a child
 whose death occurred as a result of a verified report
 of abuse or neglect; expanding the public records
 exemption to include information held by the State
 Child Abuse Death Review Committee or a local
 committee that identifies a deceased child whose death
 is not the result of abuse or neglect and to include
 the identity of the surviving siblings, family
 members, or others living in the home of such deceased
 child; reenacting the public meeting exemption to
 incorporate changes made by the act to the public
 records exemption; authorizing release of the
 confidential and exempt information to specified
 persons under certain circumstances; providing for
 future legislative review and repeal of the
 exemptions; providing a statement of public necessity;
 providing an effective date.

HB 7129

2015

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

28

29 Section 1. Section 383.412, Florida Statutes, is amended
30 to read:

31 383.412 Public records and public meetings exemptions.—

32 (1) For purposes of this section, the term "local
33 committee" means a local child abuse death review committee or a
34 panel or committee assembled by the State Child Abuse Death
35 Review Committee or a local child abuse death review committee
36 pursuant to s. 383.402.

37 (2)(a) Any information held by the State Child Abuse Death
38 Review Committee or a local committee that reveals the identity
39 of the surviving siblings of a deceased child whose death
40 occurred as the result of a verified report of abuse or neglect
41 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.
42 I of the State Constitution.

43 (b) Any information held by the State Child Abuse Death
44 Review Committee or a local committee that reveals the identity
45 of a deceased child whose death is reported to the central abuse
46 hotline but determined not to be the result of abuse or neglect,
47 or the identity of the surviving siblings, family members, or
48 others living in the home of such a deceased child, who is the
49 subject of review by and which information is held by the State
50 Child Abuse Death Review Committee or a local committee is
51 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
52 of the State Constitution.

53 ~~(c)(b)~~ Information made confidential or exempt from s.
 54 119.07(1) and s. 24(a), Art. I of the State Constitution that is
 55 obtained by the State Child Abuse Death Review Committee or a
 56 local committee shall retain its confidential or exempt status.

57 (3) (a) Portions of meetings of the State Child Abuse Death
 58 Review Committee or a local committee at which information made
 59 confidential and exempt pursuant to subsection (2) is discussed
 60 are exempt from s. 286.011 and s. 24(b), Art. I of the State
 61 Constitution. The closed portion of a meeting must be recorded,
 62 and no portion of the closed meeting may be off the record. The
 63 recording shall be maintained by the State Child Abuse Death
 64 Review Committee or a local committee.

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

68 (4) The State Child Abuse Death Review Committee and local
 69 committees may share information made confidential and exempt by
 70 this section:

71 (a) With each other;

72 (b) With a governmental agency in the furtherance of its
 73 official duties and responsibilities; or

74 (c) With any person or entity authorized by the Department
 75 of Health to use such relevant information for bona fide
 76 research or statistical purposes. A person or entity who is
 77 authorized to obtain such relevant information for research or
 78 statistical purposes must enter into a privacy and security

79 agreement with the Department of Health and comply with all laws
 80 and rules governing the use of such records and information for
 81 research or statistical purposes. Anything identifying the
 82 subjects of such relevant information must be treated as
 83 confidential by the person or entity and may not be released in
 84 any form ~~any relevant information regarding case reviews~~
 85 ~~involving child death, which information is made confidential~~
 86 ~~and exempt by this section.~~

87 (5) Any person who knowingly or willfully makes public or
 88 discloses to any unauthorized person any information made
 89 confidential and exempt under this section commits a misdemeanor
 90 of the first degree, punishable as provided in s. 775.082 or s.
 91 775.083.

92 (6) This section is subject to the Open Government Sunset
 93 Review Act in accordance with s. 119.15~~7~~ and shall stand
 94 repealed on October 2, 2020 ~~2015~~, unless reviewed and saved from
 95 repeal through reenactment by the Legislature.

96 Section 2. The Legislature finds that it is a public
 97 necessity that any information held by the State Child Abuse
 98 Death Review Committee or a local committee as defined in s.
 99 383.412, Florida Statutes, that reveals the identity of a
 100 deceased child whose death is reported to the central abuse
 101 hotline but determined not to be the result of abuse or neglect,
 102 or the identity of the surviving siblings, family members, or
 103 others living in the home of such deceased child, be made
 104 confidential and exempt from public records requirements. The

105 | Legislature further finds that it is a public necessity that
 106 | these committees have the authority to maintain the confidential
 107 | or exempt status of records otherwise confidential or exempt
 108 | which are provided to them regarding such children. The
 109 | Legislature also finds that it is a public necessity that
 110 | portions of meetings of the State Child Abuse Death Review
 111 | Committee or a local committee wherein the confidential and
 112 | exempt information is discussed be made exempt from public
 113 | meeting requirements, and that the recordings of closed portions
 114 | of such meetings be made exempt from public records
 115 | requirements. In 1999, the Legislature authorized the creation
 116 | of the committees to review the facts and circumstances
 117 | surrounding the deaths of children in this state, which occur as
 118 | the result of reported child abuse or neglect, and to prepare an
 119 | annual statistical report on the incidence and causes of death
 120 | resulting from child abuse. Since 2004, cases analyzed by the
 121 | committees have been limited to reports of verified abuse or
 122 | neglect. The Legislature made identifying information of the
 123 | surviving siblings, family members, or others living in the home
 124 | of the child who died as a result of verified abuse or neglect
 125 | confidential and exempt from public records requirements to
 126 | ensure that cases could be vetted thoroughly through open
 127 | communication without risk of disclosure of the identifying
 128 | information. In 2014, the Legislature expanded the scope of
 129 | cases reviewed by the committees to include all deaths reported
 130 | to the child abuse hotline, regardless of whether the deaths

131 were the result of verified abuse or neglect, and this act
132 expands the public records and public meeting exemptions
133 accordingly. If the identifying information related to these
134 reports were to be disclosed, it could result in emotional or
135 reputational harm to the family and caregivers and an
136 unnecessary invasion of their privacy and the privacy of the
137 deceased child. In addition, the committees must be able to
138 maintain the otherwise confidential or exempt status of records
139 that are provided to them to ensure continued access to such
140 records and the opportunity for a thorough and open review of
141 cases. Therefore, the Legislature finds that the harm that may
142 result from the release of such information through a public
143 records request or a public meeting substantially outweighs any
144 minimal public benefit that may be derived from its disclosure.

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