State Affairs Committee

Wednesday, January 13, 2016
3:30 PM
Morris Hall

MEETING PACKET

Steve Crisafulli
Speaker

Matt Caldwell
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

State Affairs Committee

Start Date and Time:	Wednesday, January 13, 2016 03:30 pm
End Date and Time:	Wednesday, January 13, 2016 05:00 pm
Location:	Morris Hall (17 HOB)
Duration:	1.50 hrs

Consideration of the following bill(s):

CS/HB 59 Agritourism by Local Government Affairs Subcommittee, Combee, Raburn
CS/HM 69 Haitian American Heritage Month by Local & Federal Affairs Committee, Watson, B.
CS/HB 181 Public Works Projects by Local Government Affairs Subcommittee, Van Zant, Tobia
CS/CS/HB 183 Administrative Procedures by Government Operations Appropriations Subcommittee, Rulemaking Oversight & Repeal Subcommittee, Adkins
HM 417 Article V Convention for Congressional Term Limits by Metz
HB 541 Addresses of Legal Residence by Spano
HB 7009 Local Government Capital Recovery by Finance & Tax Committee, Cortes, B.
HB 7033 OGSR/Emergency Notification Information by Government Operations Subcommittee, Taylor
HB 7035 OGSR/Office of Financial Regulation by Government Operations Subcommittee, Fant
HB 7037 OGSR/Local Government Audit and Investigative Reports by Government Operations Subcommittee, Ingoglia

NOTICE FINALIZED on 01/11/2016 3:14PM by Love.John

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 59 Agritourism
SPONSOR(S): Local Government Affairs Subcommittee; Combee and Raburn
TIED BILLS: **IDEN./SIM. BILLS:** SB 304

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

SUMMARY ANALYSIS

An "agritourism activity" is any agricultural related activity consistent with a bona fide farm or ranch or in a working forest that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, or harvest-your-own activities and attractions. Agritourism is one of the many methods farmers use to diversify and increase their income.

In 2013, the Florida Legislature passed SB 1106, which prohibited local governments from adopting any ordinances, regulations, rules, or policies that prohibit, restrict, regulate, or otherwise limit an agritourism activity on land that has been classified as agricultural land under Florida's greenbelt law. However, some local governments continue to enforce such ordinances, etc., that were adopted prior to the passage of SB 1106.

The bill:

- Declares the intent of the Legislature is to promote agritourism as a way to support bona fide agricultural production;
- Prohibits local governments from enforcing any local ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an agritourism activity on land classified as agricultural land under Florida's greenbelt law;
- Adds "civic" and "ceremonial" activities to the definition of "agritourism activity;" and
- Clarifies that using agricultural land for agritourism does not limit the land's greenbelt status as long as the land remains used primarily for bona fide agricultural purposes.

The bill may have a negative insignificant fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

An "agritourism activity" is any agricultural related activity consistent with a bona fide farm or ranch or in a working forest that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, or harvest-your-own activities and attractions.[1] In order to continue farming, operators of small and medium-sized farms find ways to diversify and expand their incomes, either through new enterprises on the farm or off-farm employment.[2] Agritourism is one of the many methods farmers use to diversify and expand their income.

Agritourism has an extensive history in the United States. Farm-related recreation and tourism can be traced back to the late 1800s, when families visited farming relatives in an attempt to escape from the city's summer heat. Visiting the country became even more popular with the widespread use of the automobile in the 1920s. Rural recreation gained interest again in the 1930s and 1940s by people seeking an escape from the stresses of the Great Depression and World War II. These demands for rural recreation led to widespread interest in horseback riding, farm petting zoos, and farm nostalgia during the 1960s and 1970s. Farm vacations, bed and breakfasts, and commercial farm tours were popularized in the 1980s and 1990s.[3]

Today, agritourism may include farm tours or farm stays, fishing, hunting, festivals, historical recreations, workshops or educational activities, wildlife study, horseback riding, cannery tours, cooking classes, wine tastings, barn dances, and harvest-your-own activities. The use of these resources can have a positive effect on both the agricultural enterprise and the surrounding community. Not only does this tourism have the potential to add value to the operations themselves, but it also creates awareness about the importance of agriculture.

Twenty-eight states, including Florida, have adopted legislation to promote agritourism.[4] In 2007, the Florida Legislature passed HB 1427, authorizing the Department of Agriculture and Consumer Services to provide marketing advice, technical expertise, promotional support, and product development related to agritourism to assist the following entities in their agritourism initiatives:

- Enterprise Florida, Inc.;
- Convention and visitor bureaus;
- Tourist development councils;
- Economic development organizations; and
- Local governments.[5]

In addition, HB 1427 provided that conducting agritourism activities on a bona fide farm or on lands classified as agricultural pursuant to s. 193.461, F.S., would not result in the property owner having his or her agricultural land classification limited, restricted, or divested.[6] Section 193.461, F.S., also known as Florida's "greenbelt law," allows properties classified as a bona fide agricultural operation to be

[1] Section 570.86(1), F.S.
[2] Wendy Francesconi and Taylor Stein, *Expanding Florida's Farming Business to Incorporate Tourism*, University of Florida Institute of Food and Agricultural Sciences available at: http://edis.ifas.ufl.edu/fr242 (last visited September 15, 2015).
[3] Considering an Agritainment Enterprise in Tennessee (Agricultural Extension Service, The University of Tennessee, PB 1648) available at: http://trace.tennessee.edu/utk_agexmkt/12/ (last visited September 15, 2015).
[4] A compilation of agritourism statutes can be found at: National AgLaw Center Research Publication, *State Agritourism Statutes*, http://nationalaglawcenter.org/state-compilations/agritourism/ (last visited October 14, 2015).
[5] Chapter 2007-244, Laws of Fla., codified as s. 570.85, F.S.
[6] Section 570.87(1), F.S.

taxed according to the "use" value of the agricultural operation, rather than the development value. Generally, tax assessments for qualifying lands are lower than tax assessments for other uses.

In 2013, the Florida Legislature passed SB 1106, codified in part as s. 570.85, F.S.[7] The statute prohibits a local government from adopting ordinances, regulations, rules, or policies that prohibit, restrict, regulate, or otherwise limit an agritourism activity on land that has been classified as agricultural land under Florida's greenbelt law.[8] The statute also provides limited liability protection for landowners conducting agritourism activities on their property.[9]

While local governments may not adopt ordinances, regulations, rules, or policies that limit agritourism activities on land classified as agricultural land under Florida's greenbelt law, some local governments continue to enforce such ordinances, etc., that were adopted prior to the passage of SB 1106 in 2013.

Effect of Proposed Changes

The bill amends s. 570.85, F.S., declaring that it is the Legislature's intent to promote agritourism as a way to support for bona fide agricultural production by providing a secondary stream of revenue and by educating the public about the agricultural industry. The bill also prohibit local governments from enforcing any local ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an agritourism activity on land classified as agricultural land under Florida's greenbelt law.

The bill amends s. 570.86, F.S., to add "civic" and "ceremonial" activities and attractions to the definition of agritourism activity. Thus, events such as weddings and charitable fundraisers held on a farm may be considered agritourism activities.

Lastly, the bill amends s. 570.87, F.S., to clarify that the use of agricultural land for agritourism does not change the land's classification under the greenbelt law, as long as the primary use of the land remains used for bona fide agricultural purposes.

B. SECTION DIRECTORY:

Section 1. Amends s. 570.85, F.S., relating to regulation of agritourism activities.

Section 2. Amends s. 570.86, F.S., relating to definitions pertaining to agritourism.

Section 3. Amends s. 570.87, F.S., relating to agritourism participation impact on land classification.

Section 4. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

[7] Chapter 2013-179, Laws of Fla.
[8] Section 570.85, F.S.
[9] Chapter 2013-179, Laws of Fla.; codified as s. 570.88, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Committee met on December 4, 2015, and estimated that the bill may have an insignificant negative fiscal impact on local governments by prohibiting them from enforcing local ordinances, regulations, rules, or policies that prohibit, restrict, regulate, or otherwise limit an agritourism activity on land classified as agricultural under Florida's greenbelt law.[10] Thus, counties and municipalities may be unable to collect certain fees or fines pertaining to the enforcement of such regulations. However, an increase in agritourism may also create a positive fiscal impact on local governments by increasing tourism.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill encourages agritourism by lessening the regulations on agricultural land owners who engage in agritourism activities.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill reduces the authority of counties and municipalities to raise revenues by prohibiting them from enforcing ordinances, regulations, rules, or policies that prohibit, restrict, regulate, or otherwise limit an agritourism activity on land classified as agricultural under Florida's greenbelt law. However, an exemption may apply if the bill results in an insignificant fiscal impact to county or municipal governments. The Revenue Estimating Committee met on December 4, 2015, and estimated that the bill may have an insignificant negative fiscal impact on local governments.[11]

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 4, 2015, the Local Government Affairs Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment adds "civic" and

[10] Revenue Estimating Conference, 12/04/15 Revenue Impact Results, p. 228, available at http://edr.state.fl.us/content/conferences/revenueimpact/index.cfm (last visited December 8, 2015).
[11] Id.

"ceremonial" activities to the definition of agritourism, provides intent language, and clarifies the status under the greenbelt law of agricultural land used for agritourism activities.

This analysis is drawn to the committee substitute reported favorably by the Local Government Affairs Subcommittee.

A bill to be entitled

An act relating to agritourism; amending s. 570.85, F.S.; providing legislative intent; prohibiting a local government from enforcing a local ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an agritourism activity on land classified as agricultural land; amending s. 570.86, F.S.; revising the definition of the term "agritourism activity" to include civic and ceremonial activities; amending s. 570.87, F.S.; providing conditions under which agritourism activities on farms or on lands classified as agricultural lands do not limit, restrict, or divest the land of such classification; providing an effective date.

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

Section 1. Subsection (1) of section 570.85, Florida Statutes, is amended to read:

570.85 Agritourism.—

(1) It is the intent of the Legislature to:

(a) Promote agritourism as a way to support bona fide agricultural production by providing a secondary stream of revenue and by educating the general public about the agricultural industry.

(b) Eliminate duplication of regulatory authority over

agritourism as expressed in this section. Except as otherwise provided for in this section, and notwithstanding any other provision of law, a local government may not adopt or enforce a local ~~an~~ ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an agritourism activity on land classified as agricultural land under s. 193.461. This subsection does not limit the powers and duties of a local government to address an emergency as provided in chapter 252.

Section 2. Subsection (1) of section 570.86, Florida Statutes, is amended to read:

570.86 Definitions.—As used in ss. 570.85-570.89, the term:

(1) "Agritourism activity" means any agricultural related activity consistent with a bona fide farm or ranch or in a working forest which allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, civic, ceremonial, or harvest-your-own activities and attractions. An agritourism activity does not include the construction of new or additional structures or facilities intended primarily to house, shelter, transport, or otherwise accommodate members of the general public. An activity is an agritourism activity regardless of whether the participant paid to participate in the activity.

Section 3. Subsection (1) of section 570.87, Florida

Statutes, is amended to read:

570.87 Agritourism participation impact on land classification.—

(1) In order to promote and perpetuate agriculture throughout the state, farm operations are encouraged to engage in agritourism. The conduct of agritourism activity on a bona fide farm or on agricultural lands classified as such pursuant to s. 193.461 does ~~shall~~ not limit, restrict, or divest the land of that classification as long as such lands classified as agricultural remain used primarily for bona fide agricultural purposes.

Section 4. This act shall take effect July 1, 2016.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 59 (2016)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: State Affairs Committee

Representative Combee offered the following:

Amendment (with title amendment)

Remove lines 21-35 and insert:

(1) It is the intent of the Legislature to promote agritourism as a way to support bona fide agriculture production by providing a secondary stream of revenue for, and by educating the general public about, the agricultural industry. It is also the intent of the Legislature to eliminate duplication of regulatory authority over agritourism as expressed in this section. Except as otherwise provided for in this section, and notwithstanding any other provision of law, a local government may not adopt or enforce a local ~~an~~ ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an agritourism activity on land classified as agricultural land under s. 193.461. This subsection does not

limit the powers and duties of a local government to address substantial off-site impacts of agritourism activities or an emergency as provided in chapter 252.

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

Remove line 7 and insert:
on land classified as agricultural land; providing an exception; amending s.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HM 69 Haitian American Heritage Month
SPONSOR(S): Local & Federal Affairs Committee; Watson and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	10 Y, 3 N, As CS	Kiner	Kiner
2) State Affairs Committee		Camechis	Camechis

SUMMARY ANALYSIS

Congress has passed legislation relating to national observances and commemorative months on several occasions. For example, Congress has passed legislation to commemorate or authorize the President to proclaim February as 'National African American History Month', November as 'American Indian Heritage Month', May as 'Jewish American Heritage Month', May as 'Asian Pacific Heritage Month', and the period beginning September 15 and ending October 15 as 'National Hispanic Heritage Month'.

CS/HM 69 urges Congress to recognize the month of May as 'Haitian American Heritage Month'.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Located in the Caribbean on the western one-third of the island of Hispaniola, Haiti is a country of approximately 10 million people.[1] Due in part to Haiti's close proximity to the United States, there are approximately 1.5 million[2] people of Haitian descent living in this country – a large portion of whom reside in and around the city of Miami and the greater South Florida area.

The month of May is of great cultural significance to the people of Haiti and the Haitian diaspora, and as such, many events and celebrations are held during the month throughout the country. 'Haitian Flag Day', which is among Haiti's most celebrated holidays, is celebrated on May 18th. Toussaint L'Ouverture, one of the leaders of the Haitian Revolution, is reported to have been born on May 20, 1743.

In addition, various governmental entities in the United States have issued resolutions or proclamations recognizing the importance of May in Haitian and Haitian American culture, including, but not limited to, the following:

- In 2001, Miami-Dade County passed a resolution designated May as 'Haitian Cultural Heritage Month' and has held annual celebrations in the county ever since[3][4];
- In 2003, the Palm Beach County School District issued a resolution recognizing May as 'Haitian Heritage Month'[5];
- In 2015, the Governor of the Commonwealth of Massachusetts proclaimed the month of May 2015 to be 'Haitian Heritage Month'[6];
- In 2015, the Mayor of the City of Boston and the City of Boston City Council issued separate proclamations to designate the month of May as 'Haitian Heritage Month' and to specifically honor 'Haitian Flag Day'[7].

At the federal level, several resolutions have been introduced in the United States House of Representatives to recognize May as 'Haitian American Heritage Month'. For example, House Resolution 777, sponsored by former Congressman Kendrick Meek, was introduced, but never heard, during the 109th Congress.[8] Additionally, House Resolution 224, sponsored by Congresswoman Frederica Wilson, was introduced, but never heard, during the 113th Congress.[9]

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[1] *See* Haiti's 'Country Profile' on the United States Central Intelligence Agency's World Factbook website at https://www.cia.gov/library/publications/the-world-factbook/geos/ha.html (Last viewed on 9/29/2015).
[2] U.S. Census Bureau, 2013 & 2014 American Community Survey.
[3] *See* the text of County Resolution R-452-01 here http://www.miamidade.gov/govaction/matter.asp?matter=011622&file=false&yearFolder=Y2001 (Last viewed on 9/29/2015).
[4] *See* Miami-Dade County's press release on the county's 15th Annual Haitian Cultural Heritage Month celebrations here http://www.miamidade.gov/district02/releases/2015-04-24-haitian-month.asp (Last viewed on 9/29/2015).
[5] A copy of the resolution, dated April 23, 2003, is on file with the House of Representatives Local & Federal Affairs Committee.
[6] *See* the 'Issued Proclamations' page of the Official Website of the Governor of Massachusetts here http://www.mass.gov/governor/constituent-services/recognition/issued-proclamations/haitian-heritage-month.html (Last viewed on 9/29/2015).
[7] A copy of each resolution is on file with the House of Representatives Local & Federal Affairs Committee.
[8] *See* additional information on House Resolution 777 on the Congress.gov website here https://www.congress.gov/bill/109th-congress/house-resolution/777?q=%7B%22search%22%3A%5B%22%5C%22hres777%5C%22%22%5D%7D&resultIndex=5 (Last viewed on 9/29/2015).
[9] *See* additional information on House Resolution 224 on the Congress.gov website here https://www.congress.gov/bill/113th-congress/house-resolution/224?q=%7B%22search%22%3A%5B%22%5C%22hres224%5C%22%22%5D%7D&resultIndex=2 (Last viewed on 9/29/2015).

Congress has passed legislation relating to national observances and commemorative months on several occasions. For example, Congress has passed legislation to commemorate or authorize the President to proclaim February as 'National African American History Month', November as 'American Indian Heritage Month', May as 'Jewish American Heritage Month', May as 'Asian Pacific Heritage Month', and the period beginning September 15 and ending October 15 as 'National Hispanic Heritage Month'.[10]

Effect of the Memorial

This memorial urges Congress to recognize the month of May as 'Haitian American Heritage Month'.

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

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

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

B. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

[10] *See* the Library of Congress's webpage on 'Commemorative Observances' on its website here http://www.loc.gov/law/help/commemorative-observations/index.php (Last viewed on 9/29/2015).

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On October 8, 2015, the Local & Federal Affairs Committee adopted an amendment to revise the memorial to urge Congress to recognize 'Haitian American Heritage Month'.

This analysis is drawn to the memorial as amended.

House Memorial

A memorial to the Congress of the United States, urging Congress to recognize the month of May as "Haitian American Heritage Month."

WHEREAS, Haitian American Heritage Month is held to salute the Haitian and Haitian American communities and to exhibit appreciation for their culture and heritage which have immeasurably enriched the lives of the people of this nation, and

WHEREAS, as educators, authors, community leaders, activists, athletes, artists, musicians, and politicians, Haitian Americans have made their mark in every facet of society and have contributed to the betterment and diversity of this nation, and

WHEREAS, the close proximity of Haiti to American shores, in conjunction with our common bond of mutual values and commitment to democracy, ensures lasting comity of nations and continued trade and diplomatic relations, and

WHEREAS, an estimated 1.5 million persons of Haitian descent now live throughout this nation, and

WHEREAS, Congresswoman Frederica S. Wilson and Congressman Kendrick B. Meek, having acknowledged the importance of Haitian Americans in this nation's history and diversity, have proposed resolutions in the United States House of Representatives to

recognize the month of May as "Haitian American Heritage Month" in the United States, NOW, THEREFORE,

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

That the Congress of the United States is urged to recognize the month of May as "Haitian American Heritage Month" and to encourage the people of this nation to observe Haitian American Heritage Month with appropriate ceremonies, celebrations, and activities.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 181 Public Works Projects
SPONSOR(S): Local Government Affairs Subcommittee; Van Zant, Tobia, and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 598

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	8 Y, 4 N	Moore	Williamson
2) Local Government Affairs Subcommittee	7 Y, 3 N, As CS	Darden	Miller
3) State Affairs Committee		Moore	Camechis

SUMMARY ANALYSIS

Contracts for construction services that are projected to cost more than a specified threshold must be competitively awarded. Specifically, state contracts for construction projects that are projected to cost in excess of $200,000 must be competitively bid. Counties, municipalities, special districts, or other political subdivisions seeking to construct or improve a public building must competitively bid the project if the estimated cost is in excess of $300,000. The solicitation of competitive bids or proposals must be publicly advertised in the Florida Administrative Register.

The bill creates s. 255.0992, F.S., relating to public works projects. The bill defines the terms "political subdivision" and "public works project." It prohibits the state or a political subdivision, except when required by state or federal law, from requiring a contractor, subcontractor, or material supplier or carrier engaged in the public works project to:

- Pay employees a predetermined amount of wages or prescribe any wage rate;
- Provide employees a specified type, amount, or rate of employee benefits;
- Control, limit, or expand staffing; or
- Recruit, train, or hire employees from a designated, restricted, or single source.

Department of Transportation contracts executed under chapter 337, F.S., are excluded from this bill.

In addition, the bill provides that the state or a political subdivision that contracts for a public works project may not prohibit a contractor, subcontractor, or material supplier or carrier from submitting a bid on the project or being awarded the relevant contract if such individual is otherwise qualified to do the work described.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Federal Labor and Wage Laws

The National Labor Relations Act of 1935[1] and the Labor Management Relations Act of 1947[2] constitute a comprehensive scheme of regulations guaranteeing employees the right to organize, to bargain collectively through chosen representatives, and to engage in concerted activities to secure their rights in industries involved in or affected by interstate commerce.

The Fair Labor Standards Act (FLSA or act) establishes a federal minimum wage, which is the lowest hourly wage that can be paid in the United States.[3] A state may set the rate higher than the federal minimum, but not lower.[4] The act also requires employers to pay time and a half to their employees for overtime hours worked,[5] and establishes standards for recordkeeping[6] and child labor.[7] Over 135 million workers are covered under the act;[8] most, but not all, jobs are covered by the FLSA. In addition, some jobs covered by the act are considered "exempt" from the FLSA overtime requirements.[9]

On February 12, 2014, the President signed Executive Order 13658, which establishes a minimum wage for certain federal contractors.[10] The Executive Order requires parties who contract with the federal government to pay workers performing work on or in connection with covered federal contracts at least $10.10 per hour beginning January 1, 2015. Beginning January 1, 2016, and annually thereafter, such workers must be paid an amount determined by the Secretary of Labor in accordance with the Executive Order. The order stated that "[r]aising the pay of low-wage workers increases their morale and the productivity and quality of their work, lowers turnover and its accompanying costs, and reduces supervisory costs."[11]

The Davis-Bacon Act[12] applies to contractors and subcontractors performing on federally funded or assisted contracts in excess of $2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works.[13] Contractors and subcontractors subject to the Davis-Bacon Act are required to pay their laborers and mechanics employed under the contract no less than

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[1] 29 U.S.C. ss. 151-169 (encouraging the practice and procedure of collective bargaining and protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection).

[2] 29 U.S.C. ss. 141-197 (prescribing the rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce).

[3] 29 U.S.C. s. 206.

[4] 29 U.S.C. s. 218(a).

[5] 29 U.S.C. s. 207(a)(1).

[6] 29 U.S.C. s. 211.

[7] 29 U.S.C. s. 212.

[8] United States Department of Labor, *Wage and Hour Division: Resources for Workers*, http://www.dol.gov/whd/workers.htm (last visited Sept. 30, 2015).

[9] 29 U.S.C. s. 213; United States Department of Labor, *Fact Sheet #14: Coverage Under the Fair Labor Standards Act (FLSA)*, www.dol.gov/whd/regs/compliance/whdfs14.pdf (last visited Sept. 30, 2015).

[10] Exec. Order 13658, 79 Fed. Reg. 9851 (Feb. 12, 2014), *available at* http://www.whitehouse.gov/the-press-office/2014/02/12/executive-order-minimum-wage-contractors.

[11] *Id.*

[12] Davis-Bacon Act, 40 U.S.C. s. 3141-3148.

[13] United States Department of Labor, *Wage and Hour Division: Davis-Bacon and Related Acts*, http://www.dol.gov/whd/govcontracts/dbra.htm (last visited Dec. 16, 2015).

the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area, as determined by the Department of Labor.[14] The Davis-Bacon Act applies to contractors and subcontractors performing work on federal or District of Columbia contracts.[15] Many federal laws that authorize federal assistance for construction through grants, loans, loan guarantees, and insurance are referred to as Davis-Bacon "related Acts."[16] The "related Acts" include provisions that require the prevailing wage provisions of the Davis-Bacon Act to apply to most federally assisted construction.[17]

State Labor and Wage Regulations

The State Constitution protects the right for workers to collectively bargain, including public sector employees.[18] It provides, in pertinent part, that "[t]he right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged." The Florida Supreme Court has held that public employees maintain the same rights to collectively bargain as do private employees.[19]

In addition, the State Constitution provides that "[a]ll working Floridians are entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families, that protects their employers from unfair low-wage competition, and that does not force them to rely on taxpayer-funded public services in order to avoid economic hardship."[20] Employers must pay employees no less than the minimum wage for all hours worked in Florida.[21] The current state minimum wage is $8.05 per hour,[22] which is higher than the federal rate.[23]

Procurement of Construction Services

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

- Procedures for determining the qualifications and responsibility of potential bidders prior to advertising for and receiving bids for building construction contracts;
- Procedures for awarding each state agency construction project to the lowest qualified bidder;
- Procedures to govern negotiations for construction contracts and contract modifications when such negotiations are determined to be in the best interest of the state; and
- Procedures for entering into performance-based contracts for the development of public facilities when those contracts are determined to be in the best interest of the state.[24]

State contracts for construction projects that are projected to cost in excess of $200,000 must be competitively bid.[25] A county, municipality, special district, or other political subdivision seeking to

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[14] *Id.*
[15] *Id.*
[16] United States Department of Labor, *Fact Sheet #66: The Davis-Bacon and Related Acts (DBRA)*, http://www.dol.gov/whd/regs/compliance/whdfs66.pdf (last visited Dec. 16, 2015). Examples of "related Acts" are the Federal Aid Highway Acts, the Housing and Community Development Act of 1974, and the Federal Water Pollution Control Act.
[17] *Id.*
[18] Art. I, s. 6, FLA. CONST.
[19] *See Hillsborough Cnty. Gov'tl Emps. Ass'n, Inc. v. Hillsborough Cnty. Aviation Auth.*, 522 So. 2d 358 (Fla. 1988); *City of Tallahassee v. Public Employees Relations Comm'n*, 410 So. 2d 487 (Fla. 1981); *Dade Cnty. Classroom Teachers Ass'n v. Legislature of Fla.*, 269 So. 2d 684 (Fla. 1972).
[20] Art. X, s. 24(a), FLA. CONST.
[21] Art. X, s. 24(c), FLA. CONST.
[22] Department of Economic Opportunity, *Display Posters and Required Notices*, http://www.floridajobs.org/business-growth-and-partnerships/for-employers/display-posters-and-required-notices (last visited Dec. 16, 2015).
[23] The federal minimum wage is $7.25 per hour. For more information about federal minimum wage provisions, see http://www.dol.gov/whd/minimumwage.htm (last visited Dec. 16, 2015).
[24] Section 255.29, F.S.
[25] *See* s. 255.0525, F.S.; *see also* chapters 60D-5.002 and 60D-5.0073, F.A.C.

construct or improve a public building must competitively bid the project if the estimated cost is in excess of $300,000.[26]

Section 255.0525, F.S., requires the solicitation of competitive bids or proposals for any state construction project that is projected to cost more than $200,000 to be publicly advertised in the Florida Administrative Register (FAR) at least 21 days prior to the established bid opening. If the cost of the construction project is projected to exceed $500,000, the advertisement must be published at least 30 days prior to the bid opening in the FAR, and at least once 30 days prior to the bid opening in a newspaper of general circulation in the county where the project is located.[27]

Florida law provides a preference for the employment of state residents in construction contracts funded with state funds. Such contracts must contain a provision requiring the contractor to give preference to employing state residents to perform the work if such residents have substantially equal qualifications[28] to those of non-residents.[29] If a construction contract is funded by local funds, the contract may contain such a provision.[30] In addition, a contractor required to employ state residents must contact the Department of Economic Opportunity to post the contractor's employment needs in the state's job bank system.[31]

Several counties and municipalities have adopted ordinances requiring companies bidding on contracts to pay their employees a "living wage,"[32] while others have adopted ordinances requiring apprenticeship programs.[33]

Department of Transportation Construction Projects

Chapter 337, F.S., governs contracting by the Department of Transportation (DOT). Any person who wants to bid for a construction contract in excess of $250,000 must be certified by DOT as qualified.[34] Certification is also required to bid on road, bridge, or public transportation construction projects of more than $250,000.[35] The purpose of certification is to ensure professional and financial competence relating to the performance of construction contracts by evaluating bidders "with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applicant necessary to perform the specific class of work for which the person seeks certification."[36]

Effect of Proposed Changes

The bill creates s. 255.0992, F.S., relating to public works projects. It defines the following terms:

- "Political subdivision" means a separate agency or unit of local government created or established by law or ordinance and the officers thereof. The term includes, but is not limited to, a county; a city, town, or other municipality; or a department, commission, authority, school district, taxing district, water management district, board, public corporation, institution of higher

[26] Section 255.20(1), F.S. For electrical work, local governments must competitively bid projects estimated to cost more than $75,000.

[27] For counties, municipalities, and political subdivisions, similar publishing provisions apply. *See* Section 255.0525(2), F.S.

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

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

[30] *Id.*

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

[32] *See, e.g.*, Broward County Code of Ordinances s. 26-102, Palm Beach County Code of Ordinances s. 2-147 to 2-250.1, Miami-Dade County Code of Ordinances s. 2-8.9.

[33] *See* Charlie Frago, *St. Pete council approves mandatory apprentice program for city projects*, Tampa Bay Times (May 7, 2015), *available at* http://www.tampabay.com/news/localgovernment/st-pete-council-approves-mandatory-apprentice-program-for-city-projects/2228783.

[34] Section 337.14(1), F.S. and ch. 14-22, F.A.C.

[35] Section 337.14(2), F.S.

[36] Section 337.14(1), F.S.

education, or other public agency or body authorized to expend public funds for construction, maintenance, repair, or improvement of public works.

- "Public works" or "public works project" means a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof, including repair, renovation, or remodeling, owned in whole or in part by any political subdivision for which a project for construction, maintenance, repair, or improvement of public works is to be paid for in whole or in part with state funds. Contracts executed by the Department of Transportation under ch. 337, F.S., are excluded from this definition.

The bill provides that except as required by federal or state law, the state or any political subdivision that contracts for the construction, maintenance, repair, or improvement of public works may not require specified employment provisions. Specifically, the state or any political subdivision may not require a contractor, subcontractor, or material supplier or carrier engaged in the construction, maintenance, repair, or improvement of public works to:

- Pay employees a predetermined amount of wages or prescribe any wage rate;
- Provide employees a specified type, amount, or rate of employee benefits;
- Control, limit, or expand staffing; or
- Recruit, train, or hire employees from a designated, restricted, or single source.

In addition, the bill provides that the state or any political subdivision that contracts for the construction, maintenance, repair, or improvement of a public works project may not prohibit a contractor, subcontractor, or material supplier or carrier from submitting a bid on the project or being awarded the relevant contract if such individual is able to perform the work described and is qualified, licensed, or certified as required by state law.

B. SECTION DIRECTORY:

Section 1. creates s. 255.0992, F.S., relating to public works projects.

Section 2. provides an effective date of July 1, 2016.

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 does not appear to impact state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to impact local government revenues.

2. Expenditures:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides rulemaking authority nor requires implementation by executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 4, 2015, the Local Government Affairs Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Specified that contracts executed by the Department of Transportation under ch. 337, F.S., are not included in the definition of "public works project";
- Codified the bill in s. 255.0992, F.S., rather than creating an unnumbered section of law;
- Removed redundant language; and
- Specified that state and local governments may not prohibit the awarding of a contract to a qualified entity.

This analysis is drafted to the bill as passed by the Local Government Affairs Subcommittee.

A bill to be entitled

An act relating to public works projects; creating s. 255.0992, F.S.; providing definitions; prohibiting the state and political subdivisions that contract for public works projects from imposing restrictive conditions on certain contractors, subcontractors, or material suppliers or carriers; providing an exception; prohibiting the state and political subdivisions from restricting qualified bidders from submitting bids or being awarded contracts; providing an effective date.

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

Section 1. Section 255.0992, Florida Statutes, is created to read:

255.0992 Public works projects; prohibited governmental actions.—

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

(a) "Political subdivision" means a separate agency or unit of local government created or established by law or ordinance and the officers thereof. The term includes, but is not limited to, a county; a city, town, or other municipality; or a department, commission, authority, school district, taxing district, water management district, board, public corporation, institution of higher education, or other public agency or body

thereof authorized to expend public funds for construction, maintenance, repair, or improvement of public works.

(b) "Public works project" means an activity that is paid for in whole or in part with state funds and that consists of the construction, maintenance, repair, renovation, remodeling, or improvement of a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof that is owned in whole or in part by any political subdivision. The term does not include a contract executed under chapter 337.

(2)(a) Except as required by federal or state law, the state or any political subdivision that contracts for a public works project may not require that a contractor, subcontractor, or material supplier or carrier engaged in such project:

1. Pay employees a predetermined amount of wages or prescribe any wage rate;

2. Provide employees a specified type, amount, or rate of employee benefits;

3. Control, limit, or expand staffing; or

4. Recruit, train, or hire employees from a designated, restricted, or single source.

(b) The state or any political subdivision that contracts for a public works project may not prohibit any contractor, subcontractor, or material supplier or carrier able to perform

such work who is qualified, licensed, or certified as required by state law to perform such work from submitting a bid on the public works project or being awarded any contract, subcontract, material order, or carrying order.

Section 2. This act shall take effect July 1, 2016.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 181 (2016)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: State Affairs Committee

Representative Van Zant offered the following:

Amendment (with title amendment)

Remove lines 37-38 and insert:

subdivision.

Between lines 56 and 57, insert:

(3) This section does not apply to contracts executed under chapter 337.

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

Remove lines 7-8 and insert:

material suppliers or carriers; prohibiting the state and political

Amendment No.

Remove line 11 and insert:

applicability; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 183 Administrative Procedures
SPONSOR(S): Government Operations Appropriations Subcommittee; Adkins
TIED BILLS: **IDEN./SIM. BILLS:** SB 372

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Rulemaking Oversight & Repeal Subcommittee	11 Y, 0 N, As CS	Stranburg	Rubottom
2) Government Operations Appropriations Subcommittee	12 Y, 0 N, As CS	White	Topp
3) State Affairs Committee		Moore, A.	Camechis

SUMMARY ANALYSIS

The Administrative Procedure Act (APA) provides uniform procedures for the exercise of specified administrative authority. The bill amends provisions of the APA to enhance the opportunities for substantially affected parties to challenge rules. These changes include, but are not limited to:

- Revising rulemaking procedures based on petitions to initiate rulemaking alleging an unadopted rule;
- Expanding the listing of information that must be published on the Florida Administrative Register to include rules filed for adoption in the previous seven days and a listing of all rules filed for adoption but awaiting legislative ratification;
- Revising the pleading requirements and burden of going forward with evidence in challenges to proposed and unadopted rules;
- Clarifying which rule validity decisions may be appealed; and
- Requiring agencies to identify and certify all of the rules the violation of which would be a minor violation.

The bill may have an indeterminate but likely insignificant negative fiscal impact to the state.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Rulemaking

The Administrative Procedure Act (APA)[1] sets forth a uniform set of procedures that agencies must follow when exercising delegated rulemaking authority. A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency.[2] Rulemaking authority is delegated by the Legislature through statute and authorizes an agency to "adopt, develop, establish, or otherwise create" a rule.[3] Agencies do not have discretion whether or not to engage in rulemaking.[4] To adopt a rule, an agency must have a general grant of authority to implement a specific law through rulemaking.[5] The grant of rulemaking authority itself need not be detailed. The specific statute being implemented or interpreted through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.

Petitions to Initiate Rulemaking

The APA authorizes a substantially interested party to file a petition to adopt, amend, or repeal a rule.[6] The agency must initiate rulemaking or provide a written explanation for denial of the petition. If the petition is directed to an unadopted rule, the agency must hold a workshop before it may deny the petition.[7] If, after the workshop, the agency does not initiate rulemaking, the agency is required to publish in the Florida Administrative Register (F.A.R.) a notice explaining why the agency is denying the petition and explaining any changes it will make in the scope or application of the statement that was asserted in the petition to be an unadopted rule.[8] However, the APA does not require rulemaking before an agency has had sufficient time to acquire the knowledge and experience reasonably necessary, or has otherwise resolved matters sufficiently to address a statement by rulemaking.[9] The clear implication is that an agency may apply law and establish procedures by statements of general applicability without adopting the statement as a rule until adoption is feasible and practicable.[10]

Notice of Rules

Presently, the only notice of adopted rules is the filing with the Department of State (DOS). DOS publishes such rules in the Florida Administrative Code (F.A.C.). A rule requiring ratification as a condition of effectiveness[11] is not published in the F.A.C. until ratified. However, as a courtesy, DOS, once each week, lists newly adopted rules in the F.A.R., and includes a cumulative list of rules filed for adoption pending legislative ratification. In addition to F.A.R. publication, many agencies also use web sites and email notification systems to inform constituents of rulemaking proceedings.

Burden of Proof

In general, laws carry a presumption of validity, and as such, those challenging the validity of a law carry the burden of proving its invalidity. The APA retains this presumption of validity by requiring those

[1] Chapter 120, F.S.
[2] Section 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1st DCA 2007).
[3] Section 120.52(17), F.S.
[4] Section 120.54(1)(a), F.S.
[5] Section 120.52(8) and 120.536(1), F.S.
[6] Section 120.54(7)(a), F.S.
[7] Section 120.54(7)(b), F.S.
[8] Section 120.54(7)(c), F.S.
[9] Section 120.54(1)(a)1., F.S.
[10] *See* s. 120.52(16), F.S.
[11] *See* s. 120.541(3), F.S. (requiring ratification of rules having an economic impact beyond a particular threshold).

challenging adopted rules to carry the burden of proving that a rule constitutes an invalid exercise of delegated authority.[12] However, in the case of proposed rules, the APA places the burden on the agency to demonstrate the validity of the rule as proposed, once the challenger has raised specific objections to the rule's validity.[13] In addition, a proposed rule may not be filed for adoption until any pending challenge is resolved.[14]

In the case of a statement or policy in force that was not adopted as a rule, a challenger must prove that the statement or policy meets the definition of a rule under the APA. If so, and if the statement or policy has not been validly adopted, the agency must prove that rulemaking is not feasible or practicable.[15]

Proceedings Involving Rule Challenges

The APA presently applies different procedures when proposed rules, existing rules, and statements defined as rules ("unadopted rules") are challenged by petition, as compared to a challenge to the validity of an existing rule or an unadopted rule when raised defensively in a proceeding initiated as a result of agency action. The APA provides attorney fee awards when a party petitions for invalidation of a rule, proposed rule, or unadopted rule, but not when the same successful legal case is made in defense of an enforcement action or challenging a grant or denial of a permit or license.

The APA does provide that a Division of Administrative Hearings (DOAH) judge may determine that an agency has attempted to rely on an unadopted rule in proceedings initiated by agency action. However, this is qualified by a provision that an agency may overrule the DOAH determination if clearly erroneous, and if the agency rejects the DOAH determination and is later reversed on appeal, the challenger is awarded attorney fees for the entire proceeding.[16] Additionally, in proceedings initiated by agency action, when a DOAH judge determines that a rule constitutes an invalid exercise of delegated legislative authority, the agency has full de novo authority to reject or modify such conclusions of law, provided the final order states with particularity the reasons for rejecting or modifying such determination.[17]

In proceedings initiated by a party challenging a rule or unadopted rule, the DOAH judge enters a final order that cannot be overturned by the agency. The only appeal is to the District Court of Appeal.

Final Orders

An agency must render a final order in any proceeding within 90 days after the hearing if the agency conducts the hearing, or after the recommended order is submitted to the agency if DOAH conducts the hearing[18] (except for the rule challenge proceedings described above in which the DOAH judge enters the final order).

Judicial Review

Current law prohibits a party from seeking judicial review of the validity of a rule by appealing its adoption, but authorizes an appeal from a final order in a rule challenge.[19]

Minor Violations

The APA directs an agency to issue a "notice of noncompliance" as the first response to a minor violation of a rule.[20] The law provides that a violation is a minor violation if it "does not result in

[12] Section 120.56(3), F.S. Section 120.52(8), F.S., defines "invalid exercise of delegated legislative authority."
[13] Section 120.56(2), F.S.
[14] Section 120.54(3)(e)2., F.S.
[15] Section 120.56(4), F.S.
[16] Section 120.57(1)(e)3., F.S.
[17] Section 120.57(1)(k-l), F.S.
[18] Section 120.569(l), F.S.
[19] Section 120.68(9), F.S.

economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm." Agencies are authorized to designate those rules for which a violation would be a minor violation. An agency's designation of rules under the provision is excluded from challenge under the APA, but may be subject to review and revision by the Governor or Governor and Cabinet.[21] An agency under the direction of a cabinet officer has the discretion not to use the "notice of noncompliance" once each licensee is provided a copy of all rules upon issuance of a license, and annually thereafter.

Rules Ombudsman

Section 288.7015, F.S., requires the Governor to appoint a rules ombudsman in the Executive Office of the Governor for considering the impact of agency rules on the state's citizens and businesses. The rules ombudsman must carry out the duties related to rule adoption procedures with respect to small businesses; review state agency rules that adversely or disproportionately impact businesses, particularly those relating to small and minority businesses; and make recommendations on any existing or proposed rules to alleviate unnecessary or disproportionate adverse effects to business. Each state agency must cooperate fully with the rules ombudsman in identifying such rules, and take the necessary steps to waive, modify, or otherwise minimize the adverse effects of any such rules.

Effect of the Bill

Petition to Initiate Rulemaking

Section 1 amends s. 120.54(7), F.S., to add new rulemaking requirements when an agency initiates rulemaking after a workshop on a petition to initiate rulemaking that alleges an unadopted rule. The provision will require the agency to file its notice of rule development within 30 days of a mandatory hearing on the petition. Unless the agency publishes a notice explaining the reasons it cannot do so, the notice of proposed rule must be filed within 180 days after the notice of rule development. Lastly, unless the agency publishes a statement explaining why rulemaking is not feasible or practicable under s. 120.54(1), F.S., the bill prohibits the agency from relying on the unadopted rule until rulemaking is complete. This limitation mirrors that applicable when an agency loses a formal challenge to an unadopted rule.[22]

Rulemaking Publication and Notification Requirements

Section 2 amends s. 120.55, F.S., to expand the list of information that must be published on the F.A.R. The bill requires DOS to publish in the F.A.R. a listi of rules filed for adoption in the previous seven days and a list of all rules filed for adoption but pending legislative ratification.

The bill also requires those agencies with e-mail alert services that provide regulatory information to interested parties to use such services to notify recipients of each notice required under s. 120.54(2) and (3)(a), F.S., including, but not limited to, notices of rule development, notices of proposed rules, and notices of adoption of rules. The notices must provide Internet links to either the rule page on the Secretary of State's website or an agency website that contains the proposed rule or final rule.

The bill also provides that failure to follow these notice requirements does not give rise to a challenge to the validity of a rule.

[20] Section 120.695, F.S. The statute contains the following legislative intent: "It is the intent of the Legislature that an agency charged with enforcing rules shall issue a notice of noncompliance as its first response to a minor violation of a rule in any instance in which it is reasonable to assume that the violator was unaware of the rule or unclear as to how to comply with it."

[21] Section 120.695(2)(c), (d), F.S. The statute provides for final review and revision of these agency designations to be at the discretion of elected constitutional officers.

[22] *See*, s. 120.56(4)(c) and (e), F.S.

Challenges to Rules
Section 3 amends s. 120.56, F.S., relating to petitions challenging the validity of rules, proposed rules, and unadopted rules. The changes clarify the pleading requirements for the petitions. It also clarifies the parties' respective burdens of proof in challenges to proposed rules and unadopted rules.

Disputes
Section 4 amends s. 120.57, F.S., relating to DOAH hearings of agency-initiated actions involving disputed issues of material fact. The bill incorporates many of the rule challenge provisions of s. 120.56, F.S. The changes will treat a challenge to a rule in defending against or attacking an agency action similar to a challenge in an action initiated solely to challenge the rule.

The bill specifies that a petitioner may pursue a separate, collateral rule challenge under s. 120.56, F.S., even if an adequate remedy exists through a hearing involving disputed issues of material fact. The administrative law judge may consolidate the proceedings.

The bill also revises the procedures for raising challenges to the validity of rules and unadopted rules in many proceedings where there is no dispute of material fact, staying the agency's non-DOAH proceeding during a related DOAH challenge to a rule.

Appeals
Section 5 amends s. 120.68, F.S., to improve the structure and make conforming changes based on amendments to s. 120.57, F.S., in the previous section.

Minor Violations
Section 6 amends s. 120.695, F.S., to direct each agency to timely review its rules and certify to the President of the Senate, the Speaker of the House of Representatives, the Administrative Procedures Committee, and the rules ombudsman those rules that have been designated as rules the violation of which would be a minor violation no later than June 30, 2017.

Beginning July 1, 2017, each agency will be required to publish all rules of that agency designated as rules the violation of which would be a minor violation either as a complete list on the agency's Internet webpage or by incorporation of the designations in the agency's disciplinary guidelines adopted as a rule. Each agency must ensure that all investigative and enforcement personnel are knowledgeable of the agencies' designations of these rules. The agency head must certify for each rule filed for adoption whether any part of the rule is designated as one the violation of which would be a minor violation and update the listing on the webpage or disciplinary guidelines.

Effective Date
Section 7 provides an effective date of July 1, 2016.

B. SECTION DIRECTORY:

Section 1 amends s. 120.54(7)(c), F.S., and creates paragraph (7)(d) of that section, relating to rulemaking.

Section 2 amends s. 120.55, F.S., relating to publication of rules.

Section 3 amends s. 120.56, F.S., relating to rule challenges.

Section 4 amends s. 120.57(1)(e) and (h), F.S. and subsection (2) of that section, relating to additional procedures for particular cases.

Section 5 amends s. 120.68(1) and (9), F.S., relating to judicial review.

Section 6 amends s. 120.695, F.S., relating to noncompliance with rules.

Section 7 provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The private sector may benefit slightly by the increased incentives for agencies to conform their rules to the law, thereby increasing clarity and certainty in the application of the law.

D. FISCAL COMMENTS:

The bill has an indeterminate but likely insignificant negative fiscal impact to the state. There is some additional workload on state agencies and a minimal increase in expenditures related to state agencies filing more frequently in the F.A.R., but the impact is likely insignificant and can be absorbed within existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill enhances the procedures provided by the APA for challenging rules, particularly in the defense against agency actions that are not based on valid rules. As such, it provides incentives and opportunities for private parties to keep agency rulemaking accountable under the law. The bill also increases requirements relating to identifying rules the violation of which should be classified as minor violations.

C. DRAFTING ISSUES OR OTHER COMMENTS:

A similar bill, CS/CS/CS/HB 435, passed during the 2015 legislative session, but was vetoed by the Governor. In his veto message, the Governor stated that the bill altered the long-standing deference granted to agencies by shifting final action authority to an administrative law judge which had the potential to result in prolonged litigation impeding an agency's ability to perform core functions. The language amending s. 120.57, F.S., has changed from last year's bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On October 20, 2015, the Rulemaking Oversight & Repeal Subcommittee adopted a technical amendment and reported the bill favorably as a committee substitute. The amendment changes the period of time that an unpromulgated rule may be applied to conform to s. 120.54, F.S.

On November 17, 2015, the Government Operations Appropriations Subcommittee adopted a technical amendment and reported the bill favorably as a committee substitute. The amendment clarifies that the petitioner has the burden to prove by a preponderance of the evidence that it would be substantially affected by the proposed rule.

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

A bill to be entitled

An act relating to administrative procedures; amending s. 120.54, F.S.; providing procedures for agencies to follow when initiating rulemaking after certain public hearings; limiting reliance upon an unadopted rule in certain circumstances; amending s. 120.55, F.S.; providing for publication of notices of rule development and of rules filed for adoption; providing for additional notice of rule development, proposals, and adoptions in the Florida Administrative Register; requiring certain agencies to provide additional e-mail notifications concerning specified rulemaking and rule development activities; providing that failure to follow certain provisions does not constitute grounds to challenge validity of a rule; amending s. 120.56, F.S.; clarifying language; amending s. 120.57, F.S.; conforming proceedings that oppose agency action based on an invalid or unadopted rule to proceedings used for challenging rules; authorizing the administrative law judge to make certain findings on the validity of certain alleged unadopted rules; authorizing a petitioner to file certain collateral challenges regarding the validity of a rule; authorizing the administrative law judge to consolidate proceedings in such rule challenges; providing that agency action may not be based on an invalid or unadopted rule; amending

s. 120.68, F.S.; specifying legal authority to file a petition challenging an agency rule as an invalid exercise of delegated legislative authority; amending s. 120.695, F.S.; removing obsolete provisions with respect to required agency review and designation of minor violations; requiring agency review and certification of minor violation rules by a specified date; requiring minor violation certification for all rules adopted after a specified date; requiring public notice; providing applicability; providing an effective date.

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

Section 1. Paragraph (c) of subsection (7) of section 120.54, Florida Statutes, is amended, and paragraph (d) is added to that subsection, to read:

120.54 Rulemaking.—

(7) PETITION TO INITIATE RULEMAKING.—

(c) If the agency does not initiate rulemaking or otherwise comply with the requested action within 30 days after ~~following~~ the public hearing provided for in ~~by~~ paragraph (b), ~~if the agency does not initiate rulemaking or otherwise comply with the requested action,~~ the agency shall publish in the Florida Administrative Register a statement of its reasons for not initiating rulemaking or otherwise complying with the

requested action~~,~~ and of any changes it will make in the scope or application of the unadopted rule. The agency shall file the statement with the committee. The committee shall forward a copy of the statement to the substantive committee with primary oversight jurisdiction of the agency in each house of the Legislature. The committee or the committee with primary oversight jurisdiction may hold a hearing directed to the statement of the agency. The committee holding the hearing may recommend to the Legislature the introduction of legislation making the rule a statutory standard or limiting or otherwise modifying the authority of the agency.

(d) If the agency initiates rulemaking after the public hearing provided for in paragraph (b), the agency shall publish a notice of rule development within 30 days after the hearing and file a notice of proposed rule within 180 days after the notice of rule development unless, before the 180th day, the agency publishes in the Florida Administrative Register a statement explaining its reasons for not having filed the notice. If rulemaking is initiated under this paragraph, the agency may not rely on the unadopted rule unless the agency publishes in the Florida Administrative Register a statement explaining why rulemaking under paragraph (1)(a) is not feasible or practicable until the conclusion of the rulemaking proceeding.

Section 2. Section 120.55, Florida Statutes, is amended to read:

120.55 Publication.—

(1) The Department of State shall:

(a)1. Through a continuous revision and publication system, compile and publish electronically, on a ~~an Internet~~ website managed by the department, the "Florida Administrative Code." The Florida Administrative Code shall contain all rules adopted by each agency, citing the grant of rulemaking authority and the specific law implemented pursuant to which each rule was adopted, all history notes as authorized in s. 120.545(7), complete indexes to all rules contained in the code, and any other material required or authorized by law or deemed useful by the department. The electronic code shall display each rule chapter currently in effect in browse mode and allow full text search of the code and each rule chapter. The department may contract with a publishing firm for a printed publication; however, the department shall retain responsibility for the code as provided in this section. The electronic publication shall be the official compilation of the administrative rules of this state. The Department of State shall retain the copyright over the Florida Administrative Code.

2. Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or state university rules relating to internal personnel or business and finance shall not be published in the Florida Administrative Code. Exclusion from publication in the Florida Administrative Code shall not affect the validity or

effectiveness of such rules.

3. At the beginning of the section of the code dealing with an agency that files copies of its rules with the department, the department shall publish the address and telephone number of the executive offices of each agency, the manner by which the agency indexes its rules, a listing of all rules of that agency excluded from publication in the code, and a statement as to where those rules may be inspected.

4. Forms shall not be published in the Florida Administrative Code; but any form which an agency uses in its dealings with the public, along with any accompanying instructions, shall be filed with the committee before it is used. Any form or instruction which meets the definition of "rule" provided in s. 120.52 shall be incorporated by reference into the appropriate rule. The reference shall specifically state that the form is being incorporated by reference and shall include the number, title, and effective date of the form and an explanation of how the form may be obtained. Each form created by an agency which is incorporated by reference in a rule notice of which is given under s. 120.54(3)(a) after December 31, 2007, must clearly display the number, title, and effective date of the form and the number of the rule in which the form is incorporated.

5. The department shall allow adopted rules and material incorporated by reference to be filed in electronic form as prescribed by department rule. When a rule is filed for adoption

with incorporated material in electronic form, the department's publication of the Florida Administrative Code on its ~~Internet~~ website must contain a hyperlink from the incorporating reference in the rule directly to that material. The department may not allow hyperlinks from rules in the Florida Administrative Code to any material other than that filed with and maintained by the department, but may allow hyperlinks to incorporated material maintained by the department from the adopting agency's website or other sites.

(b) Electronically publish on a ~~an Internet~~ website managed by the department a continuous revision and publication entitled the "Florida Administrative Register," which shall serve as the official publication and must contain:

1. All notices required by s. 120.54(2) and (3)(a) ~~120.54(3)(a)~~, showing the text of all rules proposed for consideration.

2. All notices of public meetings, hearings, and workshops conducted in accordance with s. 120.525, including a statement of the manner in which a copy of the agenda may be obtained.

3. A notice of each request for authorization to amend or repeal an existing uniform rule or for the adoption of new uniform rules.

4. Notice of petitions for declaratory statements or administrative determinations.

5. A summary of each objection to any rule filed by the Administrative Procedures Committee.

6. A list of rules filed for adoption in the previous 7 days.

7. A list of all rules filed for adoption pending legislative ratification under s. 120.541(3). A rule shall be removed from the list once notice of ratification or withdrawal of the rule is received.

8.~~6.~~ Any other material required or authorized by law or deemed useful by the department.

The department may contract with a publishing firm for a printed publication of the Florida Administrative Register and make copies available on an annual subscription basis.

(c) Prescribe by rule the style and form required for rules, notices, and other materials submitted for filing.

(d) Charge each agency using the Florida Administrative Register a space rate to cover the costs related to the Florida Administrative Register and the Florida Administrative Code.

(e) Maintain a permanent record of all notices published in the Florida Administrative Register.

(2) The Florida Administrative Register ~~Internet~~ website must allow users to:

(a) Search for notices by type, publication date, rule number, word, subject, and agency.

(b) Search a database that makes available all notices published on the website for a period of at least 5 years.

(c) Subscribe to an automated e-mail notification of

selected notices to be sent out before or concurrently with publication of the electronic Florida Administrative Register. Such notification must include in the text of the e-mail a summary of the content of each notice.

(d) View agency forms and other materials submitted to the department in electronic form and incorporated by reference in proposed rules.

(e) Comment on proposed rules.

(3) Publication of material required by paragraph (1)(b) on the Florida Administrative Register ~~Internet~~ website does not preclude publication of such material on an agency's website or by other means.

(4) Each agency shall provide copies of its rules upon request, with citations to the grant of rulemaking authority and the specific law implemented for each rule.

(5) Each agency that provides an e-mail notification service to inform licensees or other registered recipients of notices shall use that service to notify recipients of each notice required under s. 120.54(2) and (3) and provide Internet links to the appropriate rule page on the Secretary of State's website or Internet links to an agency website that contains the proposed rule or final rule.

(6)~~(5)~~ Any publication of a proposed rule promulgated by an agency, whether published in the Florida Administrative Register or elsewhere, shall include, along with the rule, the name of the person or persons originating such rule, the name of

the agency head who approved the rule, and the date upon which the rule was approved.

(7) ~~(6)~~ Access to the Florida Administrative Register ~~Internet~~ website and its contents, including the e-mail notification service, shall be free for the public.

(8) ~~(7)~~ (a) All fees and moneys collected by the Department of State under this chapter shall be deposited in the Records Management Trust Fund for the purpose of paying for costs incurred by the department in carrying out this chapter.

(b) The unencumbered balance in the Records Management Trust Fund for fees collected pursuant to this chapter may not exceed $300,000 at the beginning of each fiscal year, and any excess shall be transferred to the General Revenue Fund.

(9) The failure to comply with this section may not be raised in a proceeding challenging the validity of a rule pursuant to s. 120.52(8)(a).

Section 3. Subsection (1), paragraph (a) of subsection (2), paragraph (a) of subsection (3), and subsection (4) of section 120.56, Florida Statutes, are amended to read:

120.56 Challenges to rules.—

(1) GENERAL PROCEDURES ~~FOR CHALLENGING THE VALIDITY OF A RULE OR A PROPOSED RULE~~.—

(a) Any person substantially affected by a rule or a proposed rule may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority.

(b) The petition challenging the validity of a proposed or adopted rule under this section ~~seeking an administrative determination~~ must state: ~~with particularity~~

1. The particular provisions alleged to be invalid and a statement ~~with sufficient explanation~~ of the facts or grounds for the alleged invalidity. ~~and~~

2. Facts sufficient to show that the petitioner ~~person challenging a rule~~ is substantially affected by the challenged adopted rule ~~it,~~ or ~~that the person challenging a proposed rule~~ would be substantially affected by the proposed rule ~~it~~.

(c) The petition shall be filed by electronic means with the division which shall, immediately upon filing, forward by electronic means copies to the agency whose rule is challenged, the Department of State, and the committee. Within 10 days after receiving the petition, the division director shall, if the petition complies with ~~the requirements of~~ paragraph (b), assign an administrative law judge who shall conduct a hearing within 30 days thereafter, unless the petition is withdrawn or a continuance is granted by agreement of the parties or for good cause shown. Evidence of good cause includes, but is not limited to, written notice of an agency's decision to modify or withdraw the proposed rule or a written notice from the chair of the committee stating that the committee will consider an objection to the rule at its next scheduled meeting. The failure of an agency to follow the applicable rulemaking procedures or requirements set forth in this chapter shall be presumed to be

material; however, the agency may rebut this presumption by showing that the substantial interests of the petitioner and the fairness of the proceedings have not been impaired.

(d) Within 30 days after the hearing, the administrative law judge shall render a decision and state the reasons for his or her decision ~~therefor~~ in writing. The division shall forthwith transmit by electronic means copies of the administrative law judge's decision to the agency, the Department of State, and the committee.

(e) Hearings held under this section shall be de novo in nature. The standard of proof shall be the preponderance of the evidence. Hearings shall be conducted in the same manner as provided by ss. 120.569 and 120.57, except that the administrative law judge's order shall be final agency action. The petitioner and the agency whose rule is challenged shall be adverse parties. Other substantially affected persons may join the proceedings as intervenors on appropriate terms which shall not unduly delay the proceedings. Failure to proceed under this section does ~~shall~~ not constitute failure to exhaust administrative remedies.

(2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.—

(a) A ~~substantially affected person may seek an administrative determination of the invalidity of a proposed rule by filing a~~ petition alleging the invalidity of a proposed rule shall be filed ~~seeking such a determination with the division~~ within 21 days after the date of publication of the

notice required by s. 120.54(3)(a); within 10 days after the final public hearing is held on the proposed rule as provided by s. 120.54(3)(e)2.; within 20 days after the statement of estimated regulatory costs or revised statement of estimated regulatory costs, if applicable, has been prepared and made available as provided in s. 120.541(1)(d); or within 20 days after the date of publication of the notice required by s. 120.54(3)(d). ~~The petition must state with particularity the objections to the proposed rule and the reasons that the proposed rule is an invalid exercise of delegated legislative authority.~~ The petitioner has the burden to prove by a preponderance of the evidence that the petitioner would be substantially affected by the proposed rule ~~of going forward~~. The agency then has the burden to prove by a preponderance of the evidence that the proposed rule is not an invalid exercise of delegated legislative authority as to the objections raised. ~~A person who is substantially affected by a change in the proposed rule may seek a determination of the validity of such change.~~ A person who is not substantially affected by the proposed rule as initially noticed, but who is substantially affected by the rule as a result of a change, may challenge any provision of the resulting proposed rule ~~and is not limited to challenging the change to the proposed rule~~.

(3) CHALLENGING ~~EXISTING~~ RULES IN EFFECT; SPECIAL PROVISIONS.—

(a) A petition alleging ~~substantially affected person may~~

~~seek an administrative determination of~~ the invalidity of an existing rule may be filed at any time during which the ~~existence of the~~ rule is in effect. The petitioner has the ~~a~~ burden of proving by a preponderance of the evidence that the existing rule is an invalid exercise of delegated legislative authority as to the objections raised.

(4) CHALLENGING AGENCY STATEMENTS DEFINED AS UNADOPTED RULES; SPECIAL PROVISIONS.—

(a) Any person substantially affected by an agency statement that is an unadopted rule may seek an administrative determination that the statement violates s. 120.54(1)(a). The petition shall include the text of the statement or a description of the statement and shall state ~~with particularity~~ facts sufficient to show that the statement constitutes an unadopted ~~a~~ rule ~~under s. 120.52 and that the agency has not adopted the statement by the rulemaking procedure provided by s. 120.54~~.

(b) The administrative law judge may extend the hearing date beyond 30 days after assignment of the case for good cause. Upon notification to the administrative law judge provided before the final hearing that the agency has published a notice of rulemaking under s. 120.54(3), such notice shall automatically operate as a stay of proceedings pending adoption of the statement as a rule. The administrative law judge may vacate the stay for good cause shown. A stay of proceedings pending rulemaking shall remain in effect so long as the agency

is proceeding expeditiously and in good faith to adopt the statement as a rule.

(c) If a hearing is held and the petitioner proves the allegations of the petition, the agency shall have the burden of proving that rulemaking is not feasible or not practicable under s. 120.54(1)(a).

(d) ~~(c)~~ The administrative law judge may determine whether all or part of a statement violates s. 120.54(1)(a). The decision of the administrative law judge shall constitute a final order. The division shall transmit a copy of the final order to the Department of State and the committee. The Department of State shall publish notice of the final order in the first available issue of the Florida Administrative Register.

(e) ~~(d)~~ If an administrative law judge enters a final order that all or part of an unadopted rule ~~agency statement~~ violates s. 120.54(1)(a), the agency must immediately discontinue all reliance upon the unadopted rule ~~statement~~ or any substantially similar statement as a basis for agency action.

(f) ~~(e)~~ If proposed rules addressing the challenged unadopted rule ~~statement~~ are determined to be an invalid exercise of delegated legislative authority as defined in s. 120.52(8)(b)-(f), the agency must immediately discontinue reliance upon ~~on~~ the unadopted rule ~~statement~~ and any substantially similar statement until rules addressing the subject are properly adopted, and the administrative law judge

shall enter a final order to that effect.

(g) ~~(f)~~ All proceedings to determine a violation of s. 120.54(1)(a) shall be brought pursuant to this subsection. A proceeding pursuant to this subsection may be consolidated with a proceeding under subsection (3) or under any other section of this chapter. This paragraph does not prevent a party whose substantial interests have been determined by an agency action from bringing a proceeding pursuant to s. 120.57(1)(e).

Section 4. Paragraphs (e) and (h) of subsection (1) and subsection (2) of section 120.57, Florida Statutes, are amended to read:

120.57 Additional procedures for particular cases.—

(1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS INVOLVING DISPUTED ISSUES OF MATERIAL FACT.—

(e)1. An agency or an administrative law judge may not base agency action that determines the substantial interests of a party on an unadopted rule or a rule that is an invalid exercise of delegated legislative authority. ~~The administrative law judge shall determine whether an agency statement constitutes an unadopted rule.~~ This subparagraph does not preclude application of valid adopted rules and applicable provisions of law to the facts.

2. In a matter initiated as a result of agency action proposing to determine the substantial interests of a party, the party's timely petition for hearing may challenge the proposed agency action based on a rule that is an invalid exercise of

delegated legislative authority or based on an alleged unadopted rule. For challenges brought under this subparagraph:

a. The challenge may be pled as a defense using the procedures set forth in s. 120.56(1).

b. Section 120.56(3)(a) applies to a challenge alleging that a rule is an invalid exercise of delegated legislative authority.

c. Section 120.56(4)(c) applies to a challenge alleging an unadopted rule.

d. This subparagraph does not preclude the consolidation of any proceeding under s. 120.56 with any proceeding under this paragraph.

3.~~2.~~ Notwithstanding subparagraph 1., if an agency demonstrates that the statute being implemented directs it to adopt rules, that the agency has not had time to adopt those rules because the requirement was so recently enacted, and that the agency has initiated rulemaking and is proceeding expeditiously and in good faith to adopt the required rules, then the agency's action may be based upon those unadopted rules if~~, subject to de novo review by~~ the administrative law judge determines that rulemaking is neither feasible nor practicable and the unadopted rules would not constitute an invalid exercise of delegated legislative authority if adopted as rules. An unadopted rule ~~The agency action~~ shall not be presumed valid ~~or invalid~~. The agency must demonstrate that the unadopted rule:

a. Is within the powers, functions, and duties delegated

by the Legislature or, if the agency is operating pursuant to authority vested in the agency by ~~derived from~~ the State Constitution, is within that authority;

b. Does not enlarge, modify, or contravene the specific provisions of law implemented;

c. Is not vague, establishes adequate standards for agency decisions, or does not vest unbridled discretion in the agency;

d. Is not arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational;

e. Is not being applied to the substantially affected party without due notice; and

f. Does not impose excessive regulatory costs on the regulated person, county, or city.

4.~~3.~~ The recommended and final orders in any proceeding shall be governed by ~~the provisions of~~ paragraphs (k) and (l), except that the administrative law judge's determination regarding an unadopted rule under subparagraph 1. or subparagraph 2. shall not be rejected by the agency unless the agency first determines from a review of the complete record, and states with particularity in the order, that such determination is clearly erroneous or does not comply with essential requirements of law. In any proceeding for review under s. 120.68, if the court finds that the agency's rejection of the determination regarding the unadopted rule does not

comport with ~~the provisions of~~ this subparagraph, the agency action shall be set aside and the court shall award to the prevailing party the reasonable costs and a reasonable attorney ~~attorney's~~ fee for the initial proceeding and the proceeding for review.

5. A petitioner may pursue a separate, collateral challenge under s. 120.56 even if an adequate remedy exists through a proceeding under this section. The administrative law judge may consolidate the proceedings.

(h) Any party to a proceeding in which an administrative law judge ~~of the Division of Administrative Hearings~~ has final order authority may move for a summary final order when there is no genuine issue as to any material fact. A summary final order shall be rendered if the administrative law judge determines from the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that no genuine issue as to any material fact exists and that the moving party is entitled as a matter of law to the entry of a final order. A summary final order shall consist of findings of fact, if any, conclusions of law, a disposition or penalty, if applicable, and any other information required by law to be contained in the final order.

(2) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT.—In any case to which subsection (1) does not apply:

(a) The agency shall:

1. Give reasonable notice to affected persons of the action of the agency, whether proposed or already taken, or of its decision to refuse action, together with a summary of the factual, legal, and policy grounds therefor.

2. Give parties or their counsel the option, at a convenient time and place, to present to the agency or hearing officer written or oral evidence in opposition to the action of the agency or to its refusal to act, or a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction.

3. If the objections of the parties are overruled, provide a written explanation within 7 days.

(b) An agency may not base agency action that determines the substantial interests of a party on an unadopted rule or a rule that is an invalid exercise of delegated legislative authority.

(c) ~~(b)~~ The record shall only consist of:

1. The notice and summary of grounds.

2. Evidence received.

3. All written statements submitted.

4. Any decision overruling objections.

5. All matters placed on the record after an ex parte communication.

6. The official transcript.

7. Any decision, opinion, order, or report by the presiding officer.

Section 5. Subsections (1) and (9) of section 120.68, Florida Statutes, are amended to read:

120.68 Judicial review.—

(1)(a) A party who is adversely affected by final agency action is entitled to judicial review.

(b) A preliminary, procedural, or intermediate order of the agency or of an administrative law judge of the Division of Administrative Hearings is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(9) A ~~No~~ petition challenging an agency rule as an invalid exercise of delegated legislative authority shall not be instituted pursuant to this section, except to review an order entered pursuant to a proceeding under s. 120.56, s. 120.57(1)(e)1., or s. 120.57(2)(b) or an agency's findings of immediate danger, necessity, and procedural fairness prerequisite to the adoption of an emergency rule pursuant to s. 120.54(4), unless the sole issue presented by the petition is the constitutionality of a rule and there are no disputed issues of fact.

Section 6. Section 120.695, Florida Statutes, is amended to read:

120.695 Notice of noncompliance; designation of minor violation of rules.—

(1) It is the policy of the state that the purpose of regulation is to protect the public by attaining compliance with the policies established by the Legislature. Fines and other

penalties may be provided in order to assure compliance; however, the collection of fines and the imposition of penalties are intended to be secondary to the primary goal of attaining compliance with an agency's rules. It is the intent of the Legislature that an agency charged with enforcing rules shall issue a notice of noncompliance as its first response to a minor violation of a rule in any instance in which it is reasonable to assume that the violator was unaware of the rule or unclear as to how to comply with it.

(2)(a) Each agency shall issue a notice of noncompliance as a first response to a minor violation of a rule. A "notice of noncompliance" is a notification by the agency charged with enforcing the rule issued to the person or business subject to the rule. A notice of noncompliance may not be accompanied with a fine or other disciplinary penalty. It must identify the specific rule that is being violated, provide information on how to comply with the rule, and specify a reasonable time for the violator to comply with the rule. A rule is agency action that regulates a business, occupation, or profession, or regulates a person operating a business, occupation, or profession, and that, if not complied with, may result in a disciplinary penalty.

(b) Each agency shall review all of its rules and designate those for which a violation would be a minor violation and for which a notice of noncompliance must be the first enforcement action taken against a person or business subject to

regulation. A violation of a rule is a minor violation if it does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm. ~~If an agency under the direction of a cabinet officer mails to each licensee a notice of the designated rules at the time of licensure and at least annually thereafter, the provisions of paragraph (a) may be exercised at the discretion of the agency. Such notice shall include a subject-matter index of the rules and information on how the rules may be obtained.~~

(c)1. No later than June 30, 2017, and after such date within 3 months after any request of the rules ombudsman in the Executive Office of the Governor, ~~The agency's review and designation must be completed by December 1, 1995;~~ each agency shall review ~~under the direction of the Governor shall make a report to the Governor, and each agency under the joint direction of the Governor and Cabinet shall report to the Governor and Cabinet by January 1, 1996, on which of~~ its rules and certify to the President of the Senate, the Speaker of the House of Representatives, the committee, and the rules ombudsman those rules that have been designated as rules the violation of which would be a minor violation under paragraph (b), consistent with the legislative intent stated in subsection (1).

2. Beginning July 1, 2017, each agency shall:

a. Publish all rules that the agency has designated as rules the violation of which would be a minor violation, either

as a complete list on the agency's website or by incorporation of the designations in the agency's disciplinary guidelines adopted as a rule.

b. Ensure that all investigative and enforcement personnel are knowledgeable about the agency's designations under this section.

3. For each rule filed for adoption, the agency head shall certify whether any part of the rule is designated as a rule the violation of which would be a minor violation and shall update the listing required by sub-subparagraph 2.a.

(d) The Governor or the Governor and Cabinet, as appropriate ~~pursuant to paragraph (c)~~, may evaluate the review and designation effects of each agency subject to the direction and supervision of such authority and may direct ~~apply~~ a different designation than that applied by such ~~the~~ agency.

(e) Notwithstanding s. 120.52(1)(a), this section does not apply to:

1. The Department of Corrections;

2. Educational units;

3. The regulation of law enforcement personnel; or

4. The regulation of teachers.

(f) Designation pursuant to this section is not subject to challenge under this chapter.

Section 7. This act shall take effect July 1, 2016.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 183 (2016)

Amendment No. 1

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

Committee/Subcommittee hearing bill: State Affairs Committee

Representative Adkins offered the following:

Amendment

Remove line 394 and insert:

procedures set forth in s. 120.56(1)(b).

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 183 (2016)

Amendment No. 2

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

Committee/Subcommittee hearing bill: State Affairs Committee

Representative Adkins offered the following:

Amendment (with title amendment)

Between lines 595 and 596, insert:

Section 7. Section 403.8141, Florida Statutes, is amended to read:

403.8141 Special event permits.—

(1) The department shall issue permits for special events under s. 253.0345. The permits must be for a period that runs concurrently with the lease or letter of consent issued pursuant to s. 253.0345 and must allow for the movement of temporary structures within the footprint of the lease area.

(2) Administrative challenges to any proposed regulatory permits related to special events are subject to the summary hearing provisions of s. 120.574, except that the summary proceeding must be conducted within 30 days after a party files

a motion for a summary hearing, regardless of whether the parties agree to the summary proceeding.

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

Remove line 36 and insert:
notice; providing applicability; amending s. 403.8141, F.S.; providing that administrative challenges to proposed regulatory permits related to special events are subject to certain summary hearing provisions; providing an

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 417 Article V Convention for Congressional Term Limits
SPONSOR(S): Metz and others
TIED BILLS: **IDEN./SIM. BILLS:** SM 630

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	13 Y, 0 N	Kiner	Kiner
2) State Affairs Committee		Camechis	Camechis

SUMMARY ANALYSIS

HM 417 constitutes the state's application to Congress for an Article V convention for the sole purpose of proposing an amendment to the U.S. Constitution to establish term limits for members of the U.S. Senate and U.S. House of Representatives. Currently, there is not a limit on the number of terms a member of Congress may serve. The memorial does not specify the number of terms that members should be allowed to serve.

In the early 1990s, twenty-three states, including Florida, approved state constitutional amendments or passed laws imposing congressional term limits. However, in 1995, the U.S. Supreme Court ruled that congressional term limits may only be imposed by amending the U.S. Constitution.

There are two methods to amend the U.S. Constitution. The first method calls for each house of Congress to approve a proposal for an amendment by a two-thirds majority. Alternatively, two-thirds of the states (34 states) may submit applications to Congress for an Article V convention. An Article V convention has never been called. In either case, proposed amendments must be ratified by three-fourths of the states (38 states) in order to become part of the U.S. Constitution.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the U.S. Congress to act on a particular subject.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Process for Amending the United States Constitution

Article V of the U.S. Constitution provides two methods for proposing amendments. The first method authorizes Congress to propose amendments to the states that are approved by two-thirds vote of both houses of Congress.[1] Amendments approved in this manner do not require the President's signature and are transmitted to each state for ratification.[2] Starting with the Bill of Rights in 1789, Congress has used this method to submit 33 amendments to the states.[3] Of those 33 proposals, 27 amendments to the Constitution have been ratified by the states.[4]

The second method, which has never been used,[5] requires Congress to call a convention for proposing amendments when two-thirds of the state legislatures make application to Congress for an Article V convention.[6] Thirty-four states would need to submit valid applications to meet the two-thirds requirement. Though the form of a convention is not specified in the Constitution, Congress has historically attempted to take on broad responsibilities in connection with a convention by administering state applications; establishing procedures to summon a convention; setting the amount of time allotted to its deliberations; determining the number and selection process of its delegates; setting internal convention procedures, and providing arrangement for the formal transmission of any proposed amendments to the states.[7] Congressional legislation was introduced between 1973 and 1992 that would provide a procedural framework for an Article V convention should one ever be called; however, none of the legislation passed both houses of Congress.[8]

Congressional Term Limits

The U.S. Constitution governs the composition and election of members of Congress.[9] Specifically, members of the U.S. House of Representatives serve two-year terms and members of the U.S. Senate serve six-year terms.[10] However, the Constitution does not limit the number of terms or years a member of Congress may serve.[11]

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[1] U.S. CONST. art. V.
[2] *The Constitutional Amendment Process*, U.S, National Archives and Records Administration, http://www.archives.gov/federal-register/constitution (last visited November 30, 2015).
[3] *Proposed Amendments Not Ratified by the States*, U.S. Government Printing Office, http://www.gpo.gov/fdsys/pkg/GPO-CONAN-1992/pdf/GPO-CONAN-1992-8.pdf (last visited November 30, 2015).
[4] *Id.*
[5] *See* Sara R. Ellis et al., *Article V Constitutional Conventions: A Primer*, 78 TENN. L. REV. 663, 665 (2011).
[6] U.S. CONST. art. V.
[7] *See* Thomas H. Neale, Congressional Research Service, *The Article V Convention: Contemporary Issues for Congress* R42589, (April 11, 2014), pp 39-41.
[8] *See* Thomas H. Neale, Congressional Research Service, *The Article V Convention: Contemporary Issues for Congress* R42589, (April 11, 2014), p. 36.
[9] U.S. CONST. art. I.
[10] U.S. CONST. art I. §2 (as affected by the 14th and 16th Amendments); U.S. CONST. art I. §3 (as affected by the 17th Amendment).
[11] *Id.*

Background of the Congressional Term Limit Debate

In the early 1990s, twenty-three states, including Florida, approved constitutional amendments or passed laws imposing congressional term limits.[12] These efforts were found to be unconstitutional, however, in the 1995 Supreme Court case, *U.S. Term Limits, Inc. v. Thornton.*[13] In that case, the Supreme Court held the following:

1) State-imposed candidacy limitations on federal legislative office violates the U.S. Constitution's "qualifications clauses;" and
2) Congressional term limits may only be imposed by amendment to the U.S. Constitution.[14]

Since 1995, congressional members have filed several bills proposing an amendment to the U.S. Constitution to impose congressional term limits, but none have been successful.[17]

Florida's Prior Congressional Term Limit Applications

Over the years, several memorials have been filed during the regular session of the Florida Legislature relating to the imposition of congressional term limits:

- In 2012, HM 83 (SM 672) urged Congress to propose to the states an amendment to the U.S. Constitution that would impose consecutive congressional term limits. HM 83 passed the Florida House of Representatives on February 29, 2012, and the Florida Senate on March 1, 2012. HM 83 was filed with the Florida Secretary of State on March 23, 2012.

- In 2013, HM 763 (SM 970) again urged Congress to propose to the states an amendment to the U.S. Constitution that would impose consecutive congressional term limits. HM 763 passed the House, but died in the Senate.

- In 2014, HM 81, as filed, urged Congress to propose to the states an amendment to the U.S. Constitution to impose consecutive Congressional term limits. The memorial was amended on the House floor to petition Congress to call an Article V convention for the purpose of proposing a congressional term limits amendment to the states for ratification. The memorial passed the House on March 26, 2014, but died in the Senate.

- In 2014, SM 476 (HM 381) petitioned Congress to call an Article V convention for the purpose of proposing amendments to the U.S. Constitution which: impose fiscal restraints on the federal government; limit the power and jurisdiction of the federal government; or limit the terms of office for "federal officials" and "members of Congress". The memorial stated that each of these amendment categories were "severable from one another and may be counted individually toward the required two-thirds number of applications made by the state legislatures for the calling of an Article V convention." SM 476 passed the Senate and House on April 21, 2014.

Other State Applications for an Article V Convention on Congressional Term Limits

The total number of state applications that have been submitted to Congress for an Article V convention on this subject is unknown. However, in January 2015, the U.S. House of Representatives passed H.Res. 5, which amended the House Rules, to among other things, provide transparency with

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[12] Sula P. Richardson, U.S. Congressional Research Service, *Term Limits for Members of Congress: State Activity* (June 4, 1998), available at http://digital.library.unt.edu/ark:/67531/metacrs582/m1/1/high_res_d/96-152_1998Jun04.pdf (finding that passed some form of congressional term limits include the following: AK, AR, AZ, CA, CO, FL, ID, ME, MA, MI, MO, MT, NE, NH, NV, ND, OH, OK, OR, SD, UT, WA, WY).
[13] Thornton, 514 U.S. 779 (1995).
[14] *Id.*
[17] CONGRESS.GOV (Feb. 3, 2014), *available at* http://beta.congress.gov/.

respect to memorials submitted pursuant to Article V of the U.S. Constitution.[18] Under the revised House Rules, the Chairman of the House Committee on the Judiciary is authorized to determine the extent to which a state application purports to comply with Article V for the purpose of counting towards the two-thirds requirement. In relevant part, section 3(c)(1) of H.Res.5, states "the chair of the Committee on the Judiciary shall, in the case of such a memorial presented in the One Hundred Fourteenth Congress, and may, in the case of such a memorial presented prior to the One Hundred Fourteenth Congress, designate any such memorial for public availability of the Clerk."[19]

The U.S. House of Representatives website lists state applications submitted since 2012 that call for an Article V convention on various issues, including campaign finance, a balanced federal budget, and the federal debt.[20] As of December 2015, the list contains 20 applications. However, none call for an Article V convention with the sole purpose of proposing a constitutional amendment to impose congressional term limits. Since 2012, Florida,[21] Georgia,[22] and Alaska[23] have submitted applications regarding congressional term limits, but those applications also addressed term limits for federal officials, fiscal restraints on the federal government, and limitations on the power and jurisdiction of the federal government.[24]

Florida's 'Article V Constitutional Convention Act'

In 2014, the Florida Legislature passed, and the Governor signed, the Article V Constitutional Convention Act.[28] Florida's Article V Constitutional Convention Act governs the appointment, qualification, and conduct of Florida's delegates to an Article V convention should one ever be called. The Act's provisions, among other things, govern the appointment of and conduct of Florida's delegates.[29]

Effect of the Memorial

HM 417 constitutes the state's application to Congress for an Article V convention with the sole purpose of proposing an amendment to the U.S. Constitution to limit the number of terms that may be served by a member of the U.S. Senate or the U.S. House of Representatives. The memorial does not specify a particular term limit.

The memorial serves as a continuing application until the legislatures of at least two-thirds of the states (34 states) also apply to Congress to call for a convention on the issue of congressional term limits. The text of the memorial states that the application is conditional and will be revoked and withdrawn, nullified, and superseded to the same effect as if it had never been passed, and retroactive to the date of passage, if it is used for the purpose of calling an Article V convention on any other subject.

In 2014, the Florida Legislature passed a memorial to Congress (SM 476) calling for an Article V convention to, among other things, propose an amendment to the states that would limit the terms of office for "federal officials" and "members of Congress".[30] While SM 476 (2014) continues as an

[18] *See* H.Res.5 – Adopting rules for the One Hundred Fourteenth Congress, Section 3(c). The text of H.Res.5 may be viewed on the Congress.gov website here https://www.congress.gov/bill/114th-congress/house-resolution/5/actions?q=%7B%22search%22%3A%5B%22%5C%22hres5%5C%22%22%5D%7D&resultIndex=1 (last visited November 30, 2015).
[19] *Id.*
[20] Available at http://clerk.house.gov/legislative/memorials.aspx (last visited December 16, 2015).
[21] *See* SM 476, available at http://clerk.house.gov/legislative/memorials.aspx (last visited November 30).
[22] *See* Senate Resolution 736, available at http://clerk.house.gov/legislative/memorials.aspx (last visited November 30).
[23] *See* HJR 22, available at http://clerk.house.gov/legislative/memorials.aspx (last visited November 30).
[24]

[28] Ch. 2014-52, Laws of Florida.
[29] *See* ss. 11.93-11.9352, F.S.
[30] The memorial also sought a convention for amendments on the following issues: 1) imposing fiscal restraints on the federal government; 2) limiting the power and jurisdiction of the federal government. Each of the proposed amendment categories was

application to Congress for an Article V convention, HM 417's scope is more limited in that it does not advocate for a proposed amendment to limit the terms of office of "federal officials," and only petitions for an amendment that would limit congressional terms.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the U.S. Congress to act on a particular subject. This memorial does not have a fiscal impact.

B. SECTION DIRECTORY: Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Applicability of Municipality/County Mandates Provision: Not applicable.

1. Other: None

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None

House Memorial

A memorial to the Congress of the United States, applying to Congress to call a convention under Article V of the Constitution of the United States with the sole agenda of proposing an amendment to the Constitution of the United States to set a limit on the number of terms that a person may be elected as a member of the United States House of Representatives and to set a limit on the number of terms that a person may be elected as a member of the United States Senate.

WHEREAS, Article V of the Constitution of the United States requires Congress to call a convention for the sole purpose of proposing amendments to the Constitution upon application of two-thirds of the states, and

WHEREAS, a continuous and growing concern has been expressed that the best interests of the nation will be served by limiting the terms of members of Congress, and

WHEREAS, the voters of the State of Florida, by the gathering of petition signatures, placed on the general election ballot of 1992 a measure to limit the consecutive years of service for several offices, including the offices of United States Representative and United States Senator, and

WHEREAS, the voters of Florida incorporated this limitation into the State Constitution as Section 4 of Article VI, by an

approval vote that exceeded 76 percent in the general election of 1992, and

WHEREAS, in 1995, the United States Supreme Court ruled in *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995), a five-to-four decision, that the individual states did not possess the requisite authority to establish term limits, or additional qualifications, for persons elected to the United States House of Representatives or the United States Senate, and

WHEREAS, upon reflecting on the intent of the voters of this state and their overwhelming support for congressional term limits, the Legislature, in its 114th Regular Session since Statehood in 1845, did express through a memorial to Congress the desire to receive an amendment to the Constitution of the United States to limit the number of consecutive terms that a person may serve in the United States House of Representatives or the United States Senate, and

WHEREAS, the Legislature, in its 118th Regular Session since statehood in 1845, does desire to see a convention called under Article V of the Constitution of the United States with the sole agenda of proposing an amendment to the Constitution of the United States on the subject of congressional term limits as specified in this memorial, NOW, THEREFORE,

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

(1) That the Legislature of the State of Florida does hereby make application to Congress, pursuant to Article V of the Constitution of the United States, to call an Article V convention with the sole agenda of proposing an amendment to the Constitution of the United States to set a limit on the number of terms that a person may be elected as a member of the United States House of Representatives and to set a limit on the number of terms that a person may be elected as a member of the United States Senate.

(2) That this application does not revoke or supersede Senate Memorial 476 as passed by the 2014 Florida Legislature, but constitutes a separate, independent application addressing congressional term limits as specified in this application.

(3) That this application is revoked and withdrawn, nullified, and superseded to the same effect as if it had never been passed, and retroactive to the date of passage, if it is used for the purpose of calling a convention or used in support of conducting a convention to amend the Constitution of the United States with any agenda other than to set a limit on the number of terms that a person may be elected as a member of the United States House of Representatives and to set a limit on the number of terms that a person may be elected as a member of the United States Senate.

(4) That this application constitutes a continuing application in accordance with Article V of the Constitution of the United States until the legislatures of at least two-thirds

of the several states have made application on the subject of congressional term limits as specified in this application.

(5) That this application be aggregated with the applications from other states on the same subject for the purpose of attaining the two-thirds majority needed to require Congress to call a limited Article V convention as specified in this application, but not be aggregated with any other applications on any other subject.

BE IT FURTHER RESOLVED that copies of this application be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, to each member of the Florida delegation to the United States Congress, and to the presiding officer of each house of the legislature of each state.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 541 Addresses of Legal Residence
SPONSOR(S): Spano
TIED BILLS: **IDEN./SIM. BILLS:** SB 744

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

SUMMARY ANALYSIS

Current law requires the Department of State to prescribe by rule a uniform statewide voter registration application. The 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" to mean the legal residence of an elector and includes all information necessary to distinguish one residence from another, such as apartment numbers, lot numbers, room numbers, or dormitory room numbers. The bill 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:

Background

The Florida Voter Registration Act[1] delineates the qualifications and requirements necessary for a person to register to vote in Florida.[2] In order to become a registered voter in Florida, a person must register pursuant to The Florida Election Code[3] and must be at least 18 years of age, a citizen of the United States, a legal resident of Florida, and a legal resident of the county in which the person seeks to be registered.[4]

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

- 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 from a Florida identification card, or if the applicant does not have a Florida driver license or identification card, 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, the applicant 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, the applicant 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.[9]

The term "legal residence" is not defined in The Florida Election Code;[10] however, the term has been defined in case law.[11] A legal residence "is the place where a person has fixed an abode with the present intention of making it their permanent home."[12] According to the Florida Supreme Court, a "legal residence consists of the concurrence of both fact and intention."[13]

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[1] Part II, ch. 97, F.S.
[2] *See* ss. 97.041-97.105, F.S.
[3] Chapters 97-106, F.S. are cited as The Florida Election Code.
[4] Section 97.041(1)(a), F.S.
[5] Section 97.052(1), F.S.; Fla. Admin. Code R. 1S-2.040 incorporating form DS-DE 39.
[6] Section 97.052(2), F.S.
[7] The Florida Voter Registration Application, incorporated by the Division of Elections 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, Florida identification card, or social security number, the applicant must affirm this fact in the manner prescribed in the uniform statewide voter registration application. Section 97.053(5)(a)5.b., F.S.
[9] Section 97.053(5)(a), F.S.
[10] "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.
[11] *Minick v. Minick*, 149 So. 483 (Fla. 1933).
[12] *Id.*
[13] *Bloomfield v. City of St. Petersburg Beach*, 82 So.2d 364 (Fla. 1955).

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 voter registration status of electors within their county.[14] Supervisors must maintain a list of valid residential street addresses for the purpose of verifying the legal addresses of voters residing within their 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 street 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. 97.053, F.S., requiring a voter registration application to include the applicant's address of legal residence.

Section 3 amends s. 97.057, F.S., conforming a cross-reference.

Section 4 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 5 provides an effective date of July 1, 2016.

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.

[14] Section 98.015(3), F.S.
[15] Section 98.015(12), F.S.

2. Expenditures:

   Supervisors may experience a cost associated with revising their list of valid residential street 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:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill appears to be exempt from the requirements of Art. VII, S. 18 of the State Constitution because it is an election law.

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

None.

A bill to be entitled

An act relating to addresses of legal residence; amending s. 97.021, F.S.; defining the term "address of legal residence"; amending ss. 97.053 and 97.057, F.S.; requiring a voter registration application to include the applicant's address of legal residence; conforming a provision; amending s. 98.015, F.S.; providing that a list of valid addresses maintained by a supervisor of elections include certain additional distinguishing information; providing an effective date.

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

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

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

(3) "Address of legal residence" means 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.

Section 2. Paragraph (a) of subsection (5) of section

97.053, Florida Statutes, is amended to read:

97.053 Acceptance of voter registration applications.—

(5)(a) A voter registration application is complete if it contains the following information necessary to establish the applicant's eligibility pursuant to s. 97.041, including:

1. The applicant's name.

2. The applicant's address of legal residence ~~address~~.

3. The applicant's date of birth.

4. A mark in the checkbox affirming that the applicant is a citizen of the United States.

5.a. The applicant's current and valid Florida driver license number or the identification number from a Florida identification card issued under s. 322.051, or

b. If the applicant has not been issued a current and valid Florida driver license or a Florida identification card, the last four digits of the applicant's social security number.

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

6. 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.

7. 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.

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

Section 3. Subsection (10) of section 97.057, Florida Statutes, is amended to read:

97.057 Voter registration by the Department of Highway Safety and Motor Vehicles.—

(10) The department shall provide the Department of Highway Safety and Motor Vehicles with an electronic database of street addresses valid for use as the address of legal residence ~~address~~ as required in s. 97.053(5). The Department of Highway Safety and Motor Vehicles shall compare the address provided by the applicant against the database of valid street addresses. If the address provided by the applicant does not match a valid street address in the database, the applicant will be asked to verify the address provided. The Department of Highway Safety and Motor Vehicles shall not reject any application for voter registration for which a valid match cannot be made.

Section 4. Subsection (12) of section 98.015, Florida

Statutes, is amended to read:

98.015 Supervisor of elections; election, tenure of office, compensation, custody of registration-related documents, office hours, successor, seal; appointment of deputy supervisors; duties.—

(12) Each supervisor shall maintain a list of valid residential street addresses for purposes of verifying the legal addresses of voters residing in the supervisor's county. To the maximum extent practicable, the list shall include 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 supervisor shall make all reasonable efforts to coordinate with county 911 service providers, property appraisers, the United States Postal Service, or other agencies as necessary to ensure the continued accuracy of such list. The supervisor shall provide the list of valid residential addresses to the statewide voter registration system in the manner and frequency specified by rule of the department.

Section 5. This act shall take effect July 1, 2016.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 541 (2016)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: State Affairs Committee

Representative Murphy offered the following:

Amendment (with title amendment)

Remove line 33 and insert:

2. The applicant's address of legal residence, including a distinguishing apartment, suite, lot, room, or dormitory room number or other identifier, if appropriate ~~address~~. Failure to include a distinguishing apartment, suite, lot, room, or dormitory room or other identifier on a voter registration application does not impact a voter's eligibility to register to vote or cast a ballot, and such an omission may not serve as the basis for a challenge to a voter's eligibility or reason to not count a ballot.

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

Amendment No.

Remove line 6 and insert:
include the applicant's address of legal residence and certain additional distinguishing information; specifying that an applicant's failure to include such distinguishing information on a voter registration application does not affect his or her qualifications to register or vote or cast a ballot;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7009 PCB FTC 16-02 Local Government Capital Recovery
SPONSOR(S): Finance & Tax Committee, Cortes, B.
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Committee	11 Y, 6 N	Pewitt	Langston
1) State Affairs Committee		Moore, R.	Camechis

SUMMARY ANALYSIS

The bill creates sections 125.575 and 166.30, Florida Statutes, relating to local government capital recovery.

The bill provides a specified list of local government revenue sources, including abatement fines, administrative fines, property fines, and utility charges. These revenue sources are collectively referred to as "designated revenues" by the bill. The bill defines "procurement request" as an invitation to bid, invitation to negotiate, or request for proposal issued pursuant to a county's or municipality's procurement policy.

The bill provides that, after October 1, 2016, any county or municipality which meets at least one the following criteria must issue a procurement request within 30 days of first meeting the criterion. The criteria are:

- The sum of the county's or municipality's designated revenues which are more than 90 days delinquent is at least $10,000,000;
- The sum of the county's or municipality's designated revenues which are more than 180 days delinquent is at least $5,000,000; or
- The sum of the county's or municipality's designated revenues which are more than 270 days delinquent is at least $1,000,000.

The county or municipality must seek bids from registered collection agencies offering a one-time up-front cash payment to the county or municipality in exchange for the right to collect all of the county's or municipality's delinquent designated revenues as of the date the procurement request is issued.

If the county's or municipality's delinquent designated revenues make up less than 20% of its total designated revenues billed during the previous 12 months, it is not required to issue a procurement request. If it does issue a procurement request, it must evaluate the amount of its delinquent designated revenues, exclusive of any amount turned over to a collection agency that submitted a bid in response to the procurement request, 12 months after the procurement request was issued. If, at that time, it continues to meet any of the three criteria, it must issue an additional procurement request.

The county or municipality is not required to enter into a contractual relationship with any company responding to the procurement request, and may continue to collect delinquent designated revenues by any method allowed by law. However, if the governing board of the county or municipality has not entered into negotiations to contract with a collection agency that submitted a response to the procurement request within 60 days of receipt of all responses, the mayor of a municipality, county executive of a charter county, or Clerk of Courts of a non-charter county may enter into negotiations with a collection agency and may execute a contract with them on the county's or municipality's behalf.

All counties and municipalities must include, as part of the management letter submitted with the annual financial audit report, a discussion of the county's or municipality's delinquent designated revenues and the efforts undertaken by the county or municipality to collect these revenues.

The bill may require some additional local government expenditures related to issuance of procurement requests. The bill might also improve certain local government revenue collections.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

County & Municipal Code Enforcement & Other Fees & Fines

Under the Florida Constitution, local governments may not levy taxes except for ad valorem taxes or as otherwise authorized by the Legislature.[1] However, the Florida Constitution grants local governments broad home rule authority. Municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform its functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[2] Non-charter county governments are granted powers of self-government pursuant to general or special law,[3] and charter counties are granted all powers of self-government which do not conflict with general or special law.[4] Local governments may use a variety of revenue sources to fund services and improvements without express statutory authorization. Special assessments, impact fees, franchise fees, and user fees or service charges are examples of these home rule revenue sources. While local governments may have independent, home-rule authority to levy these fees or assessments, there are also Florida statutes that authorize specific types of fees.

Code enforcement fees are one example of a specific local fee authorized by state statute. Chapter 162, Florida Statutes, outlines a process by which local governments may appoint code enforcement boards to assess fines against property owners as a way to enforce county or municipal code or ordinance. Local governments are also authorized to hire code enforcement inspectors who may levy such fines.[5] Any such fine, including any repair costs incurred to bring the property into compliance with code, may also constitute a lien against the owner of the property and any other real property owned by such owner.[6] However, the statute states that local governments are not prevented by statute from enforcing codes and ordinances by any other means.[7]

County and Municipally Owned Utilities

Under their home rule power and as otherwise provided or limited by law or agreement, municipalities provide utilities to citizens and entities within the municipality's corporate boundaries, in unincorporated areas, and even other municipalities. Current law provides that municipalities or an agency of a municipality may be a "joint owner of, giving, or lending or using its taxing power or credit for the joint ownership, construction, and operation of electrical energy generating or transmission facilities with any corporation, association, partnership or person."[8] Additionally, municipalities are expressly authorized by general law to provide water and sewer utility services.[9] With respect to public works projects, including water and sewer utility services,[10] municipalities may extend and execute their corporate

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[1] FLA. CONST. art VII, s. 1(a) and 9(a).
[2] FLA. CONST. art VIII, 2(b). *See also* s. 166.021, F.S.
[3] FLA. CONST. art VIII, 1(f). See also chapter 125, F.S.
[4] FLA. CONST. art VIII, 1(g).
[5] Section 162.21, F.S.
[6] Section 162.09, F.S.
[7] Section. 162.21, F.S.
[8] FLA. CONST. art. VII, s. 10(d). *See* ss. 361.10-361.18, F.S.
[9] Pursuant to s. 180.06, F.S., a municipality may "provide water and alternative water supplies;" "provide for the collection and disposal of sewage, including wastewater reuse, and other liquid wastes;" and "construct reservoirs, sewerage systems, trunk sewers, intercepting sewers, pumping stations, wells, siphons, intakes, pipelines, distribution systems, purification works, collection systems, treatment and disposal works" to accomplish these purposes).
[10] Section 180.06, F.S., authorizes other public works projects, including alternative water supplies, maintenance of water flow and bodies of water for sanitary purposes.

powers outside of their corporate limits as "desirable or necessary for the promotion of the public health, safety and welfare" to accomplish the purposes of ch. 180, Florida Statutes.[11] Current law requires municipalities providing telecommunication services to abide by certain requirements.[12] Municipal utilities are subject to limited oversight by the Public Service Commission (PSC).[13] PSC regulation of municipal electric utilities is limited to oversight of safety, reliability, territorial, and rate structure issues.[14] PSC regulation of municipal natural gas utilities is limited to territorial issues.[15] Municipal utilities that provide water and/or wastewater service are exempt from PSC regulation.[16]

Counties are authorized by statute to purchase, construct, maintain, and manage water supply and sewage systems.[17] They are allowed to issue a variety of bonds to finance the construction of such systems,[18] and may create water and sewer districts in unincorporated areas of the county.[19] Additionally, counties may operate telecommunications services.[20]

Uncollected Fees & Fines

Many fees and fines imposed by counties and municipalities are difficult to collect in a timely manner. However, because counties and municipalities have the authority to file liens against the property as part of code and ordinance enforcement activities, collection rates over the long run are very high as most properties are likely to be sold at some point in time. Consequently, at any given time, a county or municipality can have a large balance of uncollected fees and fines. In a survey of large cities in Florida performed by a private debt collection company in 2013, seven cities reported a total of $421,885,684 in uncollected utility charges and code enforcement, abatement, administrative and other fines backed by property liens.[21]

Collection Agencies

Counties and municipalities are authorized to contract with collection agencies to collect delinquent fees and fines, and typically do so on a contingency basis.[22] When done on a contingency basis, fees paid to the collection agency may not exceed 40% of the amount originally owed to the county or municipality.

Florida law requires that businesses engaged in the practice of collecting debts from consumers be registered with the Office of Financial Regulation.[23] As of June 30, 2015, there were 1,365 registered collection agencies in Florida.[24]

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[11] Section 180.02(2), F.S.; However, s. 180.19(1), F.S., provides that a municipality may permit any other municipality and the owners of lands outside its corporate limits or within the limits of another municipality to connect with its water and sewer utility facilities and use its services upon agreed terms and conditions. .

[12] *See* s. 166.047, F.S. (setting forth certain requirements for municipal telecommunication services); s. 350.81, F.S. (providing conditions under which local governments may provide telecommunications services).

[13] *See* s. 366.011(1), F.S. (exemption for municipal utilities); s. 367.022(2), F.S. (exempting governmental entities that provide water and/or wastewater service from PSC regulation).

[14] Sections 366.04(2), (5), and (6), F.S. According to the PSC's most recent "Facts and Figures of the Florida Utility Industry" (March 2014), there are 35 municipal electric utilities in Florida that are subject to this limited jurisdiction. Available at http://www.psc.state.fl.us/publications/pdf/general/factsandfigures2014.pdf (last visited 03/17/2015).

[15] Section 366.04(3), F.S. According to the PSC's most recent "Facts and Figures of the Florida Utility Industry" (March 2014), there are 27 municipal electric utilities and 4 special gas districts in Florida that are subject to this limited jurisdiction. Available at http://www.psc.state.fl.us/publications/pdf/general/factsandfigures2014.pdf (last visited 03/17/2015).

[16] Section 367.022(2), F.S.

[17] Section 153.03, F.S.

[18] Chapter 153, F.S., multiple sections.

[19] Part II, Chapter 153, F.S.

[20] Section 125.421, F.S.

[21] On file with the Finance & Tax Committee.

[22] Section 938.35, F.S.

[23] Section 559.555, F.S.

[24] Telephone conversation with OFR (October 29, 2015).

Practices of collection agencies are governed by the federal Fair Debt Collection Practices Act[25] and the Florida Consumer Collection Practices Act.[26] Both acts define "debt collector" narrowly, and exclude persons such as original creditors and their in-house collectors and persons serving legal process in connection with the judicial enforcement of any debt. Both acts also provide private civil remedies to debtors for violations; if successful, the consumer may recover actual and statutory damages and reasonable attorney's fees and costs.

Mayors, County Executives, and Clerks of Court

Florida Statutes provide very few specific powers and duties to mayors of municipalities. Instead, each municipality defines the role of the mayor in its charter. Consequently, there are a wide variety of powers and duties granted to mayors across Florida's municipalities. In some instances, the mayor is selected from among the members of the city commission by the other members of the city commission, and fulfills only ceremonial duties.[27] In other instances, the mayor is elected through a citywide vote and has strong executive authority, including managing all of the city's departments.[28]

Chartered counties, like municipalities, have a great deal of freedom to determine the selection process, powers, and duties of the county executive in the charter. A wide variety of arrangements have been created. Some counties have a county administrator employed by the governing body,[29] while others have an elected county mayor.[30]

Except as otherwise provided in a county charter, each county in the state must have an elected Clerk of Courts, who serves as auditor, recorder, and custodian of county funds.[31] Clerks also have a large number of other responsibilities to both the county commission and the circuit court in the county, as determined by statute.

Annual Financial Audit Report

Section 218.32, F.S., requires that each local governmental entity that is determined to be a reporting entity, as defined by generally accepted accounting principles, and each independent special district as defined in s. 189.403, F.S., submit to the Florida Department of Financial Services (DFS) a copy of its annual financial report (AFR) for the previous fiscal year in a format prescribed by DFS.[32] The AFR must include any component units, as defined by generally accepted accounting principles, and each component unit must provide the local governmental entity, within a reasonable time period, financial information necessary to comply with the AFR reporting requirements. Some entities, including municipalities, are required to provide a financial audit report along with its AFR, and must do so within 45 days after completion of the audit report, but no later than 9 months after the end of the fiscal year.[33] AFRs provide local government revenue and expenditure information in more detail than is included in audit reports and is useful for detailed financial analysis.

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[25] 15 U.S.C. §§ 1692-1692p. The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-201, 124 Stat. 1376 § 1024(c)(3), directs that the FTC coordinate its law enforcement activities with the Consumer Financial Protection Bureau. The Fair Debt Collection Practices Act is also enforced by other federal agencies with respect to specific industries subject to other federal laws, such as financial institutions (such as banks, savings associations, and credit unions).

[26] Part VI of Chapter 559, F.S.

[27] See, for example, the charter of Green Cove Springs, section 2.06.

[28] See, for example, the charter of Orlando, Chapter 2, sections 1 and 3.

[29] See, for example, the charter of Alachua County, section 2.1.

[30] See, for example, the charter of Orange County, Article III.

[31] FLA. CONST. art. V, s. 16 and art. VIII, s. 1.

[32] Pursuant to s. 218.32(1)(c), F.S., regional planning councils; local government finance commissions, boards, or councils; and municipal power corporations created as a separate legal or administrative entity by interlocal agreement under s. 163.01(7), F.S., are also required to submit an AFR and audit report to DFS.

[33] Sections 218.32(1)(d)-(e), F.S.

Proposed Changes

The bill creates sections 125.575 and 166.30, Florida Statutes, relating to county and municipal capital recovery, respectively. The bill provides a specified list of local government revenue sources, including:

- Abatement fines, which are amounts billed to an owner of real property by a county or municipality to recover funds expended by the county or municipality to bring the property into compliance with county or municipal ordinance by taking some action at the property;
- Administrative fines, which are amounts other than abatement or property fines billed to an individual for the violation of a county or municipal ordinance or code unrelated to real property;
- Property fines, which are amounts other than abatement fines which are billed to a property owner due to the property being out of compliance with an ordinance or code; and
- Utility charges, which are amounts billed to a customer, other than a governmental entity, by a government-owned utility for providing utility service.

These revenue sources are collectively referred to as "designated revenues" by the bill. The bill defines "procurement request" as an invitation to bid, invitation to negotiate, or request for proposal issued pursuant to a county's or municipality's procurement policy.

The bill provides that, after October 1, 2015, any county or municipality which meets at least one the following criteria must issue a procurement request within 30 days of first meeting the criterion. The county or municipality must seek bids from registered collection agencies offering a one-time up-front cash payment to the county or municipality in exchange for the right to collect all of the county's or municipality's delinquent designated revenues as of the date the procurement request is issued. The criteria are:

- The sum of the county's or municipality's designated revenues which are more than 90 days delinquent is at least $10,000,000;
- The sum of the county's or municipality's designated revenues which are more than 180 days delinquent is at least $5,000,000; or
- The sum of the county's or municipality's designated revenues which are more than 270 days delinquent is at least $1,000,000.

If the county's or municipality's delinquent designated revenues make up less than 20% of its total designated revenues billed during the previous 12 months, it is not required to issue a procurement request. If it does issue a procurement request, it must evaluate the amount of its delinquent designated revenues, exclusive of any amount turned over to a collection agency that submitted a bid in response to the procurement request, 12 months after the procurement request was issued. If, at that time, it continues to meet any of the three criteria, it must issue an additional procurement request.

The county or municipality is not required to enter into a contractual relationship with any company responding to the procurement request, and may continue to collect delinquent designated revenues by any method allowed by law. However, if the governing board of the county or municipality has not entered into negotiations to contract with a collection agency that submitted a response to the procurement request within 60 days of receipt of all responses, the mayor of a municipality, county executive of a charter county, or Clerk of Courts of a non-charter county may enter into negotiations with a collection agency and may execute a contract with them on the county's or municipality's behalf.

Any county or municipality issuing a procurement request pursuant to this section is required to file a copy of all responses to the procurement request with the Department of Financial Services, which must maintain a copy of all such bids for a period of at least 5 years.

All municipalities must include, as part of the management letter submitted with the annual financial audit report, a discussion of the county's or municipality's delinquent designated revenues and the efforts undertaken by the county or municipality to collect these revenues.

The bill takes effect July 1, 2016.

B. SECTION DIRECTORY:

Section 1: Creates section 125.575, F.S., specifying the requirements for county capital recovery.

Section 2: Creates section 166.30, F.S., specifying the requirements for municipal capital recovery.

Section 3: Amends section 218.39, F.S., to require a discussion of county or municipal capital recovery as part of the management letter accompanying the annual financial auditing report.

Section 4: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See FISCAL COMMENTS below.

2. Expenditures:

   The bill may, in certain circumstances, require an expenditure of funds by a county or municipality to issue a procurement request.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may result in improved revenue collections if it encourages additional local government revenue collection efforts.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because the bill requires counties and municipalities, in some circumstances, to issue a procurement request, which may require the expenditure of funds; however, an exemption may apply, as the expenditure of funds to issue a procurement request is most likely insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to local government capital recovery; creating ss. 125.575 and 166.30, F.S.; providing definitions; requiring counties and municipalities that meet certain thresholds for specified delinquent revenues to issue a procurement request to collect such revenues; requiring procurement requests to be sent to consumer collection agencies; providing requirements for the content of the procurement requests; providing that counties and municipalities issuing procurement requests are not required to enter into a contract; authorizing a county executive, the county clerk of court, or a mayor of a municipality to enter into a contract under certain circumstances; excluding certain delinquent revenues from threshold calculations under certain circumstances; requiring that copies of all bids received be filed with the Department of Financial Services; amending s. 218.39, F.S.; requiring that a discussion of capital recovery efforts be included in the management letter accompanying a county's or municipality's annual financial audit report; providing an effective date.

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

Section 1. Section 125.575, Florida Statutes, is created

to read:

125.575 County capital recovery.—

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

(a) "Abatement fine" means an amount billed to an owner of real property by a county after the county brings such real property or a portion thereof into compliance with a county ordinance or code by removing, repairing, rehabilitating, demolishing, improving, remediating, storing, transporting, or disposing of any portion of the real property or any tangible personal property located thereon, regardless of whether a lien was attached to the property related to such fine.

(b) "Administrative fine" means an amount billed to an individual for a violation of a county ordinance or code unrelated to real property.

(c) "Delinquent" means unpaid after the due date listed on the original billing of an abatement fine, administrative fine, property fine, or utility charge, regardless of whether the county has contracted with a collection agency pursuant to s. 938.35 for the collection of the unpaid fines or charges.

(d) "Designated revenues" means abatement fines, administrative fines, property fines, and utility charges.

(e) "Procurement request" means an invitation to bid, an invitation to negotiate, or a request for proposals issued by a county pursuant to its procurement policies.

(f) "Property fine" means an amount, other than an abatement fine, billed to a property owner due to the property

owner's property being out of compliance with a county ordinance or code, regardless of whether a lien was attached to the property related to such fine.

(g) "Utility charge" means an amount billed to a customer, other than a government entity as defined in s. 768.295, by a county-owned utility for providing utility service.

(2) Beginning October 1, 2016, a county shall issue a procurement request meeting the requirements of subsection (4) if the county has designated revenues totaling at least:

(a) Ten million dollars which are more than 90 days delinquent;

(b) Five million dollars which are more than 180 days delinquent; or

(c) One million dollars which are more than 270 days delinquent.

(3) A county that meets at least one of the criteria in subsection (2) 1 year after issuing a procurement request pursuant to this section must issue one additional procurement request meeting the requirements of subsection (4).

(4) A procurement request issued pursuant to this section must be issued no later than 30 days after the criteria set forth in subsection (2) or subsection (3) are met and must seek bids from consumer collection agencies registered pursuant to s. 559.553. The procurement request shall require an up-front cash payment and may allow a portion of the bid to be based on contingency fees in exchange for the right of the consumer

collection agency to collect the county's delinquent designated revenues that were delinquent on the date that the county issued the procurement request. The procurement request must state that bids based solely on contingency fees with no up-front cash payment will not be accepted.

(5) Subsections (2) and (3) do not apply to a county whose delinquent designated revenues are less than 20 percent of the total designated revenues billed by the county in the previous 12 months.

(6) A county is not required to enter into a contract for services with any consumer collection agency that responds to the procurement request. However, if the governing body of the county has not begun negotiations to enter into a contract for services with a consumer collection agency that responded to the procurement request within 60 days after the receipt of all bids submitted pursuant to the procurement request, negotiations and a contract may be entered into by the county executive in a county operating under a county charter or the clerk of court in a county that is not operating under a county charter.

(7) Any delinquent designated revenues that a consumer collection agency has contracted to collect in response to a procurement request issued pursuant to this section shall be excluded from the calculation made by the county when determining whether any of the criteria in subsection (2) are met.

(8) The county shall forward a copy of all bids that it

has received in response to any procurement request to the Department of Financial Services. The Department of Financial Services shall keep all of the bids on file for at least 5 years.

Section 2. Section 166.30, Florida Statutes, is created to read:

166.30 Municipal capital recovery.—

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

(a) "Abatement fine" means an amount billed to an owner of real property by a municipality after the municipality brings such real property or a portion thereof into compliance with a municipal ordinance or code by removing, repairing, rehabilitating, demolishing, improving, remediating, storing, transporting, or disposing of any portion of the real property or any tangible personal property located thereon, regardless of whether a lien was attached to the property related to such fine.

(b) "Administrative fine" means an amount billed to an individual for a violation of a municipal ordinance or code unrelated to real property.

(c) "Delinquent" means unpaid after the due date listed on the original billing of an abatement fine, administrative fine, property fine, or utility charge, regardless of whether the municipality has contracted with a collection agency pursuant to s. 938.35 for the collection of the unpaid fines or charges.

(d) "Designated revenues" means abatement fines,

administrative fines, property fines, and utility charges.

(e) "Procurement request" means an invitation to bid, an invitation to negotiate, or a request for proposals issued by a municipality pursuant to its procurement policies.

(f) "Property fine" means an amount, other than an abatement fine, billed to a property owner due to the property owner's property being out of compliance with a municipal ordinance or code, regardless of whether a lien was attached to the property related to such fine.

(g) "Utility charge" means an amount billed to a customer, other than a government entity as defined in s. 768.295, by a municipally owned utility for providing utility service.

(2) Beginning October 1, 2016, a municipality shall issue a procurement request meeting the requirements of subsection (4) if the municipality has designated revenues totaling at least:

(a) Ten million dollars which are more than 90 days delinquent;

(b) Five million dollars which are more than 180 days delinquent; or

(c) One million dollars which are more than 270 days delinquent.

(3) A municipality that meets at least one of the criteria in subsection (2) 1 year after issuing a procurement request pursuant to this section must issue one additional procurement request meeting the requirements of subsection (4).

(4) A procurement request issued pursuant to this section

must be issued no later than 30 days after the criteria set forth in subsection (2) or subsection (3) are met and must seek bids from consumer collection agencies registered pursuant to s. 559.553. The procurement request shall require an up-front cash payment and may allow a portion of the bid to be based on contingency fees in exchange for the right of the consumer collection agency to collect the municipality's delinquent designated revenues that were delinquent on the date that the municipality issued the procurement request. The procurement request must state that bids based solely on contingency fees with no up-front cash payment will not be accepted.

(5) Subsections (2) and (3) do not apply to a municipality whose delinquent designated revenues are less than 20 percent of the total designated revenues billed by the municipality in the previous 12 months.

(6) A municipality is not required to enter into a contract for services with any consumer collection agency that responds to the procurement request. However, if the governing body of the municipality has not begun negotiations to enter into a contract for services with a consumer collection agency that responded to the procurement request within 60 days after the receipt of all bids submitted pursuant to the procurement request, negotiations and a contract may be entered into by the mayor of the municipality.

(7) Any delinquent designated revenues that a consumer collection agency has contracted to collect in response to a

procurement request issued pursuant to this section shall be excluded from the calculation made by the municipality when determining whether any of the criteria in subsection (2) are met.

(8) The municipality shall forward a copy of all bids that it has received in response to any procurement request to the Department of Financial Services. The Department of Financial Services shall keep all of the bids on file for at least 5 years.

Section 3. Subsection (4) of section 218.39, Florida Statutes, is amended to read:

218.39 Annual financial audit reports.—

(4) A management letter shall be prepared and included as a part of each financial audit report. For each county and municipal financial audit report, the letter must include a discussion of the current balance of the county's or municipality's delinquent designated revenues as defined in ss. 125.575 and 166.30 and the efforts that the county or municipality has undertaken to collect such revenues.

Section 4. This act shall take effect July 1, 2016.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 7009 (2016)

Amendment No.

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

Committee/Subcommittee hearing bill: State Affairs Committee

Representative Cortes, B. offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 125.575, Florida Statutes, is created to read:

125.575 County capital recovery.—

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

(a) "Abatement fine" means an amount billed to an owner of real property by a county after the county brings such real property or a portion thereof into compliance with a county ordinance or code by removing, repairing, rehabilitating, demolishing, improving, remediating, storing, transporting, or disposing of any portion of the real property or any tangible personal property located thereon, regardless of whether a lien was attached to the property related to such fine.

(b) "Administrative fine" means an amount billed to an individual for a violation of a county ordinance or code unrelated to real property.

(c) "Delinquent" means unpaid after the due date listed on the original billing of an abatement fine, administrative fine, property fine, or utility charge, regardless of whether the county has contracted with a collection agency pursuant to s. 938.35 for the collection of the unpaid fines or charges.

(d) "Designated revenues" means abatement fines, administrative fines, property fines, and utility charges.

(e) "Procurement request" means an invitation to bid, an invitation to negotiate, or a request for proposals issued by a county pursuant to its procurement policies.

(f) "Property fine" means an amount, other than an abatement fine, billed to a property owner due to the property owner's property being out of compliance with a county ordinance or code, regardless of whether a lien was attached to the property related to such fine.

(g) "Utility charge" means an amount billed to a customer, other than a government entity as defined in s. 768.295, by a county-owned utility for providing utility service.

(2) Beginning October 1, 2016, a county shall issue a procurement request meeting the requirements of subsection (4) if the county has designated revenues totaling at least:

(a) Ten million dollars which are more than 90 days delinquent;

(b) Five million dollars which are more than 180 days delinquent; or

(c) One million dollars which are more than 270 days delinquent.

(3) A county that meets at least one of the criteria in subsection (2) 1 year after issuing a procurement request pursuant to this section must issue one additional procurement request meeting the requirements of subsection (4).

(4) A procurement request issued pursuant to this section must be issued no later than 30 days after the criteria set forth in subsection (2) or subsection (3) are met and must seek bids from consumer collection agencies registered pursuant to s. 559.553. The procurement request shall require an up-front payment and may allow a portion of the bid to be based on contingency fees in exchange for the right of the consumer collection agency to collect the county's delinquent designated revenues that were delinquent on the date that the county issued the procurement request. The procurement request must state that bids based solely on contingency fees with no up-front payment will not be accepted.

(5) Subsections (2) and (3) do not apply to a county whose delinquent designated revenues are less than 20 percent of the total designated revenues billed by the county in the previous 12 months.

(6) A county is not required to enter into a contract for services with any consumer collection agency that responds to the procurement request.

(7) Any delinquent designated revenues that a consumer collection agency has contracted to collect in response to a procurement request issued pursuant to this section shall be excluded from the calculation made by the county when determining whether any of the criteria in subsection (2) are met.

(8) The county shall forward a copy of all bids that it has received in response to any procurement request issued pursuant to this section to the Department of Financial Services. The Department of Financial Services shall keep all of the bids on file for at least 5 years.

Section 2. Section 166.30, Florida Statutes, is created to read:

166.30 Municipal capital recovery.—

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

(a) "Abatement fine" means an amount billed to an owner of real property by a municipality after the municipality brings such real property or a portion thereof into compliance with a municipal ordinance or code by removing, repairing, rehabilitating, demolishing, improving, remediating, storing, transporting, or disposing of any portion of the real property or any tangible personal property located thereon, regardless of

whether a lien was attached to the property related to such fine.

(b) "Administrative fine" means an amount billed to an individual for a violation of a municipal ordinance or code unrelated to real property.

(c) "Delinquent" means unpaid after the due date listed on the original billing of an abatement fine, administrative fine, property fine, or utility charge, regardless of whether the municipality has contracted with a collection agency pursuant to s. 938.35 for the collection of the unpaid fines or charges.

(d) "Designated revenues" means abatement fines, administrative fines, property fines, and utility charges.

(e) "Procurement request" means an invitation to bid, an invitation to negotiate, or a request for proposals issued by a municipality pursuant to its procurement policies.

(f) "Property fine" means an amount, other than an abatement fine, billed to a property owner due to the property owner's property being out of compliance with a municipal ordinance or code, regardless of whether a lien was attached to the property related to such fine.

(g) "Utility charge" means an amount billed to a customer, other than a government entity as defined in s. 768.295, by a municipally owned utility for providing utility service.

(2) Beginning October 1, 2016, a municipality shall issue a procurement request meeting the requirements of subsection (4) if the municipality has designated revenues totaling at least:

(a) Ten million dollars which are more than 90 days delinquent;

(b) Five million dollars which are more than 180 days delinquent; or

(c) One million dollars which are more than 270 days delinquent.

(3) A municipality that meets at least one of the criteria in subsection (2) 1 year after issuing a procurement request pursuant to this section must issue one additional procurement request meeting the requirements of subsection (4).

(4) A procurement request issued pursuant to this section must be issued no later than 30 days after the criteria set forth in subsection (2) or subsection (3) are met and must seek bids from consumer collection agencies registered pursuant to s. 559.553. The procurement request shall require an up-front payment and may allow a portion of the bid to be based on contingency fees in exchange for the right of the consumer collection agency to collect the municipality's delinquent designated revenues that were delinquent on the date that the municipality issued the procurement request. The procurement request must state that bids based solely on contingency fees with no up-front payment will not be accepted.

(5) Subsections (2) and (3) do not apply to a municipality whose delinquent designated revenues are less than 20 percent of the total designated revenues billed by the municipality in the previous 12 months.

(6) A municipality is not required to enter into a contract for services with any consumer collection agency that responds to the procurement request.

(7) Any delinquent designated revenues that a consumer collection agency has contracted to collect in response to a procurement request issued pursuant to this section shall be excluded from the calculation made by the municipality when determining whether any of the criteria in subsection (2) are met.

(8) The municipality shall forward a copy of all bids that it has received in response to any procurement request issued pursuant to this section to the Department of Financial Services. The Department of Financial Services shall keep all of the bids on file for at least 5 years.

Section 3. Subsection (4) of section 218.39, Florida Statutes, is amended to read:

218.39 Annual financial audit reports.—

(4) A management letter shall be prepared and included as a part of each financial audit report. For each county and municipal financial audit report, the letter must include a discussion of the current balance of the county's or municipality's delinquent designated revenues as defined in ss. 125.575 and 166.30 and the efforts that the county or municipality has undertaken to collect such revenues.

Section 4. This act shall take effect July 1, 2016.

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

Remove everything before the enacting clause and insert:

An act relating to local government capital recovery; creating ss. 125.575 and 166.30, F.S.; providing definitions; requiring counties and municipalities that meet certain thresholds for specified delinquent revenues to issue a procurement request to collect such revenues; requiring procurement requests to be sent to consumer collection agencies; providing requirements for the content of the procurement requests; providing that counties and municipalities issuing procurement requests are not required to enter into a contract; excluding certain delinquent revenues from threshold calculations under certain circumstances; requiring that copies of all bids received be filed with the Department of Financial Services; amending s. 218.39, F.S.; requiring that a discussion of capital recovery efforts be included in the management letter accompanying a county's or municipality's annual financial audit report; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7033 PCB GVOPS 16-01 OGSR/Emergency Notification Information
SPONSOR(S): Government Operations Subcommittee, Taylor
TIED BILLS: **IDEN./SIM. BILLS:** SB 7004

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

SUMMARY ANALYSIS

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

Current law provides a public record exemption for any information furnished by a person to an agency for the purpose of being provided with emergency notification by the agency, including the person's name, address, telephone number, e-mail address, or other electronic communication address.

The bill reenacts the public record exemption, which will repeal on October 2, 2016, if this bill does not become law. Additionally, the bill removes superfluous language.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (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.[2]

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.[3]

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.[4] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created[5] then a public necessity statement and a two-thirds vote for passage are not required.

Emergency Notification Systems

The Division of Emergency Management (division) within the Executive Office of the Governor is responsible for maintaining a comprehensive statewide program of emergency management.[6] As part of the statewide program, the division must establish a system of communications and warning to ensure that the state's population and emergency management agencies are warned of developing emergency situations and to communicate emergency response decisions.[7] To that end, the division has issued a request for proposals for a Florida Statewide Emergency Alert and Notification System, which will be a mass notification system that will provide statewide alerts for imminent or sudden hazards through various methods.

State agencies are also required to have emergency plans in place in case of a natural disaster.[8] The emergency plans, called continuity of operations plans, are not required to have any sort of associated notification system.[9] However, many agencies have developed emergency notification methods or systems that allow their employees and others to receive a notification in the event of an emergency.

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[1] Section 119.15, F.S.
[2] Section 119.15(3), F.S.
[3] Section 119.15(6)(b), F.S.
[4] Section 24(c), Art. I, FLA. CONST.
[5] An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.
[6] Section 252.35(1), F.S.
[7] Section 252.35(2)(a)6., F.S.
[8] Section 252.365(3), F.S.
[9] *Id.*

Some universities have an emergency notification system to provide alerts to their students and faculty. For example, Florida State University has an emergency notification system called FSU Alert.[10] It utilizes over 30 different delivery methods ranging from voice calls to social media posts in order to alert students and faculty to any situation that poses an immediate threat to their health or safety.[11]

Many local governments have in place emergency notification systems to alert their residents of weather conditions or other dangers. For example, many counties and municipalities use the CodeRED Emergency Notification System, a third party high-speed telephone communication service that provides emergency alerts to persons who voluntarily sign up for the service.[12]

Public Record Exemption under Review

In 2011, the Legislature created a public record exemption for any information furnished by a person to an agency[13] for the purpose of receiving emergency notification by the agency, including the person's name, address, telephone number, e-mail address, or other electronic communication address.[14] The exemption applies retroactively[15] to such exempt[16] information held by an agency.

The 2011 public necessity statement for the public record exemption provides that:

> Public safety is significantly enhanced through the use of...emergency notification programs, and expansion of such programs further increases public safety. A public records exemption for information furnished to an agency for this purpose will encourage greater participation in emergency notification programs by alleviating concerns about disclosure of information that could be used for criminal purposes...the public records exemption...is necessary for the effective implementation of and broad participation in emergency notification programs conducted by agencies.[17]

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2016, unless reenacted by the Legislature.[18]

During the 2015 interim, subcommittee staff sent questionnaires to state agencies, counties, and municipalities as part of the Open Government Sunset Review process.[19] The respondents recommended reenactment of the public record exemption and indicated that without the exemption

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[10] *See* FSU Alert, available at https://emergency.fsu.edu/services/FSUAlert (last accessed Nov. 23, 2015).
[11] *Id.*
[12] *See* Broward County Emergency Management, available at http://www.brevardcounty.us/EmergencyManagement/AlertSignUp (last accessed Nov. 23, 2015); *see also* St. Petersburg CodeRED Emergency Notification System, available at http://police.stpete.org/community/code-red.html (last accessed Nov. 23, 2015).
[13] Section 119.011(2), F.S., defines the term "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of the Public Records Act, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.
[14] Chapter 2011-85, L.O.F.; codified as s. 119.071(5)(j)1., F.S.
[15] In 2001, the Florida Supreme Court ruled that a public record exemption does not apply retroactively unless the legislation clearly expresses such intent. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla. 2001).
[16] There is a difference between records the Legislature designates exempt from public records requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991) *review denied*, 589 So. 2d 289 (Fla. 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 WFTV, Inc. v. Sch. Bd. of Seminole Cnty*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004); Op. Att'y Gen. Fla. 85-692 (1985).
[17] Section 2, ch. 2011-85, L.O.F.
[18] Section 119.071(5)(j)2., F.S.
[19] Open Government Sunset Review of s. 119.071(5)(j), F.S., relating to emergency notification, questionnaire by House and Senate staff. Responses are on file with the Government Operations Subcommittee.

people would be less likely to join an emergency notification system if their information were made publicly available.[20]

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record exemption for any information furnished by a person to an agency for the purpose of being provided with emergency notification by the agency. Additionally, the bill removes the list of specified information included in the public record exemption because it is redundant. The public record exemption already provides that *all information* furnished by a person is exempt from public record requirements.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to save from repeal the public record exemption for any information furnished by a person to an agency for the purpose of receiving emergency notification.

Section 2 provides an effective date of October 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

[20] *Id.* at question 10.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.071, F.S., relating to an exemption from public records requirements for information furnished by a person to an agency for the purpose of being provided with emergency notification by the agency; removing superfluous language; removing the scheduled repeal of the exemption; providing an effective date.

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

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

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

(5) OTHER PERSONAL INFORMATION.—

(j)~~1.~~ Any information furnished by a person to an agency for the purpose of being provided with emergency notification by the agency~~, including the person's name, address, telephone number, e-mail address, or other electronic communication address,~~ is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to information held by an agency before, on, or after the effective date of this exemption.

~~2. This paragraph is subject to the Open Government Sunset~~

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

~~Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7035 PCB GVOPS 16-02 OGSR/Office of Financial Regulation
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	Toliver	Williamson
1) State Affairs Committee		Toliver LT	Camechis

SUMMARY ANALYSIS

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

The Office of Financial Regulation (office) has regulatory oversight of banks, credit unions, trust companies, securities brokers, investment advisers, mortgage loan originators, money services businesses, retail installment sellers, consumer finance companies, debt collectors, and other financial service providers. The office has licensing authority and the authority to conduct examinations and investigations.

Other states and federal agencies also have regulatory oversight of many of these entities. In addition, many of the regulated entities operate in multiple states, making interstate cooperation essential to achieving comprehensive, efficient, and effective regulatory oversight.

Current law provides a public record exemption for the following information held by the office before, on, or after July 1, 2011:

- Information received from another state or federal regulatory, administrative, or criminal justice agency that is otherwise confidential or exempt pursuant to the laws of that state or pursuant to federal law.
- Information that is received or developed by the office as part of a joint or multiagency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency.

The bill reenacts the public record exemption, which will repeal on October 2, 2016, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (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.[2]

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.[3]

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.[4] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created[5] then a public necessity statement and a two-thirds vote for passage are not required.

Office of Financial Regulation

The Office of Financial Regulation (office) has regulatory oversight of banks, credit unions, trust companies, securities brokers, investment advisers, mortgage loan originators, money services businesses, retail installment sellers, consumer finance companies, debt collectors, and other financial service providers. The office has licensing authority and the authority to conduct examinations and investigations.

Other states and federal agencies also have regulatory oversight of many of these entities. In addition, many of the regulated entities operate in multiple states, making interstate cooperation essential to achieving comprehensive, efficient, and effective regulatory oversight. According to the office, it interacts frequently with the following federal agencies:

- Financial Crimes Enforcement Network;
- Federal Trade Commission;
- Florida Fusion Center;[6]
- Commodities Futures Trading Commission;
- Federal Deposit Insurance Corporation;
- National Credit Union Association; and

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[1] Section 119.15, F.S.
[2] Section 119.15(3), F.S.
[3] Section 119.15(6)(b), F.S.
[4] Section 24(c), Art. I, Fla. Const.
[5] An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.
[6] The Florida Fusion Center is a collaboration of state and federal agencies led by the Florida Department of Law Enforcement.

- Securities Exchange Commission.[7]

Public Record Exemption under Review

In 2011, the Legislature created a public record exemption for certain information held by the office before, on, or after July 1, 2011.[8] Specifically, the following information held by the office is confidential and exempt[9] from public record requirements:

- Any information received from another state or federal regulatory, administrative, or criminal justice agency that is otherwise confidential or exempt pursuant to the laws of that state or pursuant to federal law.
- Any information received or developed by the office as part of a joint or multiagency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency.[10]

The office may obtain and use the information received or developed as part of a joint or multiagency examination or investigation in accordance with the conditions imposed by the joint or multiagency agreement. However, the exemption does not apply to information obtained or developed by the office that would otherwise be available for public inspection if the office had conducted an independent examination or investigation.[11]

Section 2 of chapter 2011-88, L.O.F., which is the public necessity statement for the exemption, provides that:

> ...Without the exemption, the office will be unable to obtain information that could assist it in pursuing violations of law under its jurisdiction. Without this exemption, the effective and efficient administration of the regulatory programs administered by the Office of Financial Regulation would be significantly impaired...The exemption is necessary to enable the office to participate in joint or multiagency investigations and examinations. Without the exemption, the office will be unable to participate in these activities, which impairs its ability to leverage its limited resources.

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2016, unless reenacted by the Legislature.[12]

During the 2015 interim, subcommittee staff met with office staff as part of the Open Government Sunset Review process. Office staff indicated it is critical for the office to have this exemption, and its ability to obtain information from state and federal agencies is predicated on the office's ability to keep the information confidential.[13] According to the office, repeal of the exemption would negatively affect

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[7] Information provided by the office at a meeting with staff of the Government Operations Subcommittee on August 3, 2015 (on file with the Government Operations Subcommittee).

[8] In 2001, the Florida Supreme Court ruled that a public record exemption does not apply retroactively unless the legislation clearly expresses such intent. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla. 2001).

[9] 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).

[10] Chapter 2011-88, L.O.F.; codified as s. 119.0712(3), F.S.

[11] Section 119.0712(3)(a)2., F.S.

[12] Section 119.0712(3)(b), F.S.

[13] Information provided by the office at a meeting with staff of the Government Operations Subcommittee on August 3, 2015 (on file with the Government Operations Subcommittee).

the office's ability to coordinate with other state or federal agencies. As such, the office recommended reenactment of the exemption without changes.

Effect of the Bill

The bill removes the repeal date thereby reenacting the public record exemption for the following information held by the office before, on, or after July 1, 2011:

- Information received from another state or federal regulatory, administrative, or criminal justice agency that is otherwise confidential or exempt pursuant to the laws of that state or pursuant to federal law; and
- Information received or developed by the office as part of a joint or multiagency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency.

B. SECTION DIRECTORY:

Section 1 amends s. 119.0712, F.S., to save from repeal the public record exemption for certain information held by the Office of Financial Regulation.

Section 2 provides an effective date of October 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.0712, F.S., relating to an exemption from public records requirements for confidential or exempt information received by the Office of Financial Regulation from certain state or federal agencies and information received or developed by the office in a joint or multiagency examination or investigation; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (3) of section 119.0712, Florida Statutes, is amended to read:

119.0712 Executive branch agency-specific exemptions from inspection or copying of public records.—

(3) OFFICE OF FINANCIAL REGULATION.—

~~(a)~~ The following information held by the Office of Financial Regulation before, on, or after July 1, 2011, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a)~~1.~~ Any information received from another state or federal regulatory, administrative, or criminal justice agency that is otherwise confidential or exempt pursuant to the laws of

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

that state or pursuant to federal law.

(b) ~~2.~~ Any information that is received or developed by the office as part of a joint or multiagency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency. The office may obtain and use the information in accordance with the conditions imposed by the joint or multiagency agreement. This exemption does not apply to information obtained or developed by the office that would otherwise be available for public inspection if the office had conducted an independent examination or investigation under Florida law.

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

Section 2. This act shall take effect October 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7037 PCB GVOPS 16-04 OGSR/Local Government Audit and Investigative Reports
SPONSOR(S): Government Operations Subcommittee, Ingoglia
TIED BILLS: **IDEN./SIM. BILLS:** SB 7002

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

SUMMARY ANALYSIS

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

Current law provides a public record exemption for audit or investigative reports prepared for or on behalf of a unit of local government. The exemption also applies to audit workpapers and notes and information received, produced, or derived from an investigation. The exemption expires when the audit or investigation is final or the investigation is no longer active.

The bill reenacts the public record exemption, which will repeal on October 2, 2016, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (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.[2]

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.[3]

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.[4] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created[5] then a public necessity statement and a two-thirds vote for passage are not required.

Local Government Auditing

Current law requires local governments to submit to the Department of Financial Services (DFS) an annual financial report covering their operations for the previous fiscal year.[6] DFS makes available to local governments an electronic filing system that accumulates the financial information reported on the annual financial reports in a database.

Current law provides that if a local government will not be audited by the Auditor General, the local government must provide for an annual financial audit to be completed within nine months after the end of the fiscal year.[7] The audit must be conducted by an independent certified public accountant retained by the local government and paid for from public funds.[8]

Public Record Exemption under Review

Prior to 2011, the public record exemption under review only provided an exemption for the audit report of an internal auditor prepared for or on behalf of a unit of local government and for the audit

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[1] Section 119.15, F.S.
[2] Section 119.15(3), F.S.
[3] Section 119.15(6)(b), F.S.
[4] Section 24(c), Art. I, FLA. CONST.
[5] An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.
[6] Section 218.32(1), F.S.
[7] Section 218.39(1), F.S.
[8] *Id.*

workpapers and notes, until such time as the audit report became final.[9] In 2011, the Legislature expanded the public record exemption to include investigative reports of the inspector general, as well as any information received, produced, or derived from an investigation. The public record exemption expires once the investigation is complete or is no longer active.[10]

An audit or investigation becomes final when the audit or investigative report is presented to the unit of local government. In addition, an investigation is considered active if is continuing with a reasonable, good faith anticipation of resolution and with reasonable dispatch.[11]

The term "unit of local government" is defined to mean a county, municipality, special district, local agency, authority, consolidated city-county government, or any other local governmental body or public body corporate or politic authorized or created by general or special law.[12]

The 2011 public necessity statement for the public record exemption under review finds that the exemption is necessary "because the release of such information could potentially be defamatory to an individual or entity under audit or investigation, causing unwarranted damage to the good name or reputation of an individual or company, or could significantly impair an administrative or criminal investigation."[13]

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2016, unless reenacted by the Legislature.[14]

During the 2015 interim, subcommittee staff sent questionnaires to counties and municipalities as part of the Open Government Sunset Review process. The respondents recommended reenactment of the exemption and provided that if the exemption were to expire, incomplete information might be released that could be defamatory to the party being audited or investigated. In addition, entities being investigated might be less likely to be forthcoming with information regarding the audit or investigation.[15]

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record exemption for audit and investigative reports prepared for or on behalf of a unit of local government, until the audit or investigation is final or the investigation is no longer active.

B. SECTION DIRECTORY:

Section 1 amends s. 119.0713, F.S., to save from repeal the public record exemption for audit and investigative reports prepared for or on behalf of a unit of local government.

Section 2 provides an effective date of October 1, 2016.

[9] Section 119.0713(2), F.S. (2010).
[10] Chapter 2011-87, L.O.F.; codified as s. 119.0713(2)(a), F.S.
[11] Section 119.0713(2)(a), F.S.
[12] *Id.*
[13] Section 2, ch. 2011-87, L.O.F.
[14] Section 119.0713(2)(b), F.S.
[15] Open Government Sunset Review of s. 119.0713, F.S., relating to local government audits and investigations, questionnaire by House and Senate staff. Questionnaire responses are on file with the Government Operations Subcommittee.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.0713, F.S., relating to an exemption from public record requirements for certain information related to an audit report of an internal auditor or an investigative report of an inspector general prepared for or on behalf of a unit of local government; removing the scheduled repeal of the exemption; reorganizing the exemption; providing an effective date.

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

Section 1. Subsection (2) of section 119.0713, Florida Statutes, is amended to read:

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

(2)(a) As used in this subsection, the term "unit of local government" means a county, municipality, special district, local agency, authority, consolidated city-county government, or any other local governmental body or public body corporate or politic authorized or created by general or special law.

(b) The audit report of an internal auditor and the investigative report of the inspector general prepared for or on behalf of a unit of local government becomes a public record

when the audit or investigation becomes final. ~~As used in this subsection, the term "unit of local government" means a county, municipality, special district, local agency, authority, consolidated city-county government, or any other local governmental body or public body corporate or politic authorized or created by general or special law.~~ An audit or investigation becomes final when the audit report or investigative report is presented to the unit of local government. Audit workpapers and notes related to such audit and information received, produced, or derived from an investigation are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the audit or investigation is complete and the audit report becomes final or when the investigation is no longer active. An investigation is active if it is continuing with a reasonable, good faith anticipation of resolution and with reasonable dispatch.

~~(b) Paragraph (a) is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2016.