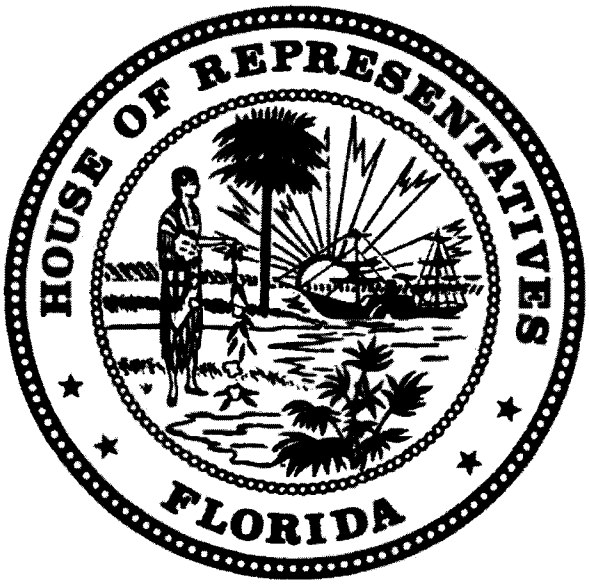

State Affairs Committee

Thursday, February 04, 2016
9:00 am
Morris Hall (17 HOB)

Meeting Packet

Steve Crisafulli
Speaker

Matt Caldwell
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

State Affairs Committee

Start Date and Time:	Thursday, February 04, 2016 09:00 am
End Date and Time:	Thursday, February 04, 2016 12:00 pm
Location:	Morris Hall (17 HOB)
Duration:	3.00 hrs

Consideration of the following bill(s):

CS/HB 95 Public-Private Partnerships by Appropriations Committee, Steube
HB 97 Public Records and Public Meetings by Steube
HB 361 Vote-by-mail Voting by Lee, Williams, A.
HB 527 Scrutinized Companies by Workman, Moskowitz, Rader
CS/HB 587 Public Records/Agency Inspector General Personnel by Government Operations Subcommittee, Powell
HB 981 Administrative Procedures by Richardson
HR 1001 Anti-Israel Boycott, Divestment, & Sanctions Campaigns by Berman
CS/HB 1165 Pub. Rec./Office of Insurance Regulation by Insurance & Banking Subcommittee, Hager
HB 1205 Fumigation by Magar
HM 1225 Preventing Voting by Noncitizens by Metz
CS/HM 1319 Authorization for Use of Military Force Against Global Islamic Terrorist Organizations by Local & Federal Affairs Committee, Ahern
HB 4035 Pesticide Registration by Combee
HB 4041 Write-in Candidates by Geller

NOTICE FINALIZED on 02/02/2016 3:31PM by Love.John

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 95 Public-Private Partnerships
SPONSOR(S): Appropriations Committee; Steube
TIED BILLS: HB 97 **IDEN./SIM. BILLS:** SB 124

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	12 Y, 0 N	Moore	Williamson
2) Local Government Affairs Subcommittee	11 Y, 0 N	Monroe	Miller
3) Appropriations Committee	24 Y, 1 N, As CS	Hawkins	Leznoff
4) State Affairs Committee		Moore	Camechis

SUMMARY ANALYSIS

Public-private partnerships (P3s) are contractual agreements formed between public entities and private sector entities that allow for greater private sector participation in the delivery and financing of public buildings and infrastructure projects. Through these agreements, the skills and assets of each sector, public and private, are shared in delivering a service or facility for use by the general public. In addition to the sharing of resources, each party shares in the risks and reward potential in the delivery of the service or facility. Current law authorizes P3s for specified public purpose projects if the responsible public entity determines the project is in the public's best interest, there is a need for or benefit derived from the project, the estimated cost of the project is reasonable, and the private entity's plans will result in the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project.

Current law also establishes the Partnership for Public Facilities and Infrastructure Act Guidelines Task Force (task force) for the purpose of recommending guidelines for the Legislature to consider for creating a uniform P3 process across the state. This bill incorporates many of the recommendations contained in the task force's final report.

The bill clarifies that the P3 process is an alternative process that must be construed as cumulative and supplemental to any other authority or power vested in the governing body of a county, municipality, district, or municipal hospital or health care system.

The bill clarifies that the list of entities authorized to conduct P3s includes special districts and school districts rather than school boards.

The bill provides increased flexibility to the responsible public entity by permitting a responsible public entity to deviate from the provided procurement timeframes if approved by majority vote of the entity's governing body.

The bill requires that an unsolicited proposal be submitted concurrently with an initial application fee, which the responsible public entity may establish. The bill authorizes a responsible public entity to request additional funds if the initial fee does not cover the costs to evaluate the unsolicited proposal. The bill also requires the responsible public entity to return the initial application fee if it does not review the unsolicited proposal.

The bill authorizes the Department of Management Services to accept and maintain copies of comprehensive agreements received from responsible public entities, for the purpose of sharing them with other responsible public entities.

The bill has an indeterminate fiscal impact on state and local governments. *See* Fiscal Comments section for further discussion.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Public-private partnerships (P3s) are contractual agreements formed between public entities and private sector entities that allow for greater private sector participation in the delivery and financing of public building and infrastructure projects.[1] Through these agreements, the skills and assets of each sector, public and private, are shared in delivering a service or facility for use by the general public. In addition to the sharing of resources, each party shares in the risks and reward potential in the delivery of the service or facility.[2]

Public-Private Partnerships Generally

Section 287.05712, F.S., governs the procurement process for P3s for public purpose projects. It authorizes a responsible public entity to enter into a P3 for a specified qualifying project if the responsible public entity determines the project is in the public's best interest.[3]

Section 287.05712(1)(j), F.S., defines "responsible public entity" as a county, municipality, school board, or any other political subdivision of the state; a public body corporate and politic; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project.

Section 287.05712(1)(i), F.S., defines "qualifying project" as:

- A facility or project that serves a public purpose, including, but not limited to, any ferry or mass transit facility, vehicle parking facility, airport or seaport facility, rail facility or project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, or educational facility or other building or facility that is used or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity;
- An improvement, including equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector;
- A water, wastewater, or surface water management facility or other related infrastructure; or
- For projects that involve a facility owned or operated by the governing board of a county, district, or municipal hospital or health care system, or projects that involve a facility owned or operated by a municipal electric utility, only those projects that the governing board designates as qualifying projects.

Procurement Procedures

Responsible public entities may receive unsolicited proposals or may solicit proposals for qualifying projects and may thereafter enter into a comprehensive agreement with a private entity for the building, upgrading, operation, ownership, or financing of facilities.[4] Responsible public entities may establish a reasonable application fee for the submission of unsolicited proposals. The fee must be sufficient to pay the costs of evaluating the proposals.[5]

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[1] *See* Federal Highway Administration, United States Department of Transportation, Innovative Program Delivery, *P3 Defined*, http://www.fhwa.dot.gov/ipd/p3/defined/index.htm (last visited Sept. 23, 2015).
[2] *Id.*
[3] Section 287.05712(4)(d), F.S.
[4] Section 287.05712(4), F.S.
[5] Section 287.05712(4)(a), F.S.

Unsolicited proposals from private entities must be accompanied by the following material and information, unless waived by the responsible public entity:

- A description of the qualifying project, including the conceptual design of the facilities or a conceptual plan for the provision of services, and a schedule for the initiation and completion of the qualifying project.
- A description of the method by which the private entity proposes to secure the necessary property interests that are required for the qualifying project.
- A description of the private entity's general plans for financing the qualifying project, including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity.
- The name and address of a person who may be contacted for further information concerning the proposal.
- The proposed user fees, lease payments, or other service payments over the term of a comprehensive agreement, and the methodology for and circumstances that would allow changes to the user fees, lease payments, and other service payments over time.
- Any additional material or information the responsible public entity reasonably requests.[6]

If the responsible public entity receives an unsolicited proposal and intends to enter into a P3 agreement for the qualifying project, the responsible public entity must publish a notice in the Florida Administrative Register (FAR) and a newspaper of general circulation at least once a week for two weeks stating the entity has received a proposal and will accept other proposals for the same project.[7] The responsible public entity must establish a timeframe within which to accept other proposals that is at least 21 days, but not more than 120 days, after the initial date of publication.[8]

After the period for accepting proposals has expired, the responsible public entity must rank the proposals received in order of preference.[9] Next, the responsible public entity may begin negotiations for a comprehensive agreement with the highest-ranked firm. If negotiations with the highest-ranked firm are unsuccessful, the responsible public entity may terminate the negotiations and begin negotiations with each subsequent-ranked firm in order of preference.[10] The responsible public entity may reject all proposals at any point in the process.[11]

The responsible public entity may charge a reasonable fee to cover the costs of processing, reviewing, and evaluating the requests, including, but not limited to, reasonable attorney fees and fees for financial and technical advisors or consultants and for other necessary advisors or consultants.[12]

The responsible public entity may approve a qualifying project if:

- There is a public need for or benefit derived from the project that the private entity proposes as the qualifying project.
- The estimated cost of the qualifying project is reasonable in relation to similar facilities.
- The private entity's plans will result in the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project.[13]

Notice to Affected Local Jurisdictions

A responsible public entity must notify each affected local jurisdiction when considering a proposal for a qualifying project by furnishing a copy of the proposal to each affected local jurisdiction.[14] The affected

[6] Section 287.05712(5), F.S.
[7] Section 287.05712(4)(b), F.S.
[8] *Id.*
[9] Section 287.05712(6)(c), F.S.
[10] *Id.*
[11] *Id.*
[12] Section 287.05712(6)(f), F.S.
[13] Section 287.05712(6)(e), F.S.

local jurisdictions may, within 60 days, submit written comments to the responsible public entity.[15] The responsible public entity must consider the comments submitted by the affected local jurisdiction before entering into a comprehensive agreement with a private entity.[16] In addition, a responsible public entity must mail a copy of the notice that is published in the FAR to each local government in the affected area.[17]

Agreements

Interim Agreement
Before entering into a comprehensive agreement, the responsible public entity may enter into an interim agreement with the private entity, which does not obligate the responsible public entity to enter into a comprehensive agreement.[18] Interim agreements must be limited to provisions that:

- Authorize the private entity to commence activities for which it may be compensated related to the proposed qualifying project.
- Establish the process and timing of the negotiation of the comprehensive agreement.
- Contain any other provision related to any aspect of the development or operation of a qualifying project.[19]

Comprehensive Agreement
The responsible public entity and private entity must enter into a comprehensive agreement prior to developing or operating a qualifying project.[20] The comprehensive agreement must provide for:

- Delivery of performance and payment bonds, letters of credit, or other security in connection with the development or operation of the qualifying project.
- Review of plans and specifications for the project by the responsible public entity. This does not require the private entity to complete the design of the project prior to executing the comprehensive agreement.
- Inspection of the qualifying project by the responsible public entity.
- Maintenance of a policy or policies of public liability insurance.
- Monitoring the maintenance practices of the private entity to ensure the qualifying project is properly maintained.
- Filing of financial statements on a periodic basis.
- Procedures governing the rights and responsibilities of the responsible public entity and private entity in the event of a termination of the comprehensive agreement or a material default.
- User fees, lease payments, or service payments as may be established.
- Duties of the private entity, including the terms and conditions that the responsible public entity determines serve the public purpose of the qualifying project.[21]

The comprehensive agreement may include the following:

- An agreement by the responsible public entity to make grants or loans to the private entity from amounts received from the federal, state, or local government or an agency or instrumentality thereof.
- A provision under which each entity agrees to provide notice of default and cure rights for the benefit of the other entity.
- A provision that terminates the authority and duties of the private entity and dedicates the qualifying project to the responsible public entity.[22]

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[14] Section 287.05712(7)(a), F.S.
[15] Section 287.05712(7)(b), F.S.
[16] *Id.*
[17] Section 287.05712(4)(b), F.S.
[18] Section 287.05712(8), F.S.
[19] *Id.*
[20] Section 287.05712(9)(a), F.S.
[21] *Id.*

Fees
The comprehensive agreement may authorize the private entity to impose fees to members of the public for use of the facility.[23]

Financing
Section 287.05712(11), F.S., authorizes the use of multiple financing options for P3s. The options include the private entity obtaining private-source financing, the responsible public entity lending funds to the private entity, or the use of other innovative finance techniques associated with P3s.

Powers and Duties of the Private Entity
The private entity must develop, operate, and maintain the qualifying project in accordance with the comprehensive agreement. The private entity must cooperate with the responsible public entity in making best efforts to establish interconnection between the qualifying project and other facilities and infrastructure. The private entity must comply with the terms of the comprehensive agreement and any other lease or contract.[24]

Expiration or Termination of Agreements
Upon the expiration or termination of a comprehensive agreement, the responsible public entity may use revenues from the qualifying project to pay the current operation and maintenance costs of the qualifying project. If the private entity materially defaults, the compensation that is otherwise due to the private entity is payable to satisfy all financial obligations to investors and lenders on the qualifying project in the same way that is provided in the comprehensive agreement or any other agreement involving the qualifying project, if the costs of operating and maintaining the project are paid in the normal course. The full faith and credit of the responsible public entity may not be pledged to secure the financing of the private entity.[25]

Partnership for Public Facilities and Infrastructure Act Guidelines Task Force
Section 287.05712(3), F.S., creates the Partnership for Public Facilities and Infrastructure Act Guidelines Task Force (task force). The task force was created to recommend guidelines for the Legislature to consider for purposes of creating a uniform P3 process across the state.[26] The seven-member task force was comprised of the Secretary of the Department of Management Services (department) and six members appointed by the Governor who represented the county government, municipal government, district school board, and business community.[27] The department provided administrative and technical support to the task force.[28]

In July 2014, the task force completed its duties and submitted a final report of its recommendations.[29] The task force was terminated on December 31, 2014.[30]

Public-Private Partnerships for State Universities
Section 1013.171, F.S., authorizes a state university board of trustees to enter into P3s for the construction of facilities and accommodations necessary and desirable to serve the needs and

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[22] Section 287.05712(9)(b), F.S.
[23] Section 287.05712(10), F.S.
[24] Section 287.05712(12)(a), F.S.
[25] Section 287.05712(13), F.S.
[26] Section 287.05712(3)(a), F.S.
[27] Section 287.05712(3)(b), F.S.
[28] Section 287.05712(3)(c), F.S.
[29] The task force report can be found online at: http://www.dms.myflorida.com/agency_administration/communications/partnership_for_public_facilities_infrastructure_act (last visited Sept. 23, 2015).
[30] Section 287.05712(3)(f), F.S.

purposes of the university. The Board of Governors has promulgated guidelines for the universities to use in reviewing and approving these P3s.[31]

EFFECT OF PROPOSED CHANGES

This bill incorporates many of the recommendations contained in the task force report, which include best practice recommendations as well as recommendations relating to needed clarification of s. 287.05712, F.S., which may facilitate the implementation of P3s.

Responsible Public Entity Definition

The bill clarifies that the definition of "responsible public entity" includes special districts and school districts, rather than school boards.[32]

Task Force

The bill deletes the task force provisions, as the task force was terminated on December 31, 2014.

Application Fee

The bill provides that when a private entity submits an unsolicited proposal, the private entity must concurrently submit the initial application fee. The application fee must be paid by cash, cashier's check, or other noncancelable instrument. The bill provides that if the initial fee, as determined by the responsible public entity, is not sufficient to cover the costs associated with evaluating the unsolicited proposal, the responsible public entity must request in writing the additional amount required. If the private entity fails to pay the additional amount requested within 30 days of the notice, the responsible public entity may stop reviewing the proposal. The bill requires the responsible public entity to return the application fee if the responsible public entity does not evaluate the unsolicited proposal.[33]

Solicitation Timeframes

The bill provides flexibility to the responsible public entity for accepting proposals if an alternative timeframe is approved by majority vote of the entity's governing body.[34]

Design Criteria Package

The bill requires a responsible public entity that solicits proposals to include in the solicitation a design criteria package prepared by a licensed architect, engineer, or landscape architect. The design criteria package must include performance-based criteria for the project.

School Projects

The bill removes the provision that requires a school board to obtain the approval of the local governing body.[35]

Ownership by the Responsible Public Entity

The bill clarifies that the project will be owned by the responsible public entity upon expiration of the comprehensive agreement, rather than solely upon completion or termination of the agreement.[36]

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[31] State University System of Florida Board of Governors, *Public-Private Partnership Guidelines*, *available at* http://www.flbog.edu/documents_regulations/guidelines/Public-Private%20Partnership%20Guidelines.pdf.

[32] The task force recommended amending the definition of "responsible public entity" to reference school district, rather than board, as the district is the unit that provides public primary education. It also recommended clarifying that the definition includes both special districts and the Florida College System. *Id.* at 18.

[33] The task force recommended amending the fee provisions to ensure that the fees were related to actual, reasonable costs associated with reviewing an unsolicited proposal and not revenue generation. *Id.* at 9.

[34] The task force determined that increased flexibility may be necessary when dealing with complex proposals to ensure sufficient time is allowed for the receipt of competing proposals. *Id.* at 7.

[35] The task force recommended striking this provision because school boards are not subject to governance by a local governing body. *Id.* at 18.

[36] This change was recommended by the task force. *Id.* at 13-14.

Pricing or Financial Terms
The bill clarifies that any pricing or financial terms included in an unsolicited proposal must be specific as to when the pricing or terms expire.[37]

Notice to Affected Local Jurisdictions
The bill deletes the requirement that a responsible public entity notify each affected local jurisdiction of an unsolicited proposal by furnishing a copy of the proposal to each affected local jurisdiction when considering it.[38] The responsible public entity must still provide each affected local jurisdiction a copy of the notice published in the FAR concerning solicitations for a qualifying project.

Financing
The bill clarifies that a financing agreement may not require the responsible public entity to secure financing by a mortgage on, or security interest in, the real or tangible personal property of the responsible public entity in a manner that could result in the loss of the fee ownership of the property by the responsible public entity.[39]

The bill also deletes a provision that requires the responsible public entity to appropriate on a priority basis a contractual payment obligation from the government fund from which the qualifying project will be funded.[40] The provision raised concerns regarding infringement upon a responsible public entity's appropriation powers.

Department of Management Services
The bill provides that the department may accept and maintain copies of comprehensive agreements received from responsible public entities for the purpose of sharing the comprehensive agreements with other responsible public entities.[41] Responsible public entities are not required to provide copies to the department; however, if a responsible public entity provides a copy, the responsible public entity must first redact any confidential or exempt information from the comprehensive agreement.

Construction
The bill clarifies that the P3 process must be construed as cumulative and supplemental to any other authority or power vested in the governing body of a county, municipality, district, or municipal hospital or health care system. The bill provides that the P3 process is an alternative method that may be used, but that the process does not limit a county, municipality, district, or other political subdivision of the state in the acquisition, design, or construction of a public project pursuant to other statutory or constitutional authority.[42]

Miscellaneous
The bill transfers and renumbers s. 287.05712, F.S., as s. 255.065, F.S., because chapter 255, F.S., relates to procurement of construction services and P3s are primarily construction-related projects.

The bill also makes other changes to provide for the consistent use of terminology and to provide clarity.

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[37] This change was recommended by the task force. *Id.* at 7.
[38] The report provided a discussion on the notice that is already provided to affected local jurisdictions through the permitting process and stated a mandatory P3 notice process could delay project timelines. *Id.* at 12.
[39] This change was recommended by the task force. *Id.* at 20.
[40] The report recommended the current provision regarding the appropriating of funds be revised, not deleted. *Id.* at 14-15. Even though the report recommended that the Legislature consider specifically authorizing the State University System to utilize P3s as a project delivery method, it does not specifically address the applicability of an appropriations requirement to universities. *Id.* at 16.
[41] The report recommended authorizing a state agency to provide assistance to responsible public entities concerning P3s. *Id.* at 11.
[42] The report discussed the need for flexibility in the creation of P3s and noted that clarification is needed to ensure that the process is considered supplemental and alternative to any other applicable statutory authority. *Id.* at 19.

B. SECTION DIRECTORY:

Section 1. transfers, renumbers, and amends s. 287.05712, F.S., relating to public-private partnerships.

Section 2. 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:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may provide for more opportunities for the private sector to enter into contracts for construction services with local governments.

D. FISCAL COMMENTS:

The bill will have an insignificant negative fiscal impact on the Department of Management Services for the purpose of receiving comprehensive agreements and acting as a depository for such comprehensive agreements. According to the department, the costs should be absorbed within current resources.[43]

The bill has an indeterminate fiscal impact on local governments that enter into P3s. State and local government expenditures would be based on currently unidentified P3s.

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.

[43] Department of Management Services, Agency Analysis of House Bill 63, p. 5 (Feb. 11, 2015) (on file with the Government Operations Subcommittee). The provision of HB 95 authorizing the department to accept and maintain copies of comprehensive agreements from responsible public entities was also included in HB 63 from the 2015 Session.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Additional rulemaking authority does not appear necessary to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 27, 2016, the Appropriations Committee adopted an amendment that removed state universities and Florida College System institutions from the definition of "responsible public entity."

The bill was reported favorably as a committee substitute. This analysis is drafted to the committee substitute as approved by the Appropriations Committee.

A bill to be entitled

An act relating to public-private partnerships; transferring, renumbering, and amending s. 287.05712, F.S.; revising definitions; deleting provisions creating the Public-Private Partnership Guidelines Task Force; requiring a private entity that submits an unsolicited proposal to pay an initial application fee and additional amounts if the fee does not cover certain costs; specifying payment methods; authorizing a responsible public entity to alter the statutory timeframe for accepting proposals for a qualifying project under certain circumstances; requiring a design criteria package to be submitted to a responsible public entity if such entity solicits specific proposals; deleting a provision that requires approval of the local governing body before a school board enters into a comprehensive agreement; revising the conditions necessary for a responsible public entity to approve a comprehensive agreement; deleting provisions relating to notice to affected local jurisdictions; providing that fees imposed by a private entity must be applied as set forth in the comprehensive agreement; authorizing a negotiated portion of revenues from fee-generating uses to be returned to the responsible public entity; restricting provisions in financing agreements that could result

in a responsible public entity's losing ownership of real or tangible personal property; deleting a provision that required a responsible public entity to comply with specific financial obligations; providing duties of the Department of Management Services relating to comprehensive agreements; revising provisions relating to construction of the act; providing an effective date.

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

Section 1. Section 287.05712, Florida Statutes, is transferred, renumbered as section 255.065, Florida Statutes, and amended to read:

255.065 ~~287.05712~~ Public-private partnerships.—

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

(a) "Affected local jurisdiction" means a county, municipality, or special district in which all or a portion of a qualifying project is located.

(b) "Develop" means to plan, design, finance, lease, acquire, install, construct, or expand.

(c) "Fees" means charges imposed by the private entity of a qualifying project for use of all or a portion of such qualifying project pursuant to a comprehensive agreement.

(d) "Lease payment" means any form of payment, including a land lease, by a public entity to the private entity of a

qualifying project for the use of the project.

(e) "Material default" means a nonperformance of its duties by the private entity of a qualifying project which jeopardizes adequate service to the public from the project.

(f) "Operate" means to finance, maintain, improve, equip, modify, or repair.

(g) "Private entity" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other private business entity.

(h) "Proposal" means a plan for a qualifying project with detail beyond a conceptual level for which terms such as fixing costs, payment schedules, financing, deliverables, and project schedule are defined.

(i) "Qualifying project" means:

1. A facility or project that serves a public purpose, including, but not limited to, any ferry or mass transit facility, vehicle parking facility, airport or seaport facility, rail facility or project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, or educational facility or other building or facility that is used or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity;

2. An improvement, including equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector;

3. A water, wastewater, or surface water management facility or other related infrastructure; or

4. Notwithstanding any provision of this section, for projects that involve a facility owned or operated by the governing board of a county, district, or municipal hospital or health care system, or projects that involve a facility owned or operated by a municipal electric utility, only those projects that the governing board designates as qualifying projects pursuant to this section.

(j) "Responsible public entity" means a county, municipality, school district, special district ~~board~~, or any other political subdivision of the state; a public body corporate and politic; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project.

(k) "Revenues" means the income, earnings, user fees, lease payments, or other service payments relating to the development or operation of a qualifying project, including, but not limited to, money received as grants or otherwise from the Federal Government, a public entity, or an agency or instrumentality thereof in aid of the qualifying project.

(l) "Service contract" means a contract between a

105 responsible public entity and the private entity which defines
106 the terms of the services to be provided with respect to a
107 qualifying project.
108 (2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
109 that there is a public need for the construction or upgrade of
110 facilities that are used predominantly for public purposes and
111 that it is in the public's interest to provide for the
112 construction or upgrade of such facilities.
113 (a) The Legislature also finds that:
114 1. There is a public need for timely and cost-effective
115 acquisition, design, construction, improvement, renovation,
116 expansion, equipping, maintenance, operation, implementation, or
117 installation of projects serving a public purpose, including
118 educational facilities, transportation facilities, water or
119 wastewater management facilities and infrastructure, technology
120 infrastructure, roads, highways, bridges, and other public
121 infrastructure and government facilities within the state which
122 serve a public need and purpose, and that such public need may
123 not be wholly satisfied by existing procurement methods.
124 2. There are inadequate resources to develop new
125 educational facilities, transportation facilities, water or
126 wastewater management facilities and infrastructure, technology
127 infrastructure, roads, highways, bridges, and other public
128 infrastructure and government facilities for the benefit of
129 residents of this state, and that a public-private partnership
130 has demonstrated that it can meet the needs by improving the

schedule for delivery, lowering the cost, and providing other benefits to the public.

3. There may be state and federal tax incentives that promote partnerships between public and private entities to develop and operate qualifying projects.

4. A procurement under this section serves the public purpose of this section if such procurement facilitates the timely development or operation of a qualifying project.

(b) It is the intent of the Legislature to encourage investment in the state by private entities; to facilitate various bond financing mechanisms, private capital, and other funding sources for the development and operation of qualifying projects, including expansion and acceleration of such financing to meet the public need; and to provide the greatest possible flexibility to public and private entities contracting for the provision of public services.

~~(3) PUBLIC-PRIVATE PARTNERSHIP GUIDELINES TASK FORCE.—~~

~~(a) There is created the Partnership for Public Facilities and Infrastructure Act Guidelines Task Force for the purpose of recommending guidelines for the Legislature to consider for purposes of creating a uniform process for establishing public-private partnerships, including the types of factors responsible public entities should review and consider when processing requests for public-private partnership projects pursuant to this section.~~

~~(b) The task force shall be composed of seven members, as~~

~~follows:~~

~~1. The Secretary of Management Services or his or her designee, who shall serve as chair of the task force.~~

~~2. Six members appointed by the Governor, as follows:~~

~~a. One county government official.~~

~~b. One municipal government official.~~

~~c. One district school board member.~~

~~d. Three representatives of the business community.~~

~~(c) Task force members must be appointed by July 31, 2013. By August 31, 2013, the task force shall meet to establish procedures for the conduct of its business and to elect a vice chair. The task force shall meet at the call of the chair. A majority of the members of the task force constitutes a quorum, and a quorum is necessary for the purpose of voting on any action or recommendation of the task force. All meetings shall be held in Tallahassee, unless otherwise decided by the task force, and then no more than two such meetings may be held in other locations for the purpose of taking public testimony. Administrative and technical support shall be provided by the department. Task force members shall serve without compensation and are not entitled to reimbursement for per diem or travel expenses.~~

~~(d) In reviewing public-private partnerships and developing recommendations, the task force must consider:~~

~~1. Opportunities for competition through public notice and the availability of representatives of the responsible public~~

~~entity to meet with private entities considering a proposal.~~

~~2. Reasonable criteria for choosing among competing proposals.~~

~~3. Suggested timelines for selecting proposals and negotiating an interim or comprehensive agreement.~~

~~4. If an accelerated selection and review and documentation timelines should be considered for proposals involving a qualifying project that the responsible public entity deems a priority.~~

~~5. Procedures for financial review and analysis which, at a minimum, include a cost-benefit analysis, an assessment of opportunity cost, and consideration of the results of all studies and analyses related to the proposed qualifying project.~~

~~6. The adequacy of the information released when seeking competing proposals and providing for the enhancement of that information, if deemed necessary, to encourage competition.~~

~~7. Current exemptions from public records and public meetings requirements, if any changes to those exemptions are necessary, or if any new exemptions should be created in order to maintain the confidentiality of financial and proprietary information received as part of an unsolicited proposal.~~

~~8. Recommendations regarding the authority of the responsible public entity to engage the services of qualified professionals, which may include a Florida-registered professional or a certified public accountant, not otherwise employed by the responsible public entity, to provide an~~

~~independent analysis regarding the specifics, advantages, disadvantages, and long-term and short-term costs of a request by a private entity for approval of a qualifying project, unless the governing body of the public entity determines that such analysis should be performed by employees of the public entity.~~

~~(e) The task force must submit a final report of its recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by July 1, 2014.~~

~~(f) The task force is terminated December 31, 2014. The establishment of guidelines pursuant to this section or the adoption of such guidelines by a responsible public entity is not required for such entity to request or receive proposals for a qualifying project or to enter into a comprehensive agreement for a qualifying project. A responsible public entity may adopt guidelines so long as such guidelines are not inconsistent with this section.~~

(3)~~(4)~~ PROCUREMENT PROCEDURES.—A responsible public entity may receive unsolicited proposals or may solicit proposals for a qualifying project ~~projects~~ and may thereafter enter into a comprehensive ~~an~~ agreement with a private entity, or a consortium of private entities, for the building, upgrading, operating, ownership, or financing of facilities.

(a)1. The responsible public entity may establish a reasonable application fee for the submission of an unsolicited proposal under this section.

2. A private entity that submits an unsolicited proposal

to a responsible public entity must concurrently pay an initial application fee, as determined by the responsible public entity. Payment must be made by cash, cashier's check, or other noncancelable instrument. Personal checks may not be accepted.

3. If the initial application fee does not cover the responsible public entity's costs to evaluate the unsolicited proposal, the responsible public entity must request in writing the additional amounts required. The private entity must pay the requested additional amounts within 30 days after receipt of the notice. The responsible public entity may stop its review of the unsolicited proposal if the private entity fails to pay the additional amounts.

4. If the responsible public entity does not evaluate the unsolicited proposal, the responsible public entity must return the application fee ~~The fee must be sufficient to pay the costs of evaluating the proposal. The responsible public entity may engage the services of a private consultant to assist in the evaluation~~.

(b) The responsible public entity may request a proposal from private entities for a qualifying ~~public-private~~ project or, if the responsible public entity receives an unsolicited proposal for a qualifying ~~public-private~~ project and the responsible public entity intends to enter into a comprehensive agreement for the project described in the ~~such~~ unsolicited proposal, the responsible public entity shall publish notice in the Florida Administrative Register and a newspaper of general

circulation at least once a week for 2 weeks stating that the responsible public entity has received a proposal and will accept other proposals for the same project. The timeframe within which the responsible public entity may accept other proposals shall be determined by the responsible public entity on a project-by-project basis based upon the complexity of the qualifying project and the public benefit to be gained by allowing a longer or shorter period of time within which other proposals may be received; however, the timeframe for allowing other proposals must be at least 21 days, but no more than 120 days, after the initial date of publication. If approved by a majority vote of the responsible public entity's governing body, the responsible public entity may alter the timeframe for accepting proposals to more adequately suit the needs of the qualifying project. A copy of the notice must be mailed to each local government in the affected area.

(c) If the responsible public entity solicits proposals under this section, the solicitation must include a design criteria package prepared by an architect, engineer, or landscape architect licensed in this state which is sufficient to allow private entities to prepare a bid or a response. The design criteria package must specify performance-based criteria for the project, including the legal description of the site, with survey information; interior space requirements; material quality standards; schematic layouts and conceptual design criteria for the project, with budget estimates; design and

construction schedules; and site and utility requirements ~~A responsible public entity that is a school board may enter into a comprehensive agreement only with the approval of the local governing body~~.

(d) Before approving a comprehensive agreement ~~approval~~, the responsible public entity must determine that the proposed project:

1. Is in the public's best interest.

2. Is for a facility that is owned by the responsible public entity or for a facility for which ownership will be conveyed to the responsible public entity.

3. Has adequate safeguards in place to ensure that additional costs or service disruptions are not imposed on the public in the event of material default or cancellation of the comprehensive agreement by the responsible public entity.

4. Has adequate safeguards in place to ensure that the responsible public entity or private entity has the opportunity to add capacity to the proposed project or other facilities serving similar predominantly public purposes.

5. Will be owned by the responsible public entity upon completion, expiration, or termination of the comprehensive agreement and upon payment of the amounts financed.

(e) Before signing a comprehensive agreement, the responsible public entity must consider a reasonable finance plan that is consistent with subsection (9) ~~(11)~~; the qualifying project cost; revenues by source; available financing; major

assumptions; internal rate of return on private investments, if governmental funds are assumed in order to deliver a cost-feasible project; and a total cash-flow analysis beginning with the implementation of the project and extending for the term of the comprehensive agreement.

(f) In considering an unsolicited proposal, the responsible public entity may require from the private entity a technical study prepared by a nationally recognized expert with experience in preparing analysis for bond rating agencies. In evaluating the technical study, the responsible public entity may rely upon internal staff reports prepared by personnel familiar with the operation of similar facilities or the advice of external advisors or consultants who have relevant experience.

(4)~~(5)~~ PROJECT APPROVAL REQUIREMENTS.—An unsolicited proposal from a private entity for approval of a qualifying project must be accompanied by the following material and information, unless waived by the responsible public entity:

(a) A description of the qualifying project, including the conceptual design of the facilities or a conceptual plan for the provision of services, and a schedule for the initiation and completion of the qualifying project.

(b) A description of the method by which the private entity proposes to secure the necessary property interests that are required for the qualifying project.

(c) A description of the private entity's general plans

for financing the qualifying project, including the sources of the private entity's funds and the identity of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity.

(d) The name and address of a person who may be contacted for additional information concerning the proposal.

(e) The proposed user fees, lease payments, or other service payments over the term of a comprehensive agreement, and the methodology for and circumstances that would allow changes to the user fees, lease payments, and other service payments over time.

(f) Additional material or information that the responsible public entity reasonably requests.

Any pricing or financial terms included in an unsolicited proposal must be specific as to when the pricing or terms expire.

(5)~~(6)~~ PROJECT QUALIFICATION AND PROCESS.—

(a) The private entity, or the applicable party or parties of the private entity's team, must meet the minimum standards contained in the responsible public entity's guidelines for qualifying professional services and contracts for traditional procurement projects.

(b) The responsible public entity must:

1. Ensure that provision is made for the private entity's performance and payment of subcontractors, including, but not

limited to, surety bonds, letters of credit, parent company guarantees, and lender and equity partner guarantees. For the components of the qualifying project which involve construction performance and payment, bonds are required and are subject to the recordation, notice, suit limitation, and other requirements of s. 255.05.

2. Ensure the most efficient pricing of the security package that provides for the performance and payment of subcontractors.

3. Ensure that ~~provision is made for the transfer of the private entity's obligations if~~ the comprehensive agreement addresses termination upon ~~is terminated or~~ a material default of the comprehensive agreement ~~occurs~~.

(c) After the public notification period has expired in the case of an unsolicited proposal, the responsible public entity shall rank the proposals received in order of preference. In ranking the proposals, the responsible public entity may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative design techniques or cost-reduction terms, and finance plans. The responsible public entity may then begin negotiations for a comprehensive agreement with the highest-ranked firm. If the responsible public entity is not satisfied with the results of the negotiations, the responsible public entity may terminate negotiations with the proposer and negotiate with the second-ranked or subsequent-ranked firms, in the order consistent with

this procedure. If only one proposal is received, the responsible public entity may negotiate in good faith, and if the responsible public entity is not satisfied with the results of the negotiations, the responsible public entity may terminate negotiations with the proposer. Notwithstanding this paragraph, the responsible public entity may reject all proposals at any point in the process until a contract with the proposer is executed.

(d) The responsible public entity shall perform an independent analysis of the proposed public-private partnership which demonstrates the cost-effectiveness and overall public benefit before the procurement process is initiated or before the contract is awarded.

(e) The responsible public entity may approve the development or operation of an educational facility, a transportation facility, a water or wastewater management facility or related infrastructure, a technology infrastructure or other public infrastructure, or a government facility needed by the responsible public entity as a qualifying project, or the design or equipping of a qualifying project that is developed or operated, if:

1. There is a public need for or benefit derived from a project of the type that the private entity proposes as the qualifying project.

2. The estimated cost of the qualifying project is reasonable in relation to similar facilities.

3. The private entity's plans will result in the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project.

(f) The responsible public entity may charge a reasonable fee to cover the costs of processing, reviewing, and evaluating the request, including, but not limited to, reasonable attorney fees and fees for financial and technical advisors or consultants and for other necessary advisors or consultants.

(g) Upon approval of a qualifying project, the responsible public entity shall establish a date for the commencement of activities related to the qualifying project. The responsible public entity may extend the commencement date.

(h) Approval of a qualifying project by the responsible public entity is subject to entering into a comprehensive agreement with the private entity.

~~(7) NOTICE TO AFFECTED LOCAL JURISDICTIONS.—~~

~~(a) The responsible public entity must notify each affected local jurisdiction by furnishing a copy of the proposal to each affected local jurisdiction when considering a proposal for a qualifying project.~~

~~(b) Each affected local jurisdiction that is not a responsible public entity for the respective qualifying project may, within 60 days after receiving the notice, submit in writing any comments to the responsible public entity and indicate whether the facility is incompatible with the local~~

~~comprehensive plan, the local infrastructure development plan, the capital improvements budget, any development of regional impact processes or timelines, or other governmental spending plan. The responsible public entity shall consider the comments of the affected local jurisdiction before entering into a comprehensive agreement with a private entity. If an affected local jurisdiction fails to respond to the responsible public entity within the time provided in this paragraph, the nonresponse is deemed an acknowledgment by the affected local jurisdiction that the qualifying project is compatible with the local comprehensive plan, the local infrastructure development plan, the capital improvements budget, or other governmental spending plan.~~

(6)~~(8)~~ INTERIM AGREEMENT.—Before or in connection with the negotiation of a comprehensive agreement, the responsible public entity may enter into an interim agreement with the private entity proposing the development or operation of the qualifying project. An interim agreement does not obligate the responsible public entity to enter into a comprehensive agreement. The interim agreement is discretionary with the parties and is not required on a qualifying project for which the parties may proceed directly to a comprehensive agreement without the need for an interim agreement. An interim agreement must be limited to provisions that:

(a) Authorize the private entity to commence activities for which it may be compensated related to the proposed

qualifying project, including, but not limited to, project planning and development, design, environmental analysis and mitigation, survey, other activities concerning any part of the proposed qualifying project, and ascertaining the availability of financing for the proposed facility or facilities.

(b) Establish the process and timing of the negotiation of the comprehensive agreement.

(c) Contain such other provisions related to an aspect of the development or operation of a qualifying project that the responsible public entity and the private entity deem appropriate.

(7) ~~(9)~~ COMPREHENSIVE AGREEMENT.—

(a) Before developing or operating the qualifying project, the private entity must enter into a comprehensive agreement with the responsible public entity. The comprehensive agreement must provide for:

1. Delivery of performance and payment bonds, letters of credit, or other security acceptable to the responsible public entity in connection with the development or operation of the qualifying project in the form and amount satisfactory to the responsible public entity. For the components of the qualifying project which involve construction, the form and amount of the bonds must comply with s. 255.05.

2. Review of the design for the qualifying project by the responsible public entity and, if the design conforms to standards acceptable to the responsible public entity, the

approval of the responsible public entity. This subparagraph does not require the private entity to complete the design of the qualifying project before the execution of the comprehensive agreement.

3. Inspection of the qualifying project by the responsible public entity to ensure that the private entity's activities are acceptable to the responsible public entity in accordance with the comprehensive agreement.

4. Maintenance of a policy of public liability insurance, a copy of which must be filed with the responsible public entity and accompanied by proofs of coverage, or self-insurance, each in the form and amount satisfactory to the responsible public entity and reasonably sufficient to ensure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project.

5. Monitoring by the responsible public entity of the maintenance practices to be performed by the private entity to ensure that the qualifying project is properly maintained.

6. Periodic filing by the private entity of the appropriate financial statements that pertain to the qualifying project.

7. Procedures that govern the rights and responsibilities of the responsible public entity and the private entity in the course of the construction and operation of the qualifying project and in the event of the termination of the comprehensive agreement or a material default by the private entity. The

procedures must include conditions that govern the assumption of the duties and responsibilities of the private entity by an entity that funded, in whole or part, the qualifying project or by the responsible public entity, and must provide for the transfer or purchase of property or other interests of the private entity by the responsible public entity.

8. Fees, lease payments, or service payments. In negotiating user fees, the fees must be the same for persons using the facility under like conditions and must not materially discourage use of the qualifying project. The execution of the comprehensive agreement or a subsequent amendment is conclusive evidence that the fees, lease payments, or service payments provided for in the comprehensive agreement comply with this section. Fees or lease payments established in the comprehensive agreement as a source of revenue may be in addition to, or in lieu of, service payments.

9. Duties of the private entity, including the terms and conditions that the responsible public entity determines serve the public purpose of this section.

(b) The comprehensive agreement may include:

1. An agreement by the responsible public entity to make grants or loans to the private entity from amounts received from the federal, state, or local government or an agency or instrumentality thereof.

2. A provision under which each entity agrees to provide notice of default and cure rights for the benefit of the other

entity, including, but not limited to, a provision regarding unavoidable delays.

3. A provision that terminates the authority and duties of the private entity under this section and dedicates the qualifying project to the responsible public entity or, if the qualifying project was initially dedicated by an affected local jurisdiction, to the affected local jurisdiction for public use.

(8) ~~(10)~~ FEES.—A comprehensive ~~An~~ agreement entered into pursuant to this section may authorize the private entity to impose fees to members of the public for the use of the facility. The following provisions apply to the comprehensive agreement:

(a) The responsible public entity may develop new facilities or increase capacity in existing facilities through a comprehensive agreement with a private entity ~~agreements with public-private partnerships~~.

(b) The comprehensive ~~public-private partnership~~ agreement must ensure that the facility is properly operated, maintained, or improved in accordance with standards set forth in the comprehensive agreement.

(c) The responsible public entity may lease existing fee-for-use facilities through a comprehensive ~~public-private partnership~~ agreement.

(d) Any revenues must be authorized by and applied in the manner set forth in ~~regulated by the responsible public entity pursuant to~~ the comprehensive agreement.

(e) A negotiated portion of revenues from fee-generating uses may ~~must~~ be returned to the responsible public entity over the life of the comprehensive agreement.

(9)~~(11)~~ FINANCING.—

(a) A private entity may enter into a private-source financing agreement between financing sources and the private entity. A financing agreement and any liens on the property or facility must be paid in full at the applicable closing that transfers ownership or operation of the facility to the responsible public entity at the conclusion of the term of the comprehensive agreement.

(b) The responsible public entity may lend funds to private entities that construct projects containing facilities that are approved under this section.

(c) The responsible public entity may use innovative finance techniques associated with a public-private partnership under this section, including, but not limited to, federal loans as provided in Titles 23 and 49 C.F.R., commercial bank loans, and hedges against inflation from commercial banks or other private sources. In addition, the responsible public entity may provide its own capital or operating budget to support a qualifying project. The budget may be from any legally permissible funding sources of the responsible public entity, including the proceeds of debt issuances. A responsible public entity may use the model financing agreement provided in s. 489.145(6) for its financing of a facility owned by a

responsible public entity. A financing agreement may not require the responsible public entity to indemnify the financing source, subject the responsible public entity's facility to liens in violation of s. 11.066(5), or secure financing of ~~by~~ the responsible public entity by a mortgage on, or security interest in, the real or tangible personal property of the responsible public entity in a manner that could result in the loss of the fee ownership of the property by the responsible public entity ~~with a pledge of security interest~~, and any such provision is void.

~~(d) A responsible public entity shall appropriate on a priority basis as required by the comprehensive agreement a contractual payment obligation, annual or otherwise, from the enterprise or other government fund from which the qualifying projects will be funded. This required payment obligation must be appropriated before other noncontractual obligations payable from the same enterprise or other government fund.~~

(10)~~(12)~~ POWERS AND DUTIES OF THE PRIVATE ENTITY.—

(a) The private entity shall:

1. Develop or operate the qualifying project in a manner that is acceptable to the responsible public entity in accordance with the provisions of the comprehensive agreement.

2. Maintain, or provide by contract for the maintenance or improvement of, the qualifying project if required by the comprehensive agreement.

3. Cooperate with the responsible public entity in making

best efforts to establish interconnection between the qualifying project and any other facility or infrastructure as requested by the responsible public entity in accordance with the provisions of the comprehensive agreement.

4. Comply with the comprehensive agreement and any lease or service contract.

(b) Each private facility that is constructed pursuant to this section must comply with the requirements of federal, state, and local laws; state, regional, and local comprehensive plans; the responsible public entity's rules, procedures, and standards for facilities; and such other conditions that the responsible public entity determines to be in the public's best interest and that are included in the comprehensive agreement.

(c) The responsible public entity may provide services to the private entity. An agreement for maintenance and other services entered into pursuant to this section must provide for full reimbursement for services rendered for qualifying projects.

(d) A private entity of a qualifying project may provide additional services for the qualifying project to the public or to other private entities if the provision of additional services does not impair the private entity's ability to meet its commitments to the responsible public entity pursuant to the comprehensive agreement.

(11) ~~(13)~~ EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the expiration or termination of a comprehensive agreement, the

responsible public entity may use revenues from the qualifying project to pay current operation and maintenance costs of the qualifying project. If the private entity materially defaults under the comprehensive agreement, the compensation that is otherwise due to the private entity is payable to satisfy all financial obligations to investors and lenders on the qualifying project in the same way that is provided in the comprehensive agreement or any other agreement involving the qualifying project, if the costs of operating and maintaining the qualifying project are paid in the normal course. Revenues in excess of the costs for operation and maintenance costs may be paid to the investors and lenders to satisfy payment obligations under their respective agreements. A responsible public entity may terminate with cause and without prejudice a comprehensive agreement and may exercise any other rights or remedies that may be available to it in accordance with the provisions of the comprehensive agreement. The full faith and credit of the responsible public entity may not be pledged to secure the financing of the private entity. The assumption of the development or operation of the qualifying project does not obligate the responsible public entity to pay any obligation of the private entity from sources other than revenues from the qualifying project unless stated otherwise in the comprehensive agreement.

(12) ~~(14)~~ SOVEREIGN IMMUNITY.—This section does not waive the sovereign immunity of a responsible public entity, an

affected local jurisdiction, or an officer or employee thereof with respect to participation in, or approval of, any part of a qualifying project or its operation, including, but not limited to, interconnection of the qualifying project with any other infrastructure or project. A county or municipality in which a qualifying project is located possesses sovereign immunity with respect to the project, including, but not limited to, its design, construction, and operation.

(13) DEPARTMENT OF MANAGEMENT SERVICES.—

(a) A responsible public entity may provide a copy of its comprehensive agreement to the Department of Management Services. A responsible public entity must redact any confidential or exempt information from the copy of the comprehensive agreement before providing it to the Department of Management Services.

(b) The Department of Management Services may accept and maintain copies of comprehensive agreements received from responsible public entities for the purpose of sharing comprehensive agreements with other responsible public entities.

(c) This subsection does not require a responsible public entity to provide a copy of its comprehensive agreement to the Department of Management Services.

(14) ~~(15)~~ CONSTRUCTION.—

(a) This section shall be liberally construed to effectuate the purposes of this section.

(b) This section shall be construed as cumulative and supplemental to any other authority or power vested in or exercised by the governing body ~~board~~ of a county, municipality, special district, or municipal hospital or health care system including those contained in acts of the Legislature ~~establishing such public hospital boards or s. 155.40~~.

(c) This section does not affect any agreement or existing relationship with a supporting organization involving such governing body ~~board~~ or system in effect as of January 1, 2013.

(d) ~~(a)~~ This section provides an alternative method and does not limit a county, municipality, special district, or other political subdivision of the state in the procurement or operation of a qualifying project ~~acquisition, design, or construction of a public project~~ pursuant to other statutory or constitutional authority.

(e) ~~(b)~~ Except as otherwise provided in this section, this section does not amend existing laws by granting additional powers to, or further restricting, a local governmental entity from regulating and entering into cooperative arrangements with the private sector for the planning, construction, or operation of a facility.

(f) ~~(c)~~ This section does not waive any requirement of s. 287.055.

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 95 (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 Steube offered the following:

Amendment

Between lines 252 and 253, insert:

5. If the responsible public entity chooses to evaluate an unsolicited proposal involving architecture, engineering or landscape architecture, it must ensure a professional review and evaluation of the design and construction proposed by the initial or subsequent proposers to assure material quality standards, interior space utilization, budget estimates, design and construction schedules and sustainable design and construction standards consistent with public projects. Such review shall be performed by an architect, a landscape architect, or an engineer licensed in this state and qualified to perform the review. Such professional shall advise the

responsible public entity through completion of the design and construction of the project.

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 Steube offered the following:

Amendment

Remove lines 277-290 and insert:

(c) If the solicited qualifying project provided in paragraph (b) includes design work, the solicitation must include a design criteria package prepared by an architect, an engineer, or a landscape architect licensed in this state which is sufficient to allow private entities to prepare a bid or a response. The design criteria package must specify reasonably specific criteria for the qualifying project, such as the legal description of the site, with survey information; interior space requirements; material quality standards; schematic layouts and conceptual design criteria for the qualifying project; cost or budget estimates; design and construction schedules; and site development and utility requirements. The licensed design

professional who prepares the design criteria package shall be retained to serve the responsible public entity through completion of the design and construction of the project. ~~A responsible public entity that is a school board may enter into a comprehensive agreement only with the approval of the local governing body.~~

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 97 Public Records and Public Meetings
SPONSOR(S): Steube
TIED BILLS: HB 95 **IDEN./SIM. BILLS:** SB 126

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	12 Y, 0 N	Moore	Williamson
2) Local Government Affairs Subcommittee	11 Y, 0 N	Monroe	Miller
3) State Affairs Committee		Moore	Camechis

SUMMARY ANALYSIS

Current law authorizes public-private partnerships (P3s) for specified public purpose projects. It authorizes responsible public entities to enter into a P3 for specified qualifying projects if the public entity determines the project is in the public's best interest.

This bill, which is linked to the passage of House Bill 95, creates an exemption from public record and public meeting requirements for unsolicited proposals for P3 projects for public facilities and infrastructure.

The bill provides that an unsolicited proposal is exempt from public record requirements until such time that the responsible public entity provides notice of its intended decision. If the responsible public entity rejects all proposals and concurrently provides notice of its intent to seek additional proposals, the unsolicited proposal remains exempt for a specified period of time; however, it does not remain exempt for more than 90 days after the responsible public entity rejects all proposals received for the project described in the unsolicited proposal.

If the responsible public entity does not issue a competitive solicitation, the unsolicited proposal is not exempt for more than 180 days.

The bill creates a public meeting exemption for any portion of a meeting during which the exempt unsolicited proposal is discussed. A recording must be made of the closed portion of the meeting. The recording, and any records generated during the closed meeting, are exempt from public record requirements until such time as the underlying public record exemption expires.

The public record and public meeting exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.

The bill may have a minimal fiscal impact on state universities, Florida College System institutions, and local governments; however, these costs would be absorbed as they are part of the entities' day-to-day responsibilities.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law
Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person the right to inspect and copy any state, county, or municipal record.

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

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

Public Record and Public Meeting Exemptions
The Legislature may provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24(a) and (b) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.[5]

Furthermore, the Open Government Sunset Review Act[6] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

[1] Section 286.011(1), F.S.
[2] *Id.*
[3] Section 286.011(6), F.S.
[4] Section 286.011(2), F.S.
[5] Section 24(c), Art. I, Fla. Const.
[6] Section 119.15, F.S.

- Protects trade or business secrets.

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

Public-Private Partnerships

Section 287.05712, F.S., governs the procurement process for public-private partnerships (P3s) for public purpose projects. It authorizes a responsible public entity[7] to enter into a P3 for specified qualifying projects[8] if the responsible public entity determines the project is in the public's best interest.[9]

Responsible public entities may receive unsolicited proposals or may solicit proposals for qualifying projects and may thereafter enter into an agreement with a private entity for the building, upgrading, operation, ownership, or financing of facilities. Unsolicited proposals from private entities must be accompanied by the following material and information, unless waived by the responsible public entity:

- A description of the qualifying project, including the conceptual design of the facilities or a conceptual plan for the provision of services, and a schedule for the initiation and completion of the qualifying project.
- A description of the method by which the private entity proposes to secure any necessary property interests that are required for the qualifying project.
- A description of the private entity's general plans for financing the qualifying project, including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity.
- The name and address of a person who may be contacted for further information concerning the proposal.
- The proposed user fees, lease payments, or other service payments over the term of a comprehensive agreement, and the methodology and circumstances for changes to the user fees, lease payments, and other service payments over time.
- Any additional material or information the responsible public entity reasonably requests.[10]

If the responsible public entity receives an unsolicited proposal and intends to enter into a P3 agreement for the project, the responsible public entity must publish a notice in the Florida Administrative Register and a newspaper of general circulation at least once a week for two weeks stating the entity has received a proposal and will accept other proposals.[11] The responsible public entity must establish a timeframe in which to accept other proposals.[12]

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[7] Section 287.05712(1)(j), F.S., defines the term "responsible public entity" as a county, municipality, school board, or any other political subdivision of the state; a public body politic and corporate; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project.

[8] Section 287.05712(1)(i), F.S., defines the term "qualifying project" as a facility or project that serves a public purpose, including, but not limited to, any ferry or mass transit facility, vehicle parking facility, airport or seaport facility, rail facility or project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, or educational facility or other building or facility that is used or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity; an improvement, including equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector; a water, wastewater, or surface water management facility or other related infrastructure; or for projects that involve a facility owned or operated by the governing board of a county, district, or municipal hospital or health care system, or projects that involve a facility owned or operated by a municipal electric utility, only those projects that the governing board designates as qualifying projects.

[9] Section 287.05712(4)(d), F.S.

[10] Section 287.05712(5), F.S.

[11] Section 287.05712(4)(b), F.S.

[12] *Id.*

After the public notification period has expired, the responsible public entity must rank the proposals received in order of preference.[13] If negotiations with the highest-ranked firm are unsuccessful, the responsible public entity may terminate negotiations and begin negotiations with each subsequent-ranked firm in order of preference.[14] The responsible public entity may reject all proposals at any point in the process.[15]

Public Record and Public Meeting Exemptions

Current law does not provide a public record exemption for unsolicited proposals. However, sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation[16] are exempt[17] from public record requirements until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier.[18] If an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt until the agency provides notice of its intended decision or withdraws the reissued competitive solicitation. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.[19]

Current law does not provide a public meeting exemption for meetings during which an unsolicited proposal is discussed. However, public meetings in which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation are exempt from pubic meeting requirements.[20] A complete recording of the closed meeting must be made and no portion of the exempt meeting may be held off the record.[21]

The recording of, and any records presented at, the exempt meeting are exempt from public record requirements until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever occurs earlier.[22] If the agency rejects all bids, proposals, or replies and concurrently provides notice of its intent to reissue a competitive solicitation, the recording and any records presented at the exempt meeting remain exempt from public record requirements until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation.[23] A recording and any records presented at an exempt meeting are not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.[24]

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[13] Section 287.05712(6)(c), F.S.
[14] *Id.*
[15] *Id.*
[16] A competitive solicitation is defined as "the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement." Section 119.071(1)(b)1., F.S.
[17] 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).
[18] Section 119.071(1)(b), F.S.
[19] *Id.*
[20] Section 286.0113(2)(b), F.S.
[21] Section 286.0113(2)(c), F.S.
[22] *Id.*
[23] *Id.*
[24] *Id.*

Effect of Proposed Changes

The bill creates an exemption from public record and public meeting requirements for unsolicited proposals for P3 projects for public facilities and infrastructure.

The bill creates a public record exemption for an unsolicited proposal held by a responsible public entity until the responsible public entity provides notice of its intended decision. If the responsible public entity rejects all proposals and concurrently provides notice of its intent to seek additional proposals, the unsolicited proposal remains exempt until such time that the responsible public entity provides notice of an intended decision concerning the reissued competitive solicitation or until the responsible public entity withdraws the reissued competitive solicitation for the project. An unsolicited proposal is not exempt for more than 90 days after the responsible public entity rejects all proposals received for the project described in the unsolicited proposal.

If the responsible public entity does not issue a competitive solicitation, the unsolicited proposal is not exempt for more than 180 days.

The bill creates a public meeting exemption for any portion of a meeting during which the exempt unsolicited proposal is discussed. A recording must be made of the closed portion of the meeting. The recording, and any records generated during the closed meeting, are exempt from public record requirements until such time as the underlying public record exemption expires.

The public record and public meeting exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.

The bill becomes effective on the same date that House Bill 95 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

B. SECTION DIRECTORY:

Section 1. amends s. 287.05712, F.S., as transferred, renumbered, and amended by HB 95, to create public record and public meeting exemptions for unsolicited proposals received by a responsible public entity for a specified period.

Section 2. provides a public necessity statement.

Section 3. provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a minimal fiscal impact on state universities, Florida College System institutions, and local governments that receive unsolicited P3 proposals because staff responsible for complying with public record requests could require training related to the public record exemption. State universities, Florida College System institutions, and local governments could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of their day-to-day responsibilities. In addition, state universities, Florida College System institutions, and local governments may incur minimal fiscal costs associated with recording that portion of a closed meeting during which an unsolicited proposal that is exempt is discussed.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

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

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

Breadth of Exemption
Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates public record and public meeting exemptions for unsolicited proposals for P3 projects that expire after a certain time. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

Additional rulemaking authority does not appear necessary to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to public records and public meetings; amending s. 287.05712, F.S., relating to qualifying public-private projects for public facilities and infrastructure; providing a definition; providing an exemption from public records requirements for unsolicited proposals received by a responsible public entity for a specified period; providing an exemption from public meeting requirements for any portion of a meeting of a responsible public entity during which exempt proposals are discussed; requiring that a recording be made of the closed meeting; providing an exemption from public records requirements for the recording of, and any records generated during, a closed meeting for a specified period; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (15) is added to section 287.05712, Florida Statutes, as transferred, renumbered, and amended by HB 95, to read:

255.065 ~~287.05712~~ Public-private partnerships; public records and public meetings exemptions.—

(15) PUBLIC RECORDS AND PUBLIC MEETINGS EXEMPTIONS.—

(a) As used in this subsection, the term "competitive solicitation" has the same meaning as provided in s. 119.071(1).

(b)1. An unsolicited proposal received by a responsible public entity is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the responsible public entity provides notice of an intended decision for a qualifying project.

2. If the responsible public entity rejects all proposals submitted pursuant to a competitive solicitation for a qualifying project and such entity concurrently provides notice of its intent to seek additional proposals for such project, the unsolicited proposal remains exempt until the responsible public entity provides notice of an intended decision concerning the reissued competitive solicitation for the qualifying project or until the responsible public entity withdraws the reissued competitive solicitation for such project.

3. An unsolicited proposal is not exempt for longer than 90 days after the initial notice by the responsible public entity rejecting all proposals.

(c) If the responsible public entity does not issue a competitive solicitation for a qualifying project, the unsolicited proposal ceases to be exempt 180 days after receipt of the unsolicited proposal by such entity.

(d)1. Any portion of a meeting of a responsible public entity during which an unsolicited proposal that is exempt is

discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

2.a. A complete recording must be made of any portion of an exempt meeting. No portion of the exempt meeting may be held off the record.

b. The recording of, and any records generated during, the exempt meeting are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the responsible public entity provides notice of an intended decision for a qualifying project or 180 days after receipt of the unsolicited proposal by the responsible public entity if such entity does not issue a competitive solicitation for the project.

c. If the responsible public entity rejects all proposals and concurrently provides notice of its intent to reissue a competitive solicitation, the recording and any records generated at the exempt meeting remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the responsible public entity provides notice of an intended decision concerning the reissued competitive solicitation or until the responsible public entity withdraws the reissued competitive solicitation for such project.

d. A recording and any records generated during an exempt meeting are not exempt for longer than 90 days after the initial notice by the responsible public entity rejecting all proposals.

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

repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity that an unsolicited proposal received by a responsible public entity pursuant to s. 287.05712, Florida Statutes, be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution until a time certain. Prohibiting the public release of unsolicited proposals until a time certain ensures the effective and efficient administration of the public-private partnership process established in s. 287.05712, Florida Statutes. Temporarily protecting unsolicited proposals protects the public-private partnership process by encouraging private entities to submit such proposals, which will facilitate the timely development and operation of a qualifying project. Protecting such information ensures that other private entities do not gain an unfair competitive advantage. The public records exemption preserves public oversight of the public-private partnership process by providing for disclosure of the unsolicited proposal when the responsible public entity provides notice of an intended decision; no longer than 90 days after the responsible public entity rejects all proposals received in a competitive solicitation for a qualifying project; or 180 days after receipt of an unsolicited proposal if such entity does not issue a competitive solicitation for a qualifying project related to the proposal.

(2) The Legislature further finds that it is a public

necessity that any portion of a meeting of the responsible public entity during which an unsolicited proposal that is exempt from public records requirements is discussed be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. The Legislature also finds that it is a public necessity that the recording of, and any records generated during, a closed meeting be made temporarily exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Failure to close any portion of a meeting during which such unsolicited proposal is discussed, and failure to protect the release of the recording and records generated during that closed meeting, would defeat the purpose of the public records exemption. In addition, the Legislature finds that public oversight is maintained because the public records exemption for the recording and records generated during any closed portion of a meeting of the responsible public entity are subject to public disclosure when such entity provides notice of an intended decision; no longer than 90 days after the responsible public entity rejects all proposals received in a competitive solicitation for a qualifying project; or 180 days after receipt of an unsolicited proposal if the responsible public entity does not issue a competitive solicitation for a qualifying project related to the proposal.

Section 3. This act shall take effect on the same date that HB 95 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an

extension thereof and becomes a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 361 Vote-by-mail Voting
SPONSOR(S): Lee, Jr., Williams and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 112

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	12 Y, 0 N	Toliver	Williamson
2) Transportation & Economic Development Appropriations Subcommittee	10 Y, 0 N	Cobb	Davis
3) State Affairs Committee		Toliver LT	Camechis

SUMMARY ANALYSIS

Prior to 2001, a voter was required to show cause in order to vote using an absentee ballot. In 2001, the Legislature adopted the Florida Election Reform Act of 2001, which eliminated the requirement that a voter show cause to vote using an absentee ballot. Now, a voter using an absentee ballot is only required to affirm that he or she:

- Is a qualified and registered voter of the county;
- Has not and will not vote more than one ballot in the election; and
- Understands that committing or attempting to commit fraud in connection with voting is a felony of the third degree.

According to the National Conference of State Legislatures, 27 states have some form of "no-excuse absentee voting." However, there seems to be a lack of uniformity regarding what to call the current concepts of absentee voting. For instance, several Florida Supervisors of Elections' websites use the terms "vote-by-mail" and "absentee" interchangeably.

The bill amends the Florida Statutes to replace the phrase "absentee ballot" with the phrase "vote-by-mail ballot."

The bill appears to have an indeterminate fiscal impact to the state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Prior to 2001, a voter was required to show cause in order to vote using an absentee ballot.[1] To vote by absentee ballot, a voter had to attest that one of the following reasons prevented him or her from voting in person at a polling place:

- The voter is unable to vote without another's assistance;
- The voter may not be in the precinct of residence during the hours the polls are open for voting on election day;
- The voter is an inspector, a poll worker, a deputy voting machine custodian, a deputy sheriff, a supervisor of elections, or a deputy supervisor of elections who is assigned to a different precinct than the one in which he or she is registered;
- The voter cannot attend the polls on election day because of the tenets of his or her religion;
- The voter changed his or her residency to another county in Florida within the time period during which the registration books are closed for the election;
- The voter changed his or her permanent residency to another state and he or she is unable under the laws of that state to vote in the general election; or
- The voter is unable to attend the polls on election day and is voting in person at the office of the supervisor of elections.[2]

In 2001, the Legislature adopted the Florida Election Reform Act of 2001, which eliminated the requirement that a voter show cause to vote using an absentee ballot.[3] Now, a voter using an absentee ballot is only required to affirm that he or she:

- Is a qualified and registered voter of the county;
- Has not and will not vote more than one ballot in the election; and
- Understands that committing or attempting to commit fraud in connection with voting is a felony of the third degree.[4]

Numerous states have amended their absentee voting laws to allow for greater absentee ballot participation by voters by removing the reasons that voters traditionally had to give in order to vote an absentee ballot.[5] According to the National Conference of State Legislatures, 27 states have some form of "no-excuse absentee voting."[6] However, there seems to be a lack of uniformity regarding what to call the current concepts of absentee voting. For instance, several Florida supervisors of elections' websites use the terms "vote-by-mail" and "absentee" interchangeably.[7]

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[1] Section 101.64, F.S. (2000).
[2] *Id.*
[3] Chapter 2001-40, s. 1, L.O.F.
[4] Section 101.64(1), F.S.
[5] Tokaji & Ruth Colter, *Absentee Voting by People with Disabilities: Promoting Access and Integrity,* 38 MCGEORGE L.REV. 1015, 1021 (2007), reprinted at http://www.americanbar.org/content/dam/aba/migrated/aging/voting/pdfs/tokaji.authcheckdam.pdf (last accessed Nov. 18, 2015); *see* Enrijeta Shino, *Absentee Voting: A Cross State Analysis* at pp. 3-5 (University of Florida Mar. 8, 2014) (2000 general election signaled the turning point in easing legal requirements for absentee voting), available at The Florida Political Science Association website at http://www.fpsanet.org/uploads/8/8/7/3/8873825/2014_nominee_shino.pdf (last accessed Nov. 18, 2015).
[6] National Conference of State Legislatures, *Absentee and Early Voting* (Feb. 11, 2015), available at http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx (last accessed Nov. 18, 2015).
[7] *See e.g.*, Escambia County Supervisor of Elections website at http://www.escambiavotes.com/vote-by-mail and http://www.escambiavotes.com/absentee-voting-and-registration (generally, using the term "absentee ballot" to refer to military and overseas ballots and the phrase "vote-by-mail" to refer to other ballots)(last accessed Nov. 18, 2015); Pasco County Supervisor of Elections website at http://www.pascovotes.com/Vote-by-Mail/About-Voting-by-Mail#mil (referring to most ballots, including military, as vote-by mail ballots)(last accessed Nov. 18, 2015); Leon County Supervisor of Elections website at

Effect of the Bill

The bill amends the Florida Statutes to replace the phrase "absentee ballot" with the phrase "vote-by-mail ballot."

B. SECTION DIRECTORY:

Sections 1 through 40 amend ss. 97.012, 97.021, 97.026, 98.065, 98.077, 98.0981, 98.255, 101.051, 101.151, 101.5612, 101.5614, 101.572, 101.591, 101.6105, 101.62, 101.64, 101.65, 101.655, 101.661, 101.662, 101.67, 101.68, 101.69, 101.6921, 101.6923, 101.6925, 101.694, 101.6951, 101.6952, 101.697, 102.031, 102.141, 102.168, 104.047, 104.0616, 104.17, 117.05, 394.459, 741.406, and 916.107, F.S., replacing the phrase "absentee ballot" with "vote-by-mail ballot."

Section 41 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:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the Department of State, the change in terminology will require the Division of Elections to revise documentation and may require coding changes to the Florida Voter Registration System. The department indicates the changes will likely be absorbed into the division's current operating budget.[8]

Additionally, supervisors of elections will need to make changes to documentation, forms, procedures, and websites to conform to the change in terminology. The cost of these changes is indeterminate since the level of changes required will differ from county to county.

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http://www.leonvotes.org/Request-an-Absentee-Ballot and Sarasota County Supervisor of Elections website at http://www.sarasotavotes.com/content.aspx?id=19 (using both terms, "vote-by-mail" and "absentee" interchangeably and simultaneously)(last accessed Nov. 18, 2015).

[8] Department of State 2016 Agency Legislative Bill Analysis for HB 361, Oct. 27, 2015, at pg. 3 (on file with the Government Operations Subcommittee).

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Delivery of Ballots

In the past, some have expressed concern that changing the term "absentee ballot" to "vote-by-mail ballot" could result in a delay in the United States Postal Service's processing, transmitting, and delivering of ballots. However, U.S. Postal Service Regulation 703 Nonprofit Standard Mail and Other Unique Eligibility provides the following:

> 8.2.5 Envelope
> The envelope used to send balloting material and the envelope supplied for return of the ballots must have printed across the face the words "Official Absentee Balloting Material—First-Class Mail" (or similar language required by state law)...[9]

Therefore, using different terms with similar meanings, such as "vote-by-mail ballot," would appear to be contemplated by the U.S. Postal Service's regulations.

Drafting Issues

Sections 100.025, 101.663, and 104.0515, F.S., reference the term "absentee ballot" but those sections are not included in the bill. The sections should be amended to replace the term "absentee ballot" with the term "vote-by-mail ballot" in order to ensure the same term is used throughout The Florida Election Code.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[9] U.S Postal Service Regulation 703.8.2.5, available at http://pe.usps.com/text/dmm300/703.htm#1174014 (last accessed Nov. 18, 2015).

A bill to be entitled

An act relating to vote-by-mail voting; amending ss. 97.012, 97.021, 97.026, 98.065, 98.077, 98.0981, 98.255, 101.051, 101.151, 101.5612, 101.5614, 101.572, 101.591, 101.6105, 101.62, 101.64, 101.65, 101.655, 101.661, 101.662, 101.67, 101.68, 101.69, 101.6921, 101.6923, 101.6925, 101.694, 101.6951, 101.6952, 101.697, 102.031, 102.141, 102.168, 104.047, 104.0616, 104.17, 117.05, 394.459, 741.406, and 916.107, F.S.; revising references of "absentee ballot" to "vote-by-mail ballot"; conforming terminology to changes made by the act; providing an effective date.

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

Section 1. Subsection (13) of section 97.012, Florida Statutes, is amended to read:

97.012 Secretary of State as chief election officer.—The Secretary of State is the chief election officer of the state, and it is his or her responsibility to:

(13) Designate an office within the department to be responsible for providing information regarding voter registration procedures and vote-by-mail ~~absentee~~ ballot procedures to absent uniformed services voters and overseas voters.

Section 2. Subsections (1) and (13) of section 97.021,

Florida Statutes, are amended to read:

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

(1) "Absent elector" means any registered and qualified voter who casts a vote-by-mail ~~an absentee~~ ballot.

(13) "Election costs" shall include, but not be limited to, expenditures for all paper supplies such as envelopes, instructions to voters, affidavits, reports, ballot cards, ballot booklets for vote-by-mail ~~absentee~~ voters, postage, notices to voters; advertisements for registration book closings, testing of voting equipment, sample ballots, and polling places; forms used to qualify candidates; polling site rental and equipment delivery and pickup; data processing time and supplies; election records retention; and labor costs, including those costs uniquely associated with vote-by-mail ~~absentee~~ ballot preparation, poll workers, and election night canvass.

Section 3. Section 97.026, Florida Statutes, is amended to read:

97.026 Forms to be available in alternative formats and via the Internet.—It is the intent of the Legislature that all forms required to be used in chapters 97-106 shall be made available upon request, in alternative formats. Such forms shall include vote-by-mail ~~absentee~~ ballots as alternative formats for such ballots become available and the Division of Elections is able to certify systems that provide them. Whenever possible,

such forms, with the exception of vote-by-mail ~~absentee~~ ballots, shall be made available by the Department of State via the Internet. Sections that contain such forms include, but are not limited to, ss. 97.051, 97.052, 97.053, 97.057, 97.058, 97.0583, 97.071, 97.073, 97.1031, 98.075, 99.021, 100.361, 100.371, 101.045, 101.171, 101.20, 101.6103, 101.62, 101.64, 101.65, 101.657, 105.031, 106.023, and 106.087.

Section 4. Paragraph (c) of subsection (4) of section 98.065, Florida Statutes, is amended to read:

98.065 Registration list maintenance programs.—

(4)

(c) The supervisor must designate as inactive all voters who have been sent an address confirmation final notice and who have not returned the postage prepaid, preaddressed return form within 30 days or for which the final notice has been returned as undeliverable. Names on the inactive list may not be used to calculate the number of signatures needed on any petition. A voter on the inactive list may be restored to the active list of voters upon the voter updating his or her registration, requesting a vote-by-mail ~~an absentee~~ ballot, or appearing to vote. However, if the voter does not update his or her voter registration information, request a vote-by-mail ~~an absentee~~ ballot, or vote by the second general election after being placed on the inactive list, the voter's name shall be removed from the statewide voter registration system and the voter shall be required to reregister to have his or her name restored to

the statewide voter registration system.

Section 5. Subsection (4) of section 98.077, Florida Statutes, is amended to read:

98.077 Update of voter signature.—

(4) All signature updates for use in verifying vote-by-mail ~~absentee~~ and provisional ballots must be received by the appropriate supervisor of elections no later than the start of the canvassing of vote-by-mail ~~absentee~~ ballots by the canvassing board. The signature on file at the start of the canvass of the vote-by-mail ~~absentee~~ ballots is the signature that shall be used in verifying the signature on the vote-by-mail ~~absentee~~ and provisional ballot certificates.

Section 6. Paragraphs (b) and (d) of subsection (1) and paragraph (a) of subsection (2) of section 98.0981, Florida Statutes, are amended to read:

98.0981 Reports; voting history; statewide voter registration system information; precinct-level election results; book closing statistics.—

(1) VOTING HISTORY AND STATEWIDE VOTER REGISTRATION SYSTEM INFORMATION.—

(b) After receipt of the information in paragraph (a), the department shall prepare a report in electronic format which contains the following information, separately compiled for the primary and general election for all voters qualified to vote in either election:

1. The unique identifier assigned to each qualified voter

within the statewide voter registration system;

2. All information provided by each qualified voter on his or her voter registration application pursuant to s. 97.052(2), except that which is confidential or exempt from public records requirements;

3. Each qualified voter's date of registration;

4. Each qualified voter's current state representative district, state senatorial district, and congressional district, assigned by the supervisor of elections;

5. Each qualified voter's current precinct; and

6. Voting history as transmitted under paragraph (a) to include whether the qualified voter voted at a precinct location, voted during the early voting period, voted by vote-by-mail ~~absentee~~ ballot, attempted to vote by vote-by-mail ~~absentee~~ ballot that was not counted, attempted to vote by provisional ballot that was not counted, or did not vote.

(d) File specifications are as follows:

1. The file shall contain records designated by the categories below for all qualified voters who, regardless of the voter's county of residence or active or inactive registration status at the book closing for the corresponding election that the file is being created for:

a. Voted a regular ballot at a precinct location.

b. Voted at a precinct location using a provisional ballot that was subsequently counted.

c. Voted a regular ballot during the early voting period.

d. Voted during the early voting period using a provisional ballot that was subsequently counted.

e. Voted by vote-by-mail ~~absentee~~ ballot.

f. Attempted to vote by vote-by-mail ~~absentee~~ ballot, but the ballot was not counted.

g. Attempted to vote by provisional ballot, but the ballot was not counted in that election.

2. Each file shall be created or converted into a tab-delimited format.

3. File names shall adhere to the following convention:

a. Three-character county identifier as established by the department followed by an underscore.

b. Followed by four-character file type identifier of 'VH03' followed by an underscore.

c. Followed by FVRS election ID followed by an underscore.

d. Followed by Date Created followed by an underscore.

e. Date format is YYYYMMDD.

f. Followed by Time Created - HHMMSS.

g. Followed by ".txt".

4. Each record shall contain the following columns: Record Identifier, FVRS Voter ID Number, FVRS Election ID Number, Vote Date, Vote History Code, Precinct, Congressional District, House District, Senate District, County Commission District, and School Board District.

(2) PRECINCT-LEVEL ELECTION RESULTS.—

(a) Within 30 days after certification by the Elections

Canvassing Commission of a presidential preference primary election, special election, primary election, or general election, the supervisors of elections shall collect and submit to the department precinct-level election results for the election in a uniform electronic format specified by paragraph (c). The precinct-level election results shall be compiled separately for the primary or special primary election that preceded the general or special general election, respectively. The results shall specifically include for each precinct the total of all ballots cast for each candidate or nominee to fill a national, state, county, or district office or proposed constitutional amendment, with subtotals for each candidate and ballot type, unless fewer than 10 voters voted a ballot type. "All ballots cast" means ballots cast by voters who cast a ballot whether at a precinct location, by vote-by-mail ~~absentee~~ ballot including overseas vote-by-mail ~~absentee~~ ballots, during the early voting period, or by provisional ballot.

Section 7. Paragraph (b) of subsection (1) of section 98.255, Florida Statutes, is amended to read:

98.255 Voter education programs.—

(1) The Department of State shall adopt rules prescribing minimum standards for nonpartisan voter education. The standards shall, at a minimum, address:

(a) Voter registration;

(b) Balloting procedures, by mail ~~absentee~~ and polling place;

(c) Voter rights and responsibilities;

(d) Distribution of sample ballots; and

(e) Public service announcements.

Section 8. Subsection (3) of section 101.051, Florida Statutes, is amended to read:

101.051 Electors seeking assistance in casting ballots; oath to be executed; forms to be furnished.—

(3) Any elector applying to cast a vote-by-mail ~~an absentee~~ ballot in the office of the supervisor, in any election, who requires assistance to vote by reason of blindness, disability, or inability to read or write may request the assistance of some person of his or her own choice, other than the elector's employer, an agent of the employer, or an officer or agent of his or her union, in casting his or her vote-by-mail ~~absentee~~ ballot.

Section 9. Paragraph (b) of subsection (1) of section 101.151, Florida Statutes, is amended to read:

101.151 Specifications for ballots.—

(1)

(b) Early voting sites may employ a ballot-on-demand production system to print individual marksense ballots, including provisional ballots, for eligible electors pursuant to s. 101.657. Ballot-on-demand technology may be used to produce marksense vote-by-mail ~~absentee~~ and election-day ballots.

Section 10. Subsection (3) of section 101.5612, Florida Statutes, is amended to read:

101.5612 Testing of tabulating equipment.—

(3) For electronic or electromechanical voting systems configured to tabulate vote-by-mail ~~absentee~~ ballots at a central or regional site, the public testing shall be conducted by processing a preaudited group of ballots so produced as to record a predetermined number of valid votes for each candidate and on each measure and to include one or more ballots for each office which have activated voting positions in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject such votes. If any error is detected, the cause therefor shall be corrected and an errorless count shall be made before the automatic tabulating equipment is approved. The test shall be repeated and errorless results achieved immediately before the start of the official count of the ballots and again after the completion of the official count. The programs and ballots used for testing shall be sealed and retained under the custody of the county canvassing board.

Section 11. Paragraph (a) of subsection (5) and subsections (7) and (8) of section 101.5614, Florida Statutes, are amended to read:

101.5614 Canvass of returns.—

(5)(a) If any vote-by-mail ~~absentee~~ ballot is physically damaged so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy shall be made of the damaged ballot in the presence of witnesses and substituted for

the damaged ballot. Likewise, a duplicate ballot shall be made of a vote-by-mail ~~an absentee~~ ballot containing an overvoted race or a marked vote-by-mail ~~absentee~~ ballot in which every race is undervoted which shall include all valid votes as determined by the canvassing board based on rules adopted by the division pursuant to s. 102.166(4). All duplicate ballots shall be clearly labeled "duplicate," bear a serial number which shall be recorded on the defective ballot, and be counted in lieu of the defective ballot. After a ballot has been duplicated, the defective ballot shall be placed in an envelope provided for that purpose, and the duplicate ballot shall be tallied with the other ballots for that precinct.

(7) Vote-by-mail ~~Absentee~~ ballots may be counted by automatic tabulating equipment if they have been marked in a manner which will enable them to be properly counted by such equipment.

(8) The return printed by the automatic tabulating equipment, to which has been added the return of write-in, vote-by-mail ~~absentee~~, and manually counted votes and votes from provisional ballots, shall constitute the official return of the election upon certification by the canvassing board. Upon completion of the count, the returns shall be open to the public. A copy of the returns may be posted at the central counting place or at the office of the supervisor of elections in lieu of the posting of returns at individual precincts.

Section 12. Section 101.572, Florida Statutes, is amended

to read:

101.572 Public inspection of ballots.—The official ballots and ballot cards received from election boards and removed from vote-by-mail ~~absentee~~ ballot mailing envelopes shall be open for public inspection or examination while in the custody of the supervisor of elections or the county canvassing board at any reasonable time, under reasonable conditions; however, no persons other than the supervisor of elections or his or her employees or the county canvassing board shall handle any official ballot or ballot card. If the ballots are being examined prior to the end of the contest period in s. 102.168, the supervisor of elections shall make a reasonable effort to notify all candidates whose names appear on such ballots or ballot cards by telephone or otherwise of the time and place of the inspection or examination. All such candidates, or their representatives, shall be allowed to be present during the inspection or examination.

Section 13. Paragraphs (a) and (b) of subsection (2) of section 101.591, Florida Statutes, are amended to read:

101.591 Voting system audit.—

(2)(a) A manual audit shall consist of a public manual tally of the votes cast in one randomly selected race that appears on the ballot. The tally sheet shall include election-day, vote-by-mail ~~absentee~~, early voting, provisional, and overseas ballots, in at least 1 percent but no more than 2 percent of the precincts chosen at random by the county

canvassing board or the local board responsible for certifying the election. If 1 percent of the precincts is less than one entire precinct, the audit shall be conducted using at least one precinct chosen at random by the county canvassing board or the local board responsible for certifying the election. Such precincts shall be selected at a publicly noticed canvassing board meeting.

(b) An automated audit shall consist of a public automated tally of the votes cast across every race that appears on the ballot. The tally sheet shall include election day, vote-by-mail ~~absentee~~, early voting, provisional, and overseas ballots in at least 20 percent of the precincts chosen at random by the county canvassing board or the local board responsible for certifying the election. Such precincts shall be selected at a publicly noticed canvassing board meeting.

Section 14. Section 101.6105, Florida Statutes, is amended to read:

101.6105 Vote-by-mail ~~Absentee~~ voting.—The provisions of the election code relating to vote-by-mail ~~absentee~~ voting and vote-by-mail ~~absentee~~ ballots shall apply to elections under ss. 101.6101-101.6107 only insofar as they do not conflict with the provisions of ss. 101.6101-101.6107.

Section 15. Section 101.62, Florida Statutes, is amended to read:

101.62 Request for vote-by-mail ~~absentee~~ ballots.—

(1)(a) The supervisor shall accept a request for a vote-

by-mail ~~an absentee~~ ballot from an elector in person or in writing. One request shall be deemed sufficient to receive a vote-by-mail ~~an absentee~~ ballot for all elections through the end of the calendar year of the second ensuing regularly scheduled general election, unless the elector or the elector's designee indicates at the time the request is made the elections for which the elector desires to receive a vote-by-mail ~~an absentee~~ ballot. Such request may be considered canceled when any first-class mail sent by the supervisor to the elector is returned as undeliverable.

(b) The supervisor may accept a written or telephonic request for a vote-by-mail ~~an absentee~~ ballot to be mailed to an elector's address on file in the Florida Voter Registration System from the elector, or, if directly instructed by the elector, a member of the elector's immediate family, or the elector's legal guardian; if the ballot is requested to be mailed to an address other than the elector's address on file in the Florida Voter Registration System, the request must be made in writing and signed by the elector. However, an absent uniformed service voter or an overseas voter seeking a vote-by-mail ~~an absentee~~ ballot is not required to submit a signed, written request for a vote-by-mail ~~an absentee~~ ballot that is being mailed to an address other than the elector's address on file in the Florida Voter Registration System. For purposes of this section, the term "immediate family" has the same meaning as specified in paragraph (4)(c). The person making the request

must disclose:

1. The name of the elector for whom the ballot is requested.

2. The elector's address.

3. The elector's date of birth.

4. The requester's name.

5. The requester's address.

6. The requester's driver license number, if available.

7. The requester's relationship to the elector.

8. The requester's signature (written requests only).

(c) Upon receiving a request for a vote-by-mail ~~an absentee~~ ballot from an absent voter, the supervisor of elections shall notify the voter of the free access system that has been designated by the department for determining the status of his or her vote-by-mail ~~absentee~~ ballot.

(2) A request for a vote-by-mail ~~an absentee~~ ballot to be mailed to a voter must be received no later than 5 p.m. on the sixth day before the election by the supervisor of elections. The supervisor of elections shall mail vote-by-mail ~~absentee~~ ballots to voters requesting ballots by such deadline no later than 4 days before the election.

(3) For each request for a vote-by-mail ~~an absentee~~ ballot received, the supervisor shall record the date the request was made, the date the vote-by-mail ~~absentee~~ ballot was delivered to the voter or the voter's designee or the date the vote-by-mail ~~absentee~~ ballot was delivered to the post office or other

carrier, the date the ballot was received by the supervisor, the absence of the voter's signature on the voter's certificate, if applicable, and such other information he or she may deem necessary. This information shall be provided in electronic format as provided by rule adopted by the division. The information shall be updated and made available no later than 8 a.m. of each day, including weekends, beginning 60 days before the primary until 15 days after the general election and shall be contemporaneously provided to the division. This information shall be confidential and exempt from s. 119.07(1) and shall be made available to or reproduced only for the voter requesting the ballot, a canvassing board, an election official, a political party or official thereof, a candidate who has filed qualification papers and is opposed in an upcoming election, and registered political committees for political purposes only.

(4)(a) No later than 45 days before each presidential preference primary election, primary election, and general election, the supervisor of elections shall send a vote-by-mail ~~an absentee~~ ballot as provided in subparagraph (c)2. to each absent uniformed services voter and to each overseas voter who has requested a vote-by-mail ~~an absentee~~ ballot.

(b) The supervisor of elections shall mail a vote-by-mail ~~an absentee~~ ballot to each absent qualified voter, other than those listed in paragraph (a), who has requested such a ballot, between the 35th and 28th days before the presidential preference primary election, primary election, and general

election. Except as otherwise provided in subsection (2) and after the period described in this paragraph, the supervisor shall mail vote-by-mail ~~absentee~~ ballots within 2 business days after receiving a request for such a ballot.

(c) The supervisor shall provide a vote-by-mail ~~an~~ ~~absentee~~ ballot to each elector by whom a request for that ballot has been made by one of the following means:

1. By nonforwardable, return-if-undeliverable mail to the elector's current mailing address on file with the supervisor or any other address the elector specifies in the request.

2. By forwardable mail, e-mail, or facsimile machine transmission to absent uniformed services voters and overseas voters. The absent uniformed services voter or overseas voter may designate in the vote-by-mail ~~absentee~~ ballot request the preferred method of transmission. If the voter does not designate the method of transmission, the vote-by-mail ~~absentee~~ ballot shall be mailed.

3. By personal delivery before 7 p.m. on election day to the elector, upon presentation of the identification required in s. 101.043.

4. By delivery to a designee on election day or up to 5 days prior to the day of an election. Any elector may designate in writing a person to pick up the ballot for the elector; however, the person designated may not pick up more than two vote-by-mail ~~absentee~~ ballots per election, other than the designee's own ballot, except that additional ballots may be

picked up for members of the designee's immediate family. For purposes of this section, "immediate family" means the designee's spouse or the parent, child, grandparent, or sibling of the designee or of the designee's spouse. The designee shall provide to the supervisor the written authorization by the elector and a picture identification of the designee and must complete an affidavit. The designee shall state in the affidavit that the designee is authorized by the elector to pick up that ballot and shall indicate if the elector is a member of the designee's immediate family and, if so, the relationship. The department shall prescribe the form of the affidavit. If the supervisor is satisfied that the designee is authorized to pick up the ballot and that the signature of the elector on the written authorization matches the signature of the elector on file, the supervisor shall give the ballot to that designee for delivery to the elector.

5. Except as provided in s. 101.655, the supervisor may not deliver a vote-by-mail ~~an absentee~~ ballot to an elector or an elector's immediate family member on the day of the election unless there is an emergency, to the extent that the elector will be unable to go to his or her assigned polling place. If a vote-by-mail ~~an absentee~~ ballot is delivered, the elector or his or her designee shall execute an affidavit affirming to the facts which allow for delivery of the vote-by-mail ~~absentee~~ ballot. The department shall adopt a rule providing for the form of the affidavit.

(5) If the department is unable to certify candidates for an election in time to comply with paragraph (4)(a), the Department of State is authorized to prescribe rules for a ballot to be sent to absent uniformed services voters and overseas voters.

(6) Nothing other than the materials necessary to vote by mail ~~absentee~~ shall be mailed or delivered with any vote-by-mail ~~absentee~~ ballot.

Section 16. Subsections (1) and (4) of section 101.64, Florida Statutes, are amended to read:

101.64 Delivery of vote-by-mail ~~absentee~~ ballots; envelopes; form.—

(1) The supervisor shall enclose with each vote-by-mail ~~absentee~~ ballot two envelopes: a secrecy envelope, into which the absent elector shall enclose his or her marked ballot; and a mailing envelope, into which the absent elector shall then place the secrecy envelope, which shall be addressed to the supervisor and also bear on the back side a certificate in substantially the following form:

Note: Please Read Instructions Carefully Before Marking Ballot and Completing Voter's Certificate.

VOTER'S CERTIFICATE

I, ..., do solemnly swear or affirm that I am a qualified and registered voter of .... County, Florida, and that I have

not and will not vote more than one ballot in this election. I understand that if I commit or attempt to commit any fraud in connection with voting, vote a fraudulent ballot, or vote more than once in an election, I can be convicted of a felony of the third degree and fined up to $5,000 and/or imprisoned for up to 5 years. I also understand that failure to sign this certificate will invalidate my ballot.

...(Date)... ...(Voter's Signature)...

(4) The supervisor shall mark, code, indicate on, or otherwise track the precinct of the absent elector for each vote-by-mail ~~absentee~~ ballot.

Section 17. Section 101.65, Florida Statutes, is amended to read:

101.65 Instructions to absent electors.—The supervisor shall enclose with each vote-by-mail ~~absentee~~ ballot separate printed instructions in substantially the following form:

READ THESE INSTRUCTIONS CAREFULLY
BEFORE MARKING BALLOT.

1. VERY IMPORTANT. In order to ensure that your vote-by-mail ~~absentee~~ ballot will be counted, it should be completed and returned as soon as possible so that it can reach the supervisor of elections of the county in which your precinct is located no later than 7 p.m. on the day of the election. However, if you

are an overseas voter casting a ballot in a presidential preference primary or general election, your vote-by-mail ~~absentee~~ ballot must be postmarked or dated no later than the date of the election and received by the supervisor of elections of the county in which you are registered to vote no later than 10 days after the date of the election.

2. Mark your ballot in secret as instructed on the ballot. You must mark your own ballot unless you are unable to do so because of blindness, disability, or inability to read or write.

3. Mark only the number of candidates or issue choices for a race as indicated on the ballot. If you are allowed to "Vote for One" candidate and you vote for more than one candidate, your vote in that race will not be counted.

4. Place your marked ballot in the enclosed secrecy envelope.

5. Insert the secrecy envelope into the enclosed mailing envelope which is addressed to the supervisor.

6. Seal the mailing envelope and completely fill out the Voter's Certificate on the back of the mailing envelope.

7. VERY IMPORTANT. In order for your vote-by-mail ~~absentee~~ ballot to be counted, you must sign your name on the line above (Voter's Signature). A vote-by-mail ~~An absentee~~ ballot will be considered illegal and not be counted if the signature on the voter's certificate does not match the signature on record. The signature on file at the start of the canvass of the vote-by-mail ~~absentee~~ ballots is the signature that will be used to

verify your signature on the voter's certificate. If you need to update your signature for this election, send your signature update on a voter registration application to your supervisor of elections so that it is received no later than the start of the canvassing of vote-by-mail ~~absentee~~ ballots, which occurs no earlier than the 15th day before election day.

8. VERY IMPORTANT. If you are an overseas voter, you must include the date you signed the Voter's Certificate on the line above (Date) or your ballot may not be counted.

9. Mail, deliver, or have delivered the completed mailing envelope. Be sure there is sufficient postage if mailed.

10. FELONY NOTICE. It is a felony under Florida law to accept any gift, payment, or gratuity in exchange for your vote for a candidate. It is also a felony under Florida law to vote in an election using a false identity or false address, or under any other circumstances making your ballot false or fraudulent.

Section 18. Subsections (1) and (2) of section 101.655, Florida Statutes, are amended to read:

101.655 Supervised voting by absent electors in certain facilities.—

(1) The supervisor of elections of a county shall provide supervised voting for absent electors residing in any assisted living facility, as defined in s. 429.02, or nursing home facility, as defined in s. 400.021, within that county at the request of any administrator of such a facility. Such request for supervised voting in the facility shall be made by

submitting a written request to the supervisor of elections no later than 21 days prior to the election for which that request is submitted. The request shall specify the name and address of the facility and the name of the electors who wish to vote by mail ~~absentee~~ in that election. If the request contains the names of fewer than five voters, the supervisor of elections is not required to provide supervised voting.

(2) The supervisor of elections may, in the absence of a request from the administrator of a facility, provide for supervised voting in the facility for those persons who have requested vote-by-mail ~~absentee~~ ballots. The supervisor of elections shall notify the administrator of the facility that supervised voting will occur.

Section 19. Section 101.661, Florida Statutes, is amended to read:

101.661 Voting vote-by-mail ~~absentee~~ ballots.—All electors must personally mark or designate their choices on the vote-by-mail ~~absentee~~ ballot, except:

(1) Electors who require assistance to vote because of blindness, disability, or inability to read or write, who may have some person of the elector's choice, other than the elector's employer, an agent of the employer, or an officer or agent of the elector's union, mark the elector's choices or assist the elector in marking his or her choices on the ballot.

(2) As otherwise provided in s. 101.051 or s. 101.655.

Section 20. Section 101.662, Florida Statutes, is amended

to read:

101.662 Accessibility of vote-by-mail ~~absentee~~ ballots.—It is the intent of the Legislature that voting by vote-by-mail ~~absentee~~ ballot be by methods that are fully accessible to all voters, including voters having a disability. The Department of State shall work with the supervisors of elections and the disability community to develop and implement procedures and technologies, as possible, which will include procedures for providing vote-by-mail ~~absentee~~ ballots, upon request, in alternative formats that will allow all voters to cast a secret, independent, and verifiable vote-by-mail ~~absentee~~ ballot without the assistance of another person.

Section 21. Section 101.67, Florida Statutes, is amended to read:

101.67 Safekeeping of mailed ballots; deadline for receiving vote-by-mail ~~absentee~~ ballots.—

(1) The supervisor of elections shall safely keep in his or her office any envelopes received containing marked ballots of absent electors, and he or she shall, before the canvassing of the election returns, deliver the envelopes to the county canvassing board along with his or her file or list kept regarding said ballots.

(2) Except as provided in s. 101.6952(5), all marked absent electors' ballots to be counted must be received by the supervisor by 7 p.m. the day of the election. All ballots received thereafter shall be marked with the time and date of

receipt and filed in the supervisor's office.

Section 22. Section 101.68, Florida Statutes, is amended to read:

101.68 Canvassing of vote-by-mail ~~absentee~~ ballot.—

(1) The supervisor of the county where the absent elector resides shall receive the voted ballot, at which time the supervisor shall compare the signature of the elector on the voter's certificate with the signature of the elector in the registration books or the precinct register to determine whether the elector is duly registered in the county and may record on the elector's registration certificate that the elector has voted. However, effective July 1, 2005, an elector who dies after casting a vote-by-mail ~~an absentee~~ ballot but on or before election day shall remain listed in the registration books until the results have been certified for the election in which the ballot was cast. The supervisor shall safely keep the ballot unopened in his or her office until the county canvassing board canvasses the vote. Except as provided in subsection (4), after a vote-by-mail ~~an absentee~~ ballot is received by the supervisor, the ballot is deemed to have been cast, and changes or additions may not be made to the voter's certificate.

(2)(a) The county canvassing board may begin the canvassing of vote-by-mail ~~absentee~~ ballots at 7 a.m. on the 15th day before the election, but not later than noon on the day following the election. In addition, for any county using electronic tabulating equipment, the processing of vote-by-mail

~~absentee~~ ballots through such tabulating equipment may begin at 7 a.m. on the 15th day before the election. However, notwithstanding any such authorization to begin canvassing or otherwise processing vote-by-mail ~~absentee~~ ballots early, no result shall be released until after the closing of the polls in that county on election day. Any supervisor of elections, deputy supervisor of elections, canvassing board member, election board member, or election employee who releases the results of a canvassing or processing of vote-by-mail ~~absentee~~ ballots prior to the closing of the polls in that county on election day commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) To ensure that all vote-by-mail ~~absentee~~ ballots to be counted by the canvassing board are accounted for, the canvassing board shall compare the number of ballots in its possession with the number of requests for ballots received to be counted according to the supervisor's file or list.

(c)1. The canvassing board shall, if the supervisor has not already done so, compare the signature of the elector on the voter's certificate or on the vote-by-mail ~~absentee~~ ballot affidavit as provided in subsection (4) with the signature of the elector in the registration books or the precinct register to see that the elector is duly registered in the county and to determine the legality of that vote-by-mail ~~absentee~~ ballot. The ballot of an elector who casts a vote-by-mail ~~an absentee~~ ballot shall be counted even if the elector dies on or before election

day, as long as, prior to the death of the voter, the ballot was postmarked by the United States Postal Service, date-stamped with a verifiable tracking number by a common carrier, or already in the possession of the supervisor of elections. A vote-by-mail ~~An absentee~~ ballot shall be considered illegal if the voter's certificate or vote-by-mail ~~absentee~~ ballot affidavit does not include the signature of the elector, as shown by the registration records or the precinct register. However, a vote-by-mail ~~an absentee~~ ballot is not considered illegal if the signature of the elector does not cross the seal of the mailing envelope. If the canvassing board determines that any ballot is illegal, a member of the board shall, without opening the envelope, mark across the face of the envelope: "rejected as illegal." The vote-by-mail ~~absentee~~ ballot affidavit, if applicable, the envelope, and the ballot contained therein shall be preserved in the manner that official ballots voted are preserved.

2. If any elector or candidate present believes that a vote-by-mail ~~an absentee~~ ballot is illegal due to a defect apparent on the voter's certificate or the vote-by-mail ~~absentee~~ ballot affidavit, he or she may, at any time before the ballot is removed from the envelope, file with the canvassing board a protest against the canvass of that ballot, specifying the precinct, the ballot, and the reason he or she believes the ballot to be illegal. A challenge based upon a defect in the voter's certificate or vote-by-mail ~~absentee~~ ballot affidavit

may not be accepted after the ballot has been removed from the mailing envelope.

(d) The canvassing board shall record the ballot upon the proper record, unless the ballot has been previously recorded by the supervisor. The mailing envelopes shall be opened and the secrecy envelopes shall be mixed so as to make it impossible to determine which secrecy envelope came out of which signed mailing envelope; however, in any county in which an electronic or electromechanical voting system is used, the ballots may be sorted by ballot styles and the mailing envelopes may be opened and the secrecy envelopes mixed separately for each ballot style. The votes on vote-by-mail ~~absentee~~ ballots shall be included in the total vote of the county.

(3) The supervisor or the chair of the county canvassing board shall, after the board convenes, have custody of the vote-by-mail ~~absentee~~ ballots until a final proclamation is made as to the total vote received by each candidate.

(4)(a) The supervisor of elections shall, on behalf of the county canvassing board, notify each elector whose ballot was rejected as illegal and provide the specific reason the ballot was rejected. The supervisor shall mail a voter registration application to the elector to be completed indicating the elector's current signature if the elector's ballot was rejected due to a difference between the elector's signature on the voter's certificate or vote-by-mail ~~absentee~~ ballot affidavit and the elector's signature in the registration books or

precinct register. This section does not prohibit the supervisor from providing additional methods for updating an elector's signature.

(b) Until 5 p.m. on the day before an election, the supervisor shall allow an elector who has returned a vote-by-mail ~~an absentee~~ ballot that does not include the elector's signature to complete and submit an affidavit in order to cure the unsigned vote-by-mail ~~absentee~~ ballot.

(c) The elector shall provide identification to the supervisor and must complete a vote-by-mail ~~an absentee~~ ballot affidavit in substantially the following form:

VOTE-BY-MAIL ~~ABSENTEE~~ BALLOT AFFIDAVIT

I, ..., am a qualified voter in this election and registered voter of .... County, Florida. I do solemnly swear or affirm that I requested and returned the vote-by-mail ~~absentee~~ ballot and that I have not and will not vote more than one ballot in this election. I understand that if I commit or attempt any fraud in connection with voting, vote a fraudulent ballot, or vote more than once in an election, I may be convicted of a felony of the third degree and fined up to $5,000 and imprisoned for up to 5 years. I understand that my failure to sign this affidavit means that my vote-by-mail ~~absentee~~ ballot will be invalidated.

...(Voter's Signature)...

...(Address)...

(d) Instructions must accompany the vote-by-mail ~~absentee~~ ballot affidavit in substantially the following form:

READ THESE INSTRUCTIONS CAREFULLY BEFORE COMPLETING THE AFFIDAVIT. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY CAUSE YOUR BALLOT NOT TO COUNT.

1. In order to ensure that your vote-by-mail ~~absentee~~ ballot will be counted, your affidavit should be completed and returned as soon as possible so that it can reach the supervisor of elections of the county in which your precinct is located no later than 5 p.m. on the 2nd day before the election.

2. You must sign your name on the line above (Voter's Signature).

3. You must make a copy of one of the following forms of identification:

a. Identification that includes your name and photograph: United States passport; debit or credit card; military identification; student identification; retirement center identification; neighborhood association identification; or public assistance identification; or

b. Identification that shows your name and current residence address: current utility bill, bank statement,

government check, paycheck, or government document (excluding voter identification card).

4. Place the envelope bearing the affidavit into a mailing envelope addressed to the supervisor. Insert a copy of your identification in the mailing envelope. Mail, deliver, or have delivered the completed affidavit along with the copy of your identification to your county supervisor of elections. Be sure there is sufficient postage if mailed and that the supervisor's address is correct.

5. Alternatively, you may fax or e-mail your completed affidavit and a copy of your identification to the supervisor of elections. If e-mailing, please provide these documents as attachments.

(e) The department and each supervisor shall include the affidavit and instructions on their respective websites. The supervisor must include his or her office's mailing address, e-mail address, and fax number on the page containing the affidavit instructions; the department's instruction page must include the office mailing addresses, e-mail addresses, and fax numbers of all supervisors of elections or provide a conspicuous link to such addresses.

(f) The supervisor shall attach each affidavit received to the appropriate vote-by-mail ~~absentee~~ ballot mailing envelope.

Section 23. Section 101.69, Florida Statutes, is amended to read:

101.69 Voting in person; return of vote-by-mail ~~absentee~~

ballot.—The provisions of this code shall not be construed to prohibit any elector from voting in person at the elector's precinct on the day of an election or at an early voting site, notwithstanding that the elector has requested a vote-by-mail ~~an absentee~~ ballot for that election. An elector who has returned a voted vote-by-mail ~~absentee~~ ballot to the supervisor, however, is deemed to have cast his or her ballot and is not entitled to vote another ballot or to have a provisional ballot counted by the county canvassing board. An elector who has received a vote-by-mail ~~an absentee~~ ballot and has not returned the voted ballot to the supervisor, but desires to vote in person, shall return the ballot, whether voted or not, to the election board in the elector's precinct or to an early voting site. The returned ballot shall be marked "canceled" by the board and placed with other canceled ballots. However, if the elector does not return the ballot and the election official:

(1) Confirms that the supervisor has received the elector's vote-by-mail ~~absentee~~ ballot, the elector shall not be allowed to vote in person. If the elector maintains that he or she has not returned the vote-by-mail ~~absentee~~ ballot or remains eligible to vote, the elector shall be provided a provisional ballot as provided in s. 101.048.

(2) Confirms that the supervisor has not received the elector's vote-by-mail ~~absentee~~ ballot, the elector shall be allowed to vote in person as provided in this code. The elector's vote-by-mail ~~absentee~~ ballot, if subsequently

received, shall not be counted and shall remain in the mailing envelope, and the envelope shall be marked "Rejected as Illegal."

(3) Cannot determine whether the supervisor has received the elector's vote-by-mail ~~absentee~~ ballot, the elector may vote a provisional ballot as provided in s. 101.048.

Section 24. Subsections (1) and (2) of section 101.6921, Florida Statutes, are amended to read:

101.6921 Delivery of special vote-by-mail ~~absentee~~ ballot to certain first-time voters.—

(1) The provisions of this section apply to voters who are subject to the provisions of s. 97.0535 and who have not provided the identification or certification required by s. 97.0535 by the time the vote-by-mail ~~absentee~~ ballot is mailed.

(2) The supervisor shall enclose with each vote-by-mail ~~absentee~~ ballot three envelopes: a secrecy envelope, into which the absent elector will enclose his or her marked ballot; an envelope containing the Voter's Certificate, into which the absent elector shall place the secrecy envelope; and a mailing envelope, which shall be addressed to the supervisor and into which the absent elector will place the envelope containing the Voter's Certificate and a copy of the required identification.

Section 25. Section 101.6923, Florida Statutes, is amended to read:

101.6923 Special vote-by-mail ~~absentee~~ ballot instructions for certain first-time voters.—

(1) The provisions of this section apply to voters who are subject to the provisions of s. 97.0535 and who have not provided the identification or information required by s. 97.0535 by the time the vote-by-mail ~~absentee~~ ballot is mailed.

(2) A voter covered by this section shall be provided with printed instructions with his or her vote-by-mail ~~absentee~~ ballot in substantially the following form:

READ THESE INSTRUCTIONS CAREFULLY BEFORE MARKING YOUR BALLOT. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY CAUSE YOUR BALLOT NOT TO COUNT.

1. In order to ensure that your vote-by-mail ~~absentee~~ ballot will be counted, it should be completed and returned as soon as possible so that it can reach the supervisor of elections of the county in which your precinct is located no later than 7 p.m. on the date of the election. However, if you are an overseas voter casting a ballot in a presidential preference primary or general election, your vote-by-mail ~~absentee~~ ballot must be postmarked or dated no later than the date of the election and received by the supervisor of elections of the county in which you are registered to vote no later than 10 days after the date of the election.

2. Mark your ballot in secret as instructed on the ballot. You must mark your own ballot unless you are unable to do so because of blindness, disability, or inability to read or write.

3. Mark only the number of candidates or issue choices for a race as indicated on the ballot. If you are allowed to "Vote for One" candidate and you vote for more than one, your vote in that race will not be counted.

4. Place your marked ballot in the enclosed secrecy envelope and seal the envelope.

5. Insert the secrecy envelope into the enclosed envelope bearing the Voter's Certificate. Seal the envelope and completely fill out the Voter's Certificate on the back of the envelope.

a. You must sign your name on the line above (Voter's Signature).

b. If you are an overseas voter, you must include the date you signed the Voter's Certificate on the line above (Date) or your ballot may not be counted.

c. A vote-by-mail ~~An absentee~~ ballot will be considered illegal and will not be counted if the signature on the Voter's Certificate does not match the signature on record. The signature on file at the start of the canvass of the vote-by-mail ~~absentee~~ ballots is the signature that will be used to verify your signature on the Voter's Certificate. If you need to update your signature for this election, send your signature update on a voter registration application to your supervisor of elections so that it is received no later than the start of canvassing of vote-by-mail ~~absentee~~ ballots, which occurs no earlier than the 15th day before election day.

6. Unless you meet one of the exemptions in Item 7., you must make a copy of one of the following forms of identification:

a. Identification which must include your name and photograph: United States passport; debit or credit card; military identification; student identification; retirement center identification; neighborhood association identification; or public assistance identification; or

b. Identification which shows your name and current residence address: current utility bill, bank statement, government check, paycheck, or government document (excluding voter identification card).

7. The identification requirements of Item 6. do not apply if you meet one of the following requirements:

a. You are 65 years of age or older.

b. You have a temporary or permanent physical disability.

c. You are a member of a uniformed service on active duty who, by reason of such active duty, will be absent from the county on election day.

d. You are a member of the Merchant Marine who, by reason of service in the Merchant Marine, will be absent from the county on election day.

e. You are the spouse or dependent of a member referred to in paragraph c. or paragraph d. who, by reason of the active duty or service of the member, will be absent from the county on election day.

f. You are currently residing outside the United States.

8. Place the envelope bearing the Voter's Certificate into the mailing envelope addressed to the supervisor. Insert a copy of your identification in the mailing envelope. DO NOT PUT YOUR IDENTIFICATION INSIDE THE SECRECY ENVELOPE WITH THE BALLOT OR INSIDE THE ENVELOPE WHICH BEARS THE VOTER'S CERTIFICATE OR YOUR BALLOT WILL NOT COUNT.

9. Mail, deliver, or have delivered the completed mailing envelope. Be sure there is sufficient postage if mailed.

10. FELONY NOTICE. It is a felony under Florida law to accept any gift, payment, or gratuity in exchange for your vote for a candidate. It is also a felony under Florida law to vote in an election using a false identity or false address, or under any other circumstances making your ballot false or fraudulent.

Section 26. Subsections (1) and (2) of section 101.6925, Florida Statutes, are amended to read:

101.6925 Canvassing special vote-by-mail ~~absentee~~ ballots.—

(1) The supervisor of the county where the absent elector resides shall receive the voted special vote-by-mail ~~absentee~~ ballot, at which time the mailing envelope shall be opened to determine if the voter has enclosed the identification required or has indicated on the Voter's Certificate that he or she is exempt from the identification requirements.

(2) If the identification is enclosed or the voter has indicated that he or she is exempt from the identification

requirements, the supervisor shall make the note on the registration records of the voter and proceed to canvass the vote-by-mail ~~absentee~~ ballot as provided in s. 101.68.

Section 27. Section 101.694, Florida Statutes, is amended to read:

101.694 Mailing of ballots upon receipt of federal postcard application.—

(1) Upon receipt of a federal postcard application for a vote-by-mail ~~an absentee~~ ballot executed by a person whose registration is in order or whose application is sufficient to register or update the registration of that person, the supervisor shall send the ballot in accordance with s. 101.62(4).

(2) Upon receipt of a federal postcard application for a vote-by-mail ~~an absentee~~ ballot executed by a person whose registration is not in order and whose application is insufficient to register or update the registration of that person, the supervisor shall follow the procedure set forth in s. 97.073.

(3) Vote-by-mail ~~Absentee~~ envelopes printed for voters entitled to vote by mail ~~absentee~~ under the Uniformed and Overseas Citizens Absentee Voting Act shall meet the specifications as determined by the Federal Voting Assistance Program of the United States Department of Defense and the United States Postal Service.

(4) Cognizance shall be taken of the fact that vote-by-

mail ~~absentee~~ ballots and other materials such as instructions and envelopes are to be carried via air mail, and, to the maximum extent possible, such ballots and materials shall be reduced in size and weight of paper. The same ballot shall be used, however, as is used by other vote-by-mail ~~absentee~~ voters.

Section 28. Subsections (1) and (4) of section 101.6951, Florida Statutes, are amended to read:

101.6951 State write-in vote-by-mail ballot.—

(1) An overseas voter may request, not earlier than 180 days before a general election, a state write-in vote-by-mail ~~absentee~~ ballot from the supervisor of elections in the county of registration. In order to receive a state write-in ballot, the voter shall state that due to military or other contingencies that preclude normal mail delivery, the voter cannot vote a vote-by-mail ~~an absentee~~ ballot during the normal vote-by-mail ~~absentee~~ voting period. State write-in vote-by-mail ~~absentee~~ ballots shall be made available to voters 90 to 180 days prior to a general election. The Department of State shall prescribe by rule the form of the state write-in vote-by-mail ballot.

(4) The state write-in vote-by-mail ballot shall contain all offices, federal, state, and local, for which the voter would otherwise be entitled to vote.

Section 29. Section 101.6952, Florida Statutes, is amended to read:

101.6952 Vote-by-mail ~~Absentee~~ ballots for absent

uniformed services and overseas voters.—

(1) If an absent uniformed services voter's or an overseas voter's request for an official vote-by-mail ~~absentee~~ ballot pursuant to s. 101.62 includes an e-mail address, the supervisor of elections shall:

(a) Record the voter's e-mail address in the vote-by-mail ~~absentee~~ ballot record;

(b) Confirm by e-mail that the vote-by-mail ~~absentee~~ ballot request was received and include in that e-mail the estimated date the vote-by-mail ~~absentee~~ ballot will be sent to the voter; and

(c) Notify the voter by e-mail when the voted vote-by-mail ~~absentee~~ ballot is received by the supervisor of elections.

(2)(a) An absent uniformed services voter or an overseas voter who makes timely application for but does not receive an official vote-by-mail ~~absentee~~ ballot may use the federal write-in absentee ballot to vote in any federal, state, or local election.

(b)1. In an election for federal office, an elector may designate a candidate by writing the name of a candidate on the ballot. Except for a primary or special primary election, the elector may alternatively designate a candidate by writing the name of a political party on the ballot. A written designation of the political party shall be counted as a vote for the candidate of that party if there is such a party candidate in the race.

2. In a state or local election, an elector may vote in the section of the federal write-in absentee ballot designated for nonfederal races by writing on the ballot the title of each office and by writing on the ballot the name of the candidate for whom the elector is voting. Except for a primary, special primary, or nonpartisan election, the elector may alternatively designate a candidate by writing the name of a political party on the ballot. A written designation of the political party shall be counted as a vote for the candidate of that party if there is such a party candidate in the race. In addition, the elector may vote on any ballot measure presented in such election by identifying the ballot measure on which he or she desires to vote and specifying his or her vote on the measure. For purposes of this section, a vote cast in a judicial merit retention election shall be treated in the same manner as a ballot measure in which the only allowable responses are "Yes" or "No."

(c) In the case of a joint candidacy, such as for the offices of President/Vice President or Governor/Lieutenant Governor, a valid vote for one or both qualified candidates on the same ticket shall constitute a vote for the joint candidacy.

(d) For purposes of this subsection and except when the context clearly indicates otherwise, such as when a candidate in the election is affiliated with a political party whose name includes the word "Independent," "Independence," or a similar term, a voter designation of "No Party Affiliation" or

"Independent," or any minor variation, misspelling, or abbreviation thereof, shall be considered a designation for the candidate, other than a write-in candidate, who qualified to run in the race with no party affiliation. If more than one candidate qualifies to run as a candidate with no party affiliation, the designation may not count for any candidate unless there is a valid, additional designation of the candidate's name.

(e) Any abbreviation, misspelling, or other minor variation in the form of the name of an office, the name of a candidate, the ballot measure, or the name of a political party must be disregarded in determining the validity of the ballot.

(3)(a) An absent uniformed services voter or an overseas voter who submits a federal write-in absentee ballot and later receives an official vote-by-mail ~~absentee~~ ballot may submit the official vote-by-mail ~~absentee~~ ballot. An elector who submits a federal write-in absentee ballot and later receives and submits an official vote-by-mail ~~absentee~~ ballot should make every reasonable effort to inform the appropriate supervisor of elections that the elector has submitted more than one ballot.

(b) A federal write-in absentee ballot may not be canvassed until 7 p.m. on the day of the election. A federal write-in absentee ballot from an overseas voter in a presidential preference primary or general election may not be canvassed until the conclusion of the 10-day period specified in subsection (5). Each federal write-in absentee ballot received

by 7 p.m. on the day of the election shall be canvassed pursuant to ss. 101.5614(5) and 101.68, unless the elector's official vote-by-mail ~~absentee~~ ballot is received by 7 p.m. on election day. Each federal write-in absentee ballot from an overseas voter in a presidential preference primary or general election received by 10 days after the date of the election shall be canvassed pursuant to ss. 101.5614(5) and 101.68, unless the overseas voter's official vote-by-mail ~~absentee~~ ballot is received by 10 days after the date of the election. If the elector's official vote-by-mail ~~absentee~~ ballot is received by 7 p.m. on election day, or, for an overseas voter in a presidential preference primary or general election, no later than 10 days after the date of the election, the federal write-in absentee ballot is invalid and the official vote-by-mail ~~absentee~~ ballot shall be canvassed. The time shall be regulated by the customary time in standard use in the county seat of the locality.

(4) For vote-by-mail ~~absentee~~ ballots received from absent uniformed services voters or overseas voters, there is a presumption that the envelope was mailed on the date stated on the outside of the return envelope, regardless of the absence of a postmark on the mailed envelope or the existence of a postmark date that is later than the date of the election.

(5) A vote-by-mail ~~An absentee~~ ballot from an overseas voter in any presidential preference primary or general election which is postmarked or dated no later than the date of the

election and is received by the supervisor of elections of the county in which the overseas voter is registered no later than 10 days after the date of the election shall be counted as long as the vote-by-mail ~~absentee~~ ballot is otherwise proper.

Section 30. Section 101.697, Florida Statutes, is amended to read:

101.697 Electronic transmission of election materials.—The Department of State shall determine whether secure electronic means can be established for receiving ballots from overseas voters. If such security can be established, the department shall adopt rules to authorize a supervisor of elections to accept from an overseas voter a request for a vote-by-mail ~~an absentee~~ ballot or a voted vote-by-mail ~~absentee~~ ballot by secure facsimile machine transmission or other secure electronic means. The rules must provide that in order to accept a voted ballot, the verification of the voter must be established, the security of the transmission must be established, and each ballot received must be recorded.

Section 31. Paragraph (a) of subsection (4) of section 102.031, Florida Statutes, is amended to read:

102.031 Maintenance of good order at polls; authorities; persons allowed in polling rooms and early voting areas; unlawful solicitation of voters.—

(4)(a) No person, political committee, or other group or organization may solicit voters inside the polling place or within 100 feet of the entrance to any polling place, a polling

room where the polling place is also a polling room, an early voting site, or an office of the supervisor of elections where vote-by-mail ~~absentee~~ ballots are requested and printed on demand for the convenience of electors who appear in person to request them. Before the opening of the polling place or early voting site, the clerk or supervisor shall designate the no-solicitation zone and mark the boundaries.

Section 32. Subsections (2), (3), and (4) of section 102.141, Florida Statutes, are amended to read:

102.141 County canvassing board; duties.—

(2) The county canvassing board shall meet in a building accessible to the public in the county where the election occurred at a time and place to be designated by the supervisor of elections to publicly canvass the absent ~~absentee~~ electors' ballots as provided for in s. 101.68 and provisional ballots as provided by ss. 101.048, 101.049, and 101.6925. Provisional ballots cast pursuant to s. 101.049 shall be canvassed in a manner that votes for candidates and issues on those ballots can be segregated from other votes. Public notice of the time and place at which the county canvassing board shall meet to canvass the absent ~~absentee~~ electors' ballots and provisional ballots shall be given at least 48 hours prior thereto by publication on the supervisor of elections' website and once in one or more newspapers of general circulation in the county or, if there is no newspaper of general circulation in the county, by posting such notice in at least four conspicuous places in the county.

As soon as the absent ~~absentee~~ electors' ballots and the provisional ballots are canvassed, the board shall proceed to publicly canvass the vote given each candidate, nominee, constitutional amendment, or other measure submitted to the electorate of the county, as shown by the returns then on file in the office of the supervisor of elections.

(3) The canvass, except the canvass of absent ~~absentee~~ electors' returns and the canvass of provisional ballots, shall be made from the returns and certificates of the inspectors as signed and filed by them with the supervisor, and the county canvassing board shall not change the number of votes cast for a candidate, nominee, constitutional amendment, or other measure submitted to the electorate of the county, respectively, in any polling place, as shown by the returns. All returns shall be made to the board on or before 2 a.m. of the day following any primary, general, or other election. If the returns from any precinct are missing, if there are any omissions on the returns from any precinct, or if there is an obvious error on any such returns, the canvassing board shall order a retabulation of the returns from such precinct. Before canvassing such returns, the canvassing board shall examine the tabulation of the ballots cast in such precinct and determine whether the returns correctly reflect the votes cast. If there is a discrepancy between the returns and the tabulation of the ballots cast, the tabulation of the ballots cast shall be presumed correct and such votes shall be canvassed accordingly.

(4)(a) The supervisor of elections shall upload into the county's election management system by 7 p.m. on the day before the election the results of all early voting and vote-by-mail ~~absentee~~ ballots that have been canvassed and tabulated by the end of the early voting period. Pursuant to ss. 101.5614(9), 101.657, and 101.68(2), the tabulation of votes cast or the results of such uploads may not be made public before the close of the polls on election day.

(b) The canvassing board shall report all early voting and all tabulated vote-by-mail ~~absentee~~ results to the Department of State within 30 minutes after the polls close. Thereafter, the canvassing board shall report, with the exception of provisional ballot results, updated precinct election results to the department at least every 45 minutes until all results are completely reported. The supervisor of elections shall notify the department immediately of any circumstances that do not permit periodic updates as required. Results shall be submitted in a format prescribed by the department.

Section 33. Subsection (8) of section 102.168, Florida Statutes, is amended to read:

102.168 Contest of election.—

(8) In any contest that requires a review of the canvassing board's decision on the legality of a vote-by-mail ~~an absentee~~ ballot pursuant to s. 101.68 based upon a comparison of the signature on the voter's certificate and the signature of the elector in the registration records, the circuit court may

not review or consider any evidence other than the signature on the voter's certificate and the signature of the elector in the registration records. The court's review of such issue shall be to determine only if the canvassing board abused its discretion in making its decision.

Section 34. Subsection (1) of section 104.047, Florida Statutes, is amended to read:

104.047 Vote-by-mail ~~Absentee~~ ballots and voting; violations.—

(1) Except as provided in s. 101.62 or s. 101.655, any person who requests a vote-by-mail ~~an absentee~~ ballot on behalf of an elector is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 35. Section 104.0616, Florida Statutes, is amended to read:

104.0616 Vote-by-mail ~~Absentee~~ ballots and voting; violations.—

(1) For purposes of this section, the term "immediate family" means a person's spouse or the parent, child, grandparent, or sibling of the person or the person's spouse.

(2) Any person who provides or offers to provide, and any person who accepts, a pecuniary or other benefit in exchange for distributing, ordering, requesting, collecting, delivering, or otherwise physically possessing more than two vote-by-mail ~~absentee~~ ballots per election in addition to his or her own ballot or a ballot belonging to an immediate family member,

except as provided in ss. 101.6105-101.694, commits a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 36. Section 104.17, Florida Statutes, is amended to read:

104.17 Voting in person after casting vote-by-mail ~~absentee~~ ballot.—Any person who willfully votes or attempts to vote both in person and by vote-by-mail ~~absentee~~ ballot at any election is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 37. Paragraph (b) of subsection (2) of section 117.05, Florida Statutes, is amended to read:

117.05 Use of notary commission; unlawful use; notary fee; seal; duties; employer liability; name change; advertising; photocopies; penalties.—

(2)

(b) A notary public may not charge a fee for witnessing a vote-by-mail ~~an absentee~~ ballot in an election, and must witness such a ballot upon the request of an elector, provided the notarial act is in accordance with the provisions of this chapter.

Section 38. Subsection (7) of section 394.459, Florida Statutes, is amended to read:

394.459 Rights of patients.—

(7) VOTING IN PUBLIC ELECTIONS.—A patient who is eligible to vote according to the laws of the state has the right to vote

in the primary and general elections. The department shall establish rules to enable patients to obtain voter registration forms, applications for vote-by-mail ~~absentee~~ ballots, and vote-by-mail ~~absentee~~ ballots.

Section 39. Section 741.406, Florida Statutes, is amended to read:

741.406 Voting by program participant; use of designated address by supervisor of elections.—A program participant who is otherwise qualified to vote may request a vote-by-mail ~~an absentee~~ ballot pursuant to s. 101.62. The program participant shall automatically receive vote-by-mail ~~absentee~~ ballots for all elections in the jurisdictions in which that individual resides in the same manner as vote-by-mail ~~absentee~~ voters. The supervisor of elections shall transmit the vote-by-mail ~~absentee~~ ballot to the program participant at the address designated by the participant in his or her application as a vote-by-mail ~~an absentee~~ voter. The name, address, and telephone number of a program participant may not be included in any list of registered voters available to the public.

Section 40. Subsection (7) of section 916.107, Florida Statutes, is amended to read:

916.107 Rights of forensic clients.—

(7) VOTING IN PUBLIC ELECTIONS.—A forensic client who is eligible to vote according to the laws of the state has the right to vote in the primary and general elections. The department and agency shall establish rules to enable clients to

obtain voter registration forms, applications for vote-by-mail ~~absentee~~ ballots, and vote-by-mail ~~absentee~~ ballots.

Section 41. This act shall take effect July 1, 2016.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 361 (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: Government Operations Subcommittee

Representative Lee offered the following:

Amendment (with title amendment)

Between lines 1276 and 1277, insert:

Section 41. Section 100.025, Florida Statutes, is amended to read:

100.025 Citizens residing overseas; notice of elections.—A citizen of this state who is residing overseas may notify the supervisor of elections in the county where he or she is registered of his or her overseas address; and, thereafter, the supervisor shall notify such citizen at least 90 days prior to regular primary and general elections and when possible prior to any special election so that such citizen may follow the procedures for ~~absentee~~ voting by mail provided by law.

Section 42. Section 101.663, Florida Statutes, is amended to read:

101.663 Electors; change of residence to another state.—An elector registered in this state who moves his or her permanent residence to another state after the registration books in that state have closed is ~~shall be~~ permitted to vote by mail ~~absentee~~ in the county of his or her former residence for the offices of President and Vice President of the United States.

Section 43. Paragraph (b) of subsection (2) of section 104.0515, Florida Statutes, is amended to read:

104.0515 Voting rights; deprivation of, or interference with, prohibited; penalty.—

(2) No person acting under color of law shall:

(b) Deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under law to vote in such election. This paragraph shall apply to vote-by-mail ~~absentee~~ ballots only if there is a pattern or history of discrimination on the basis of race, color, or previous condition of servitude in regard to vote-by-mail ~~absentee~~ ballots.

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

Amendment No.

Remove line 9 and insert:

104.17, 117.05, 394.459, 741.406, 916.107, 100.025, 101.663, and 104.0515, F.S.;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 527 Scrutinized Companies
SPONSOR(S): Workman, Moskowitz, Rader, and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 86

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	12 Y, 0 N	Moore	Williamson
2) Appropriations Committee	26 Y, 0 N	Delaney	Leznoff
3) State Affairs Committee		Moore	Camechis

SUMMARY ANALYSIS

The State Board of Administration (SBA) has responsibility for oversight of the Florida Retirement System (FRS) Pension Plan investments and the FRS Investment Plan, which represent approximately $153.8 billion, or 87.1 percent, of the $176.5 billion in assets managed by the SBA. The SBA's ability to invest the FRS assets is governed by a "legal list" of the types of investments and the total percentage of funds that may be invested in each type. In 2007, the Legislature unanimously passed the Protecting Florida's Investment Act, which required the SBA to identify and divest of companies with certain business operations in Sudan or Iran.

Chapter 287, F.S., regulates state agency procurement of personal property and services. Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods. Current law prohibits a company with certain business operations in Sudan or Iran or that is engaged in business operations in Cuba or Syria from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or local governmental entity for goods or services of $1 million or more.

The Boycott, Divestment, and Sanctions (BDS) Movement is a global campaign targeting Israel in an attempt to increase economic and political pressure on the country to comply with the movement's stated goals. The BDS Movement promotes the boycott, divestment, and sanction of Israel and has gained support from many academics, trade unions, political parties, and citizens around the world. However, opposition to the movement is widespread, and critics have claimed the movement is ineffective, immoral, based on false or biased information, and could end up harming the Palestinian cause. In response to the BDS Movement, some states have enacted legislation that condemns BDS activities.

The bill defines "boycott Israel" to mean refusing to deal with, terminating business activities with, or taking other actions intended to penalize, inflict economic harm, or otherwise limit commercial relations with Israel or persons or entities doing business in Israel or in Israeli-controlled territories for reasons other than business, investment, or commercial reasons

The bill requires the SBA to identify and create a list of all companies that boycott Israel in which the SBA, on behalf of the FRS trust fund, has direct or indirect holdings or could possibly have such holdings in the future. The SBA is prohibited from acquiring securities of companies on the list, with certain exceptions.

The bill also prohibits a company on the list from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or local governmental entity for goods or services of $1 million or more, with certain exceptions.

The bill may have an indeterminate fiscal impact on the private sector, the state, and local governments. *See* Fiscal Comments section.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Board of Administration

The State Board of Administration (SBA or board) is established by Art. IV, s. 4(e) of the State Constitution and is composed of the Governor, the Chief Financial Officer, and the Attorney General. The board members are commonly referred to as "Trustees." The SBA derives its powers to oversee state funds from Art. XII, s. 9 of the Constitution.

The SBA has responsibility for oversight of the Florida Retirement System (FRS) Pension Plan investments and the FRS Investment Plan,[1] which represent approximately $153.8 billion, or 87.1 percent, of the $176.5 billion in assets managed by the SBA, as of October 31, 2015.[2] The SBA also manages more than 30 other investment portfolios with combined assets of $22.9 billion, including the Florida Hurricane Catastrophe Fund, the Florida Lottery Fund, the Florida Pre-Paid College Plan, and various debt-service accounts for state bond issues.[3]

Investments

Investment decisions for the pension plan are made by fiduciaries hired by the state. Under Florida law, an SBA fiduciary charged with an investment decision must act as a prudent expert would under similar circumstances, taking into account all relevant substantive factors. A nine-member Investment Advisory Council provides recommendations on investment policy, strategy, and procedures.[4]

The SBA's ability to invest the FRS assets is governed by s. 215.47, F.S., which provides a "legal list" of the types of investments and the total percentage that may be invested in each type. Some "legal list" guidelines specific to the pension plan provide:

- No more than 80 percent of assets should be invested in domestic common stocks.
- No more than 75 percent of assets should be invested in internally managed common stocks.
- No more than 3 percent of equity assets should be invested in the equity securities of any one corporation, except to the extent a higher percentage of the same issue is included in a nationally recognized market index, based on market values, or except upon a specific finding by the board that such higher percentage is in the best interest of the fund.
- No more than 25 percent of assets should be invested in notes issued by FHA-insured or VA-guaranteed first mortgages on real property, or foreign government general obligations.
- No more than 35 percent of assets should be invested in foreign corporate or commercial securities or obligations.
- No more than 20 percent of assets should be invested in alternative investments.

Exchange-traded Funds

Exchange-traded funds (ETFs) are a type of investment product. ETFs offer investors a way to pool their money in a fund that makes investments in stocks, bonds, or other assets and, in return, to receive an interest in that investment pool. Unlike mutual funds, ETF shares are traded on a national

[1] Members in the FRS may elect to participate in the pension plan, which is a defined benefit plan, or the investment plan, which is a defined contribution plan.
[2] *See* State Board of Administration, *Performance Report to the Trustees*, October 31, 2015, *issued* December 15, 2015, p. 5-6, *available at* https://www.sbafla.com/fsb/Portals/Internet/Reports/20151031_Trustees_Performance_Reportrev.pdf.
[3] *Id.*
[4] Section 215.444, F.S.

stock exchange and at market prices that may or may not be the same as the net asset value of the shares.[5]

State Sponsors of Terrorism

Countries that are determined by the United States Secretary of State to have repeatedly provided support for acts of international terrorism are designated as "State Sponsors of Terrorism" and are subject to sanctions under the Export Administration Act, the Arms Export Control Act, and the Foreign Assistance Act.[6] The four main categories of sanctions resulting from designations under these acts are: restrictions on U.S. foreign assistance, a ban on defense exports and sales, certain controls over exports of dual use items, and miscellaneous financial and other restrictions.[7]

The three countries currently designated by the U.S. Secretary of State as "State Sponsors of Terrorism" are Iran, Sudan, and Syria.[8]

Divestment of Securities

Divestment of securities is one method of applying economic pressures to companies, groups, or countries whose practices are not condoned by shareholders. Divestment may be used in conjunction with or in lieu of other sanctioning methods, such as economic embargoes and diplomatic and military activities. Alternatively, divestment may be used as a protective device if a particular investment carries a high level of risk to the performance of a fund.

State Divestment Laws

The state has practiced divestment three times in modern history. From 1986 to 1993, the Legislature directed the SBA to divest of companies doing business with South Africa. From 1997 until 2001, the SBA made a decision to divest of 16 tobacco stocks due to pending litigation involving the state and those companies. In 2007, the Legislature unanimously passed the Protecting Florida's Investment Act (PFIA), which required the SBA to divest of companies with certain business operations in the countries of Sudan or Iran. The PFIA requires the SBA to assemble and publish a list of "Scrutinized Companies"[9] that have prohibited business operations in Sudan or Iran. Once a company

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[5] More information about ETFs can be found online at: http://www.nasdaq.com/investing/etfs/what-are-ETFs.aspx (last visited Jan. 13, 2016).

[6] U.S. Department of State, *State Sponsors of Terrorism*, http://www.state.gov/j/ct/list/c14151.htm (last visited Jan. 13, 2016).

[7] *Id.*

[8] *Id.*

[9] Section 215.473(1)(t), F.S., defines "scrutinized company" as a company that meets any of the following criteria:

1. The company has business operations that involve contracts with or provision of supplies or services to the government of Sudan, companies in which the government of Sudan has any direct or indirect equity share, consortiums or projects commissioned by the government of Sudan, or companies involved in consortiums or projects commissioned by the government of Sudan , and:

a. More than 10 percent of the company's revenues or assets linked to Sudan involve oil-related activities or mineral-extraction activities; less than 75 percent of the company's revenues or assets linked to Sudan involve contracts with or provision of oil-related or mineral-extracting products or services to the regional government of southern Sudan or a project or consortium created exclusively by that regional government; and the company has failed to take substantial action; or

b. More than 10 percent of the company's revenues or assets linked to Sudan involve power-production activities; less than 75 percent of the company's power-production activities include projects whose intent is to provide power or electricity to the marginalized populations of Sudan; and the company has failed to take substantial action.

2. The company is complicit in the Darfur genocide.

3. The company supplies military equipment within Sudan, unless it clearly shows that the military equipment cannot be used to facilitate offensive military actions in Sudan or the company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict. Examples of safeguards include post-sale tracking of such equipment by the company, certification from a reputable and objective third party that such equipment is not being used by a party participating in armed conflict in Sudan, or sale of such equipment solely to the regional government of southern Sudan or any internationally recognized peacekeeping force or humanitarian organization.

4. The company has business operations that involve contracts with or provision of supplies or services to the government of Iran, companies in which the government of Iran has any direct or indirect equity share, consortiums, or projects commissioned by the government of Iran, or companies involved in consortiums or projects commissioned by the government of Iran and:

a. More than 10 percent of the company's total revenues or assets are linked to Iran and involve oil-related activities or mineral-extraction activities; and the company has failed to take substantial action; or

is placed on the list, the SBA and its investment managers are prohibited from acquiring that company's securities and are required to divest the company's securities if the company does not cease the prohibited activities or take certain compensating actions involving petroleum or energy, oil or mineral extraction, power production, or military support activities.

Procurement of Commodities and Services

Chapter 287, F.S., regulates state agency[10] procurement of personal property and services. Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods that include:

- Single source contracts, which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid, which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposals, which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate, which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services. [11]

For contracts for commodities or services in excess of $35,000, agencies must utilize a competitive solicitation process.[12] However, specified contractual services and commodities are not subject to competitive solicitation requirements.[13]

The Department of Management Services (DMS) is statutorily designated as the central executive agency procurement authority and its responsibilities include overseeing agency implementation of the procurement process,[14] creating uniform agency procurement rules,[15] implementing the online procurement program,[16] and establishing state term contracts.[17] The agency procurement process is partly decentralized in that agencies, except in the case of state term contracts, may procure goods and services themselves in accordance with requirements set forth in statute and rule, rather than placing orders through DMS.

Prohibition against Contracting with Scrutinized Companies and Companies Engaged in Business Operations in Cuba or Syria

Current law prohibits a company that is on the Scrutinized Companies with Activities in Sudan List (Sudan List) or on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List (Iran List) or that is engaged in business operations in Cuba[18] or Syria from bidding on, submitting a

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b. The company has, with actual knowledge, on or after August 5, 1996, made an investment of $20 million or more, or any combination of investments of at least $10 million each, which in the aggregate equals or exceeds $20 million in any 12-month period, and which directly or significantly contributes to the enhancement of Iran's ability to develop the petroleum resources of Iran.

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

[11] *See ss.* 287.012(6) and 287.057(1), F.S.

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

[13] *See* s. 287.057(3)(e), F.S.

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

[15] *See* ss. 287.032(2) and 287.042(3), (4), and (12), F.S.

[16] *See* s. 287.057(23), F.S.

[17] *See* ss. 287.042(2), 287.056, and 287.1345, F.S.

[18] The law prohibiting a company that is engaged in business operations in Cuba from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or local governmental entity for goods or services of $1 million or more is known as the "Cuba Amendment" and was passed in 2012. In *Odebrecht Const., Inc. v. Secretary, Fla. Dep't of Transp.*, 715 F.3d 1268 (11th

proposal for, or entering into or renewing a contract with an agency or local governmental entity[19] for goods or services of $1 million or more.[20] A company that submits a bid or proposal for or enters into or renews such a contract must certify that the company is not on the Sudan List or the Iran List or that it does not have business operations in Cuba or Syria.[21] The certification must be submitted at the time a bid or proposal is submitted or before a contract is executed or renewed.[22] In addition, a contract for goods or services of $1 million or more entered into or renewed on or after July 1, 2012, must contain a provision that allows for the termination of the contract, at the option of the awarding body, if the company is found to have submitted a false certification, been placed on the Sudan List or the Iran List, or been engaged in business operations in Cuba or Syria.[23]

If an agency or local governmental entity determines that a company has submitted a false certification, it must provide the company with written notice, and the company has 90 days to respond in writing to such determination.[24] If the company fails to demonstrate that the determination of false certification was made in error, the awarding body must bring a civil action against the company.[25] If a civil action is brought and the court determines that the company submitted a false certification, the company must pay all reasonable attorney fees and costs (including costs for investigations that led to the finding of false certification).[26] In addition, a civil penalty equal to the greater of $2 million or twice the amount of the contract for which the false certification was submitted must be imposed.[27] The company is ineligible to bid on any contract with an agency or local governmental entity for three years after the date the agency or local governmental entity determined that the company submitted a false certification.[28] A civil action to collect the penalties must commence within three years after the date the false certification is submitted.[29]

An agency or local governmental entity is authorized to make a case-by-case exception to the contracting prohibition for a company on the Sudan List or the Iran List if all of the following occur:

- The scrutinized business operations[30] were made before July 1, 2011;
- The scrutinized business operations have not been expanded or renewed after July 1, 2011;
- The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company; and
- The company has adopted, has publicized, and is implementing a formal plan to cease scrutinized business operations and to refrain from engaging in any new scrutinized business operations.[31]

An agency or local governmental entity is also authorized to make a case-by-case exception to the contracting prohibition for a company engaged in business operations in Cuba or Syria if:

- The business operations were made before July 1, 2012;
- The business operations have not been expanded or renewed after July 1, 2012;

Cir. 2013), the Eleventh Circuit Court of Appeals affirmed an injunction prohibiting enforcement of the Cuba Amendment. The court found that the Cuba Amendment was preempted by extensive federal statutory and administrative sanctions and would undermine the President's discretionary authority concerning federal policy toward Cuba.

[19] Section 287.135(1)(c), F.S., defines "local governmental entity" as a county, municipality, special district, or other political subdivision of the state.

[20] Section 287.135(2), F.S.

[21] Section 287.135(5), F.S.

[22] *Id.*

[23] Section 287.135(3)(b), F.S.

[24] Section 287.135(5)(a), F.S.

[25] *Id.*

[26] *Id.*

[27] Section 287.135(5)(a)1., F.S.

[28] Section 287.135(5)(a)2., F.S.

[29] Section 287.135(5)(b), F.S.

[30] Section 215.473(1)(t), F.S., defines "scrutinized business operations" to mean business operations that result in a company becoming a scrutinized company.

[31] Section 287.135(4)(a)1., F.S.

- The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company; and
- The company has adopted, has publicized, and is implementing a formal plan to cease business operations and to refrain from engaging in any new business operations.[32]

In addition, an agency or local governmental entity may make an exception to the contracting prohibition for a company on the Sudan List, on the Iran List, or that is engaged in business operations in Cuba or Syria if one of the following occurs:

- The local governmental entity makes a public finding that, absent such an exemption, the local governmental entity would be unable to obtain the goods or services for which the contract is offered.
- For a contract with an executive agency, the Governor makes a public finding that, absent such an exemption, the agency would be unable to obtain the goods or services for which the contract is offered.
- For a contract with an office of a state constitutional officer other than the Governor, the state constitutional officer makes a public finding that, absent such an exemption, the office would be unable to obtain the goods or services for which the contract is offered.[33]

Section 287.135(8), F.S., specifies that the contracting prohibitions discussed above become inoperative on the date that federal law ceases to authorize the state to adopt and enforce such prohibitions.

Boycott, Divestment, and Sanctions against Israel

The Boycott, Divestment, and Sanctions (BDS) Movement is a global campaign targeting Israel in an attempt to increase economic and political pressure on the country to comply with the movement's stated goals, which are:

- Ending its occupation and colonization of all Arab lands occupied in June 1967 and dismantling the wall;
- Recognizing the fundamental rights of the Arab-Palestinian citizens of Israel to full equality; and
- Respecting, protecting, and promoting the rights of Palestinian refugees to return to their homes and properties as stipulated in UN Resolution 194.[34]

The BDS Movement promotes the boycott, divestment, and sanction of Israel and has gained support from many academics, trade unions, political parties, and citizens around the world.[35] However, opposition to the movement is widespread, and critics have claimed the movement is ineffective,[36] immoral,[37] based on false or biased information,[38] and could end up harming the Palestinian cause.[39]

In response to the BDS Movement, some states have enacted legislation that condemns BDS activities. In 2015, Illinois passed a law that requires state-funded retirement systems to divest of holdings in companies that boycott Israel under certain circumstances.[40] South Carolina also enacted

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[32] Section 287.135(4)(a)2., F.S.
[33] Section 287.135(4)(a)1., F.S.
[34] BDS Movement, *Introducing the BDS Movement*, http://bdsmovement.net/bdsintro (last visited Jan. 14, 2016).
[35] BDS Movement, *BDS in 2015: Seven ways our movement broke new ground against Israeli settler-colonialism and apartheid*, http://bdsmovement.net/2015/7-ways-our-movement-broke-new-ground-13634 (last visited Jan. 14, 2016).
[36] *Boycotting Israel: New pariah on the block*, THE ECONOMIST (Sept. 13, 2007), *available at* http://www.economist.com/node/9804231.
[37] Naftalia Balanson, *The Moral Argument Against BDS*, ZEEK (Nov. 29, 2010), *available at* http://zeek.forward.com/articles/117084/.
[38] *Hundreds in academic world sign anti-BDS petition*, JEWISH TELEGRAPHIC AGENCY (Sept. 22, 2014), *available at* http://www.jta.org/2014/09/22/news-opinion/united-states/hundreds-of-academics-sign-anti-bds-petition.
[39] *Chomsky says BDS tactics won't work, may be harmful to Palestinians*, THE JERUSALEM POST (July 3, 2014), *available at* http://www.jpost.com/Diplomacy-and-Politics/Chomsky-says-BDS-tactics-wont-work-may-be-harmful-to-Palestinians-361417.
[40] *Illinois Gov. Signs First Anti-BDS Bill Into Law*, THE WASHINGTON FREE BEACON (July 23, 2015), http://freebeacon.com/issues/ill-gov-signs-first-anti-bds-bill-into-law/.

anti-BDS legislation that prohibits the state or a political subdivision of the state from accepting a proposal from or procuring goods or services from a business that engages in the boycott of a person or an entity based on race, color, religion, gender, or national origin.[41] Other states, including Tennessee, Indiana, Pennsylvania, and New York, have passed resolutions condemning the BDS Movement. States considering anti-BDS legislation include Ohio, New York, and New Jersey.

In June of 2015, President Obama signed into law the first federal anti-BDS legislation. With respect to an agreement that is proposed to be entered into with the Transatlantic Trade and Investment Partnership countries, the law specifies that the principal negotiating objectives of the United States regarding commercial partnerships are the following:

- To discourage actions by potential trading partners that directly or indirectly prejudice or otherwise discourage commercial activity solely between the United States and Israel.
- To discourage politically motivated actions to boycott, divest from, or sanction Israel and to seek the elimination of politically motivated nontariff barriers on Israeli goods, services, or other commerce imposed on the State of Israel.
- To seek the elimination of state-sponsored unsanctioned foreign boycotts against Israel or compliance with the Arab League Boycott of Israel by prospective trading partners.

Effect of Proposed Changes

Prohibited Investments in Companies that Boycott Israel

The bill creates s. 215.4725, F.S., relating to prohibited investments by the SBA in companies that boycott Israel. It provides the following definitions:

- "Boycott Israel" or "boycott of Israel" means refusing to deal with, terminating business activities with, or taking other actions intended to penalize, inflict economic harm, or otherwise limit commercial relations with Israel or persons or entities doing business in Israel or in Israeli-controlled territories for reasons other than business, investment, or commercial reasons.
- "Company" means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, and parent companies, that exists for the purpose of making profit.
- "Direct holdings" in a company means all securities of that company that are held directly by the state board on behalf of the public fund or in an account or fund in which the state board, on behalf of the public fund, owns all shares or interests.
- "Indirect holdings" in a company means all securities of that company that are held in a commingled fund or other collective investment, such as a mutual fund, in which the state board, on behalf of the public fund, owns shares or interests together with other investors not subject to the newly created section or that are held in an index fund.
- "Public fund" means the System Trust Fund as defined in s. 121.021(36), F.S.[42]
- "Scrutinized companies" means companies that boycott Israel or engage in a boycott of Israel.
- "State board" means the SBA.
- "Trustees" means the Board of Trustees of the SBA.

[41] Miles Terry, *South Carolina: The First State in the Country to Stand with Israel Against the BDS Movement*, ACLJ, http://aclj.org/israel/south-carolina-the-first-state-in-the-country-to-stand-with-israel-against-the-bds-movement (last visited Jan 14, 2016).

[42] Section 121.021(36), F.S., defines "System Trust Fund" as the trust fund established in the State Treasury by ch. 121, F.S., for the purpose of holding and investing the contributions paid by FRS members and employers and paying the benefits to which members or their beneficiaries may become entitled.

By August 1, 2016, the SBA is required to make its best efforts to identify all scrutinized companies in which the SBA, on behalf of the public fund, has direct or indirect holdings or could possibly have such holdings in the future. The bill directs the SBA to use the following efforts to identify these companies:

- Reviewing and relying, as appropriate in the SBA's judgment, on publicly available information regarding companies that boycott Israel, including information provided by nonprofit organizations, research firms, international organizations, and government entities;
- Contacting asset managers contracted by the SBA, on behalf of the public fund, for information regarding companies that boycott Israel; and
- Contacting other institutional investors that prohibit such investments or that have engaged with companies that boycott Israel.

In addition, a statement by a company that it is participating in a boycott of Israel, or that it has initiated a boycott in response to a request for a boycott of Israel or in compliance with, or in furtherance of, calls for a boycott of Israel, may be considered by the SBA as evidence that a company is participating in a boycott of Israel.

Before its first meeting following the identification of scrutinized companies, the SBA must compile and make available the Scrutinized Companies that Boycott Israel List (Israel List). The SBA is required to update and make publicly available quarterly the Israel List based on evolving information from the sources used to compile the initial list as well as other sources.

The bill prohibits the SBA, on behalf of the public fund, from acquiring securities of companies on the Israel List. However, the following securities are excluded from the prohibition:

- Indirect holdings;
- Securities that are not publicly traded, which the bill deems indirect holdings;
- Alternative investments, as defined in s. 215.4401, F.S.,[43] which the bill deems indirect holdings; and
- ETFs.

For indirect holdings containing companies that boycott Israel, the SBA is required to submit letters to managers of the investment funds requesting that the managers consider removing such companies from the fund or create a similar fund having indirect holdings devoid of such companies. If the investment manager creates a similar fund, the SBA, on behalf of the public fund, is required to replace all applicable investments with investments in the similar fund in an expedited timeframe consistent with prudent investing standards.

The bill requires the SBA to immediately determine companies on the Israel List in which the SBA, on behalf of the public fund, owns direct or indirect holdings. For each company the SBA newly identifies after August 1, 2016, the SBA must send a written notice informing the company of its scrutinized company status and advising the company that it may become subject to investment prohibition. The notice must inform the company of the opportunity to clarify its activities regarding the boycott of Israel and encourage the company to cease the boycott within 90 days to avoid qualifying for investment prohibition. If, within 90 days after notification by the SBA, the company ceases a boycott of Israel, the company must be removed from the Israel List, and the investment prohibition may no longer apply to that company unless the company resumes a boycott of Israel.

Within 30 days after the Israel List is created, the SBA is required to file a report with each member of the trustees, the President of the Senate, and the Speaker of the House of Representatives that includes the Israel List. The report must be made available to the public.

[43] Section 215.4401(3)(a)1., F.S., defines "alternative investment" as an investment by the SBA in a private equity fund, venture fund, hedge fund, or distress fund or a direct investment in a portfolio company through an investment manager.

At each quarterly meeting of the trustees thereafter, the SBA must file a report, which must be made available to the public and to each member of the trustees, the President of the Senate, and the Speaker of the House of Representatives. This report must include the following:

- A summary of correspondence with companies identified as scrutinized companies;
- All prohibited investments;
- Any progress related to communicating with managers of indirect holdings that contain companies that boycott Israel; and
- A list of all publicly traded securities held directly by the public fund.

The SBA is required to adopt and incorporate the actions it takes to comply with the bill's investment prohibition into the SBA's investment policy statement as set forth in s. 215.475, F.S.[44]

Notwithstanding any other provision of the bill to the contrary, the SBA, on behalf of the public fund, may invest in certain scrutinized companies if clear and convincing evidence shows that the value of all the assets under management by the SBA, on behalf of the public fund, becomes equal to or less than 99.5 percent, or 50 basis points, of the hypothetical value of all assets under management by the SBA, on behalf of the public fund, assuming no investment prohibition for any scrutinized company had occurred. Cessation of the investment prohibition and any new investment in a scrutinized company is limited to the minimum steps necessary to avoid this contingency. For any cessation of the investment prohibition and new investment in a scrutinized company, the SBA must submit a written report to the trustees, the President of the Senate, and the Speaker of the House of Representatives in advance of the new investment. The report must be updated semiannually thereafter as applicable, setting forth the reasons and justification, supported by clear and convincing evidence, for its decisions to cease the investment prohibition in scrutinized companies.

Prohibition against Contracting with Companies that Boycott Israel

The bill amends current law to prohibit a company on the Israel List from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or local governmental entity for goods or services of $1 million or more. At the time a company submits a bid or proposal for such a contract or before the company enters into or renews such a contract, the company must certify that it is not on the Israel List.

Any contract with an agency or local governmental entity for goods or services of $1 million or more entered into or renewed on or after October 1, 2016, must contain a provision that allows for the termination of the contract by the awarding body if the company:

- Is found to have submitted a false certification; or
- Has been placed on the Israel List.

An agency or local governmental entity is authorized to make a case-by-case exception to the contracting prohibition for a company on the Israel List if all of the following occur:

- The scrutinized business operations were made before October 1, 2016;
- The scrutinized business operations have not been expanded or renewed after October 1, 2016;

[44] Section 215.475, F.S., entitled "Investment policy statement" provides:

(1) In making investments for the System Trust Fund pursuant to ss. 215.44-215.53, F.S., the board shall make no investment which is not in conformance with the Florida Retirement System Defined Benefit Plan Investment Policy Statement, hereinafter referred to as "the IPS," as developed by the executive director and approved by the board. The IPS must include, among other items, the investment objectives of the System Trust Fund; permitted types of securities in which the board may invest; and evaluation criteria necessary to measure the investment performance of the fund. As required from time to time, the executive director of the board may present recommended changes in the IPS to the board for approval.

(2) Prior to any recommended changes in the IPS being presented to the board, the executive director of the board shall present such changes to the Investment Advisory Council for review. The council shall present the results of its review to the board prior to the board's final approval of the IPS or changes in the IPS.

- The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company; and
- The company has adopted, has publicized, and is implementing a formal plan to cease scrutinized business operations and to refrain from engaging in any new scrutinized business operations.

An agency or local governmental entity is also authorized to make an exception to the contracting prohibition for a company on the Israel List if one of the following occurs:

- The local governmental entity makes a public finding that, absent such an exemption, the local governmental entity would be unable to obtain the goods or services for which the contract is offered.
- For a contract with an executive agency, the Governor makes a public finding that, absent such an exemption, the agency would be unable to obtain the goods or services for which the contract is offered.
- For a contract with an office of a state constitutional officer other than the Governor, the state constitutional officer makes a public finding that, absent such an exemption, the office would be unable to obtain the goods or services for which the contract is offered.

B. SECTION DIRECTORY:

Section 1. creates s. 215.4725, F.S., relating to prohibited investments by the SBA in companies that boycott Israel.

Section 2. amends s. 287.135, F.S., relating to the prohibition against contracting with scrutinized companies.

Section 3. provides an effective date of upon becoming a law except as expressly provided in the act.

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:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has an indeterminate fiscal impact on the private sector. Companies that engage in a boycott of Israel may not be eligible to contract with the state and local governmental entities, which may have a negative fiscal impact on the company. In addition, the SBA may be prohibited from acquiring securities

in those companies as an asset of the FRS, which to a lesser degree may have a negative fiscal impact on those companies.[45]

D. FISCAL COMMENTS:

Prohibition on Contracting with Companies that Boycott Israel
The bill has an indeterminate fiscal impact on the state and local governments. State agencies and local governments will not be authorized to contract with certain companies that boycott Israel in certain instances. This prohibition may eliminate companies that otherwise would have been the least expensive source for certain goods or services.

Prohibition on Investing in Companies that Boycott Israel
There will be a recurring cost to the SBA to subscribe to appropriate services and for additional staff time necessary to comply with requirements of the bill related to companies that boycott Israel. However, such costs are expected to be less than $25,000 per year and can be absorbed within existing agency funds.[46]

The fiscal impact of prohibiting the SBA from acquiring securities of companies that boycott Israel as an asset of the FRS is indeterminate. According to the SBA, there is a potential for an impact on the employer contribution rates to the FRS, but such impact, if any, would be indiscernible.[47]

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:

Dormant Foreign Affairs Doctrine
The United States Constitution grants the federal government various powers related to foreign affairs, such as the power to declare war,[48] maintain a military,[49] enter into treaties and other international agreements,[50] regulate foreign commerce,[51] and to hear cases involving foreign states and citizens.[52] These grants of power have been interpreted to grant the federal government the exclusive power to act in the area of foreign affairs.[53] The federal government's exclusive authority to act in the area of foreign affairs is known as the dormant foreign affairs doctrine.

When a state law operates in the field of foreign affairs without federal authorization, a reviewing court might find the state law to be invalid as a violation of the dormant foreign affairs doctrine.[54]

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[45] State Board of Administration, Agency Analysis of 2016 House Bill 527, p. 4 (Dec. 16, 2015).
[46] *Id.*
[47] *Id.*
[48] Section 8, Art. I, U.S. Constitution.
[49] *Id.*
[50] Section 2, Art. II, U.S. Constitution.
[51] Section 8, Art. I, U.S. Constitution.
[52] Section 2, Art. III, U.S. Constitution.
[53] *Hines v. Davidowitz*, 312 U.S. 52, 63 (1941) (stating that the "Federal Government, representing as it does the collective interests of the forty-eight states, is entrusted with full and exclusive responsibility for the conduct of affairs with foreign sovereignties.").
[54] *Zschernig v. Miller*, 389 U.S. 429 (1968); *American Ins. Ass'n v. Garamendi*, 539 U.S. 396 (2003).

If the purpose of the bill is to impact foreign affairs,[55] or if the effects of the bill have a sufficiently serious impact on foreign policy,[56] the bill may be found in violation of the dormant foreign affairs doctrine.[57]

South Carolina and Illinois have both enacted anti-BDS laws that have not been challenged.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[55] *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 381 (2000) (pointing out that a congressional invocation of exclusively national powers with respect to addressing human rights violations in Burma precluded Massachusetts from restricting its agencies from purchasing goods or services from companies that did business with Burma; the case, however, was decided on the basis that a federal law preempted the state law.).

[56] *Clark v. Allen*, 331 U.S. 503, 517-518 (1947) (finding a state law that addressed the disposition of personal property of alien decedents valid, in spite of noting that the law would "have some incidental or indirect effect in foreign countries."); *Zschernig v. Miller*, 389 U.S. 429 (1968).

[57] Matthew Shaefer, *Constraints on State-Level Foreign Policy: (Re) Justifying, Refining, and Distinguishing the Dormant Foreign Affairs Doctrine*, 41 SETON HALL L. REV. 201, 237-239 (2011).

A bill to be entitled

An act relating to scrutinized companies; creating s. 215.4725, F.S.; providing definitions; requiring the State Board of Administration to identify all companies that are boycotting Israel or are engaged in a boycott of Israel in which the public fund owns direct or indirect holdings; requiring the state board to create and maintain a scrutinized companies list that names all such companies; requiring the state board to provide written notice to a company that is identified as a scrutinized company; specifying contents of the notice; specifying circumstances under which a company may be removed from the list; prohibiting the acquisition of certain securities of scrutinized companies; prescribing reporting requirements; requiring certain information to be included in the investment policy statement; authorizing the state board to invest in certain scrutinized companies if the value of all assets under management by the state board becomes equal to or less than a specified amount; requiring the state board to provide a written report to the Board of Trustees of the state board and the Legislature before such investment occurs; specifying required contents of the report; reenacting and amending s. 287.135, F.S., relating to the prohibition against contracting with

scrutinized companies; prohibiting a state agency or local governmental entity from contracting for goods and services that exceed a specified amount if the company has been placed on the Scrutinized Companies that Boycott Israel List; requiring inclusion of a contract provision that authorizes termination of a contract under certain circumstances; providing exceptions; requiring certification upon submission of a bid or proposal for a contract, or before a company enters into or renews a contract, with an agency or governmental entity that the company is not on the Scrutinized Companies that Boycott Israel List; providing that certain contracting prohibitions become inoperative if federal law ceases to authorize the states to enforce certain contracting prohibitions; providing effective dates.

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

Section 1. Section 215.4725, Florida Statutes, is created to read:

215.4725 Prohibited investments by the State Board of Administration; companies that boycott Israel.—

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

(a) "Boycott Israel" or "boycott of Israel" means refusing to deal with, terminating business activities with, or taking

other actions that are intended to penalize, inflict economic harm, or otherwise limit commercial relations with Israel or persons or entities doing business in Israel or in Israeli-controlled territories for reasons other than business, investment, or commercial reasons. The term does not apply to decisions made during the course of a company's ordinary business or for other business, investment, or commercial reasons. A statement by a company that it is participating in a boycott of Israel, or that it has initiated a boycott in response to a request for a boycott of Israel or in compliance with, or in furtherance of, calls for a boycott of Israel, may be considered by the State Board of Administration to be evidence that a company is participating in a boycott of Israel.

(b) "Company" means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, and parent companies, that exists for the purpose of making profit.

(c) "Direct holdings" in a company means all securities of that company that are held directly by the state board on behalf of the public fund or in an account or fund in which the state board, on behalf of the public fund, owns all shares or interests.

(d) "Indirect holdings" in a company means all securities of that company that are held in a commingled fund or other

collective investment, such as a mutual fund, in which the state board, on behalf of the public fund, owns shares or interests together with other investors not subject to this section or that are held in an index fund.

(e) "Public fund" means the System Trust Fund as defined in s. 121.021(36).

(f) "Scrutinized companies" means companies that boycott Israel or engage in a boycott of Israel.

(g) "State board" means the State Board of Administration.

(h) "Trustees" means the Board of Trustees of the State Board of Administration.

(2) IDENTIFICATION OF COMPANIES.—

(a) By August 1, 2016, the state board shall make its best efforts to identify all scrutinized companies in which the state board, on behalf of the public fund, has direct or indirect holdings or could possibly have such holdings in the future. Such efforts include:

1. To the extent that the state board finds it appropriate, reviewing and relying on publicly available information regarding companies that boycott Israel, including information provided by nonprofit organizations, research firms, international organizations, and government entities.

2. Contacting asset managers contracted by the state board, on behalf of the public fund, for information regarding companies that boycott Israel.

3. Contacting other institutional investors that prohibit

such investments or that have engaged with companies that boycott Israel.

(b) Before the first meeting of the state board following the identification of scrutinized companies in accordance with paragraph (a), the state board shall compile and make available the "Scrutinized Companies that Boycott Israel List."

(c) The state board shall update and make publicly available quarterly the Scrutinized Companies that Boycott Israel List based on evolving information from, among other sources, those listed in paragraph (a).

(3) REQUIRED ACTIONS.—The state board shall adhere to the following procedures for assembling companies on the Scrutinized Companies that Boycott Israel List.

(a) Engagement.—

1. The state board shall immediately determine the companies on the Scrutinized Companies that Boycott Israel List in which the state board, on behalf of the public fund, owns direct or indirect holdings.

2. For each company newly identified under this paragraph after August 1, 2016, the state board shall send a written notice informing the company of its scrutinized company status and that it may become subject to investment prohibition by the state board on behalf of the public fund. The notice must inform the company of the opportunity to clarify its activities regarding the boycott of Israel and encourage the company to cease the boycott of Israel within 90 days in order to avoid

qualifying for investment prohibition.

3. If, within 90 days after the state board's first engagement with a company pursuant to this paragraph, the company ceases a boycott of Israel, the company shall be removed from the Scrutinized Companies that Boycott Israel List, and this section shall cease to apply to that company unless that company resumes a boycott of Israel.

(b) Prohibition.—The state board, on behalf of the public fund, may not acquire securities of companies on the Scrutinized Companies that Boycott Israel List, except as provided in paragraph (c) and subsection (6).

(c) Excluded securities.—Notwithstanding this section, paragraph (b) does not apply to:

1. Indirect holdings. However, the state board shall submit letters to the managers of such investment funds containing companies that boycott Israel requesting that they consider removing such companies from the fund or create a similar fund having indirect holdings devoid of such companies. If the manager creates a similar fund, the state board, on behalf of the public fund, shall replace all applicable investments with investments in the similar fund in an expedited timeframe consistent with prudent investing standards. For the purposes of this section, an alternative investment, as the term is defined in s. 215.4401, and securities that are not publicly traded are deemed to be indirect holdings.

2. Exchange-traded funds.

(4) REPORTING.—

(a) The state board shall file a report with each member of the trustees, the President of the Senate, and the Speaker of the House of Representatives which includes the Scrutinized Companies that Boycott Israel List within 30 days after the list is created. This report shall be made available to the public.

(b) At each quarterly meeting of the trustees thereafter, the state board shall file a report, which shall be made available to the public and to each member of the trustees, the President of the Senate, and the Speaker of the House of Representatives, which includes:

1. A summary of correspondence with companies engaged by the state board under subparagraph (3)(a)2.

2. All prohibited investments under paragraph (3)(b).

3. Any progress made under paragraph (3)(c).

4. A list of all publicly traded securities held directly by the public fund.

(5) INVESTMENT POLICY STATEMENT OBLIGATIONS.—The state board's actions taken in compliance with this section, including all good faith determinations regarding companies as required by this act, shall be adopted and incorporated into the public fund's investment policy statement as provided in s. 215.475.

(6) INVESTMENT IN CERTAIN SCRUTINIZED COMPANIES.—Notwithstanding any other provision of this section, the state board, on behalf of the public fund, may invest in certain scrutinized companies if clear and convincing evidence shows

that the value of all assets under management by the state board, on behalf of the public fund, becomes equal to or less than 99.5 percent, or 50 basis points, of the hypothetical value of all assets under management by the state board, on behalf of the public fund, assuming no investment prohibition for any company had occurred under paragraph (3)(b). Cessation of the investment prohibition and any new investment in a scrutinized company is limited to the minimum steps necessary to avoid the contingency described in this subsection. For any cessation of the investment prohibition and new investment authorized by this subsection, the state board shall provide a written report to each member of the trustees, the President of the Senate, and the Speaker of the House of Representatives in advance of the new investment, updated semiannually thereafter as applicable, setting forth the reasons and justification, supported by clear and convincing evidence, for its decisions to cease the investment prohibition in scrutinized companies.

Section 2. Effective October 1, 2016, section 287.135, Florida Statutes, is reenacted and amended to read:

287.135 Prohibition against contracting with scrutinized companies.—

(1) In addition to the terms defined in ss. 287.012 and 215.473, as used in this section, the term:

(a) "Awarding body" means, for purposes of state contracts, an agency or the department, and for purposes of local contracts, the governing body of the local governmental

entity.

(b) "Business operations" means, for purposes specifically related to Cuba or Syria, engaging in commerce in any form in Cuba or Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce.

(c) "Local governmental entity" means a county, municipality, special district, or other political subdivision of the state.

(2) A company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services of $1 million or more if ~~that~~, at the time of bidding or submitting a proposal for a new contract or renewal of an existing contract, the company:

(a) Is on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725;

(b) Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473;~~,~~ or

(c) Is engaged in business operations in Cuba or Syria~~, is ineligible for, and may not bid on, submit a proposal for, or enter into or renew a contract with an agency or local~~

~~governmental entity for goods or services of $1 million or more~~.

(3)~~(a)~~ Any contract with an agency or local governmental entity for goods or services of $1 million or more entered into or renewed on or after:

(a) July 1, 2011, through June 30, 2012, must contain a provision that allows for the termination of such contract at the option of the awarding body if the company is found to have submitted a false certification as provided under subsection (5) or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

(b) ~~Any contract with an agency or local governmental entity for goods or services of $1 million or more entered into or renewed on or after~~ July 1, 2012, through September 30, 2016, must contain a provision that allows for the termination of such contract at the option of the awarding body if the company is found to have submitted a false certification as provided under subsection (5), been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria.

(c) October 1, 2016, must contain a provision that allows for the termination of such contract at the option of the awarding body if the company:

1. Is found to have submitted a false certification as provided under subsection (5);

2. Has been placed on the Scrutinized Companies that Boycott Israel List;

3. Has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; or

4. Has been engaged in business operations in Cuba or Syria.

(4) Notwithstanding subsection (2) or subsection (3), an agency or local governmental entity, on a case-by-case basis, may permit a company on the Scrutinized Companies that Boycott Israel List, the Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or a company with business operations in Cuba or Syria, to be eligible for, bid on, submit a proposal for, or enter into or renew a contract for goods or services of $1 million or more under the conditions set forth in paragraph (a) or the conditions set forth in paragraph (b):

(a)1. With respect to a company on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, all of the following occur:

a. The scrutinized business operations were made before July 1, 2011.

b. The scrutinized business operations have not been expanded or renewed after July 1, 2011.

c. The agency or local governmental entity determines that

it is in the best interest of the state or local community to contract with the company.

d. The company has adopted, has publicized, and is implementing a formal plan to cease scrutinized business operations and to refrain from engaging in any new scrutinized business operations.

2. With respect to a company engaged in business operations in Cuba or Syria, all of the following occur:

a. The business operations were made before July 1, 2012.

b. The business operations have not been expanded or renewed after July 1, 2012.

c. The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company.

d. The company has adopted, has publicized, and is implementing a formal plan to cease business operations and to refrain from engaging in any new business operations.

3. With respect to a company on the Scrutinized Companies that Boycott Israel List, all of the following occur:

a. The scrutinized business operations were made before October 1, 2016.

b. The scrutinized business operations have not been expanded or renewed after October 1, 2016.

c. The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company.

d. The company has adopted, has publicized, and is implementing a formal plan to cease scrutinized business operations and to refrain from engaging in any new scrutinized business operations.

(b) One of the following occurs:

1. The local governmental entity makes a public finding that, absent such an exemption, the local governmental entity would be unable to obtain the goods or services for which the contract is offered.

2. For a contract with an executive agency, the Governor makes a public finding that, absent such an exemption, the agency would be unable to obtain the goods or services for which the contract is offered.

3. For a contract with an office of a state constitutional officer other than the Governor, the state constitutional officer makes a public finding that, absent such an exemption, the office would be unable to obtain the goods or services for which the contract is offered.

(5) At the time a company submits a bid or proposal for a contract or before the company enters into or renews a contract with an agency or governmental entity for goods or services of $1 million or more, the company must certify that the company is not on the Scrutinized Companies that Boycott Israel List, the Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or that it does not have business operations

in Cuba or Syria.

(a) If, after the agency or the local governmental entity determines, using credible information available to the public, that the company has submitted a false certification, the agency or local governmental entity shall provide the company with written notice of its determination. The company shall have 90 days following receipt of the notice to respond in writing and to demonstrate that the determination of false certification was made in error. If the company does not make such demonstration within 90 days after receipt of the notice, the agency or the local governmental entity shall bring a civil action against the company. If a civil action is brought and the court determines that the company submitted a false certification, the company shall pay the penalty described in subparagraph 1. and all reasonable attorney fees and costs, including any costs for investigations that led to the finding of false certification.

1. A civil penalty equal to the greater of $2 million or twice the amount of the contract for which the false certification was submitted shall be imposed.

2. The company is ineligible to bid on any contract with an agency or local governmental entity for 3 years after the date the agency or local governmental entity determined that the company submitted a false certification.

(b) A civil action to collect the penalties described in paragraph (a) must commence within 3 years after the date the false certification is submitted.

(6) Only the agency or local governmental entity that is a party to the contract may cause a civil action to be brought under this section. This section does not create or authorize a private right of action or enforcement of the penalties provided in this section. An unsuccessful bidder, or any other person other than the agency or local governmental entity, may not protest the award of a contract or contract renewal on the basis of a false certification.

(7) This section preempts any ordinance or rule of any agency or local governmental entity involving public contracts for goods or services of $1 million or more with a company engaged in scrutinized business operations.

(8) The contracting prohibitions in this section applicable to companies on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or to companies engaged in business operations in Cuba or Syria become ~~This section becomes~~ inoperative on the date that federal law ceases to authorize the states to adopt and enforce such ~~the~~ contracting prohibitions ~~of the type provided for in this section~~.

Section 3. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 587 Public Records/Agency Inspector General Personnel
SPONSOR(S): Government Operations Subcommittee; Powell
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 752

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

SUMMARY ANALYSIS

Current law establishes an Office of Inspector General (OIG) in each state agency to provide a central point for the coordination and responsibility for activities that promote accountability, integrity, and efficiency in government.

The bill creates a public record exemption for the home addresses, telephone numbers, dates of birth, and photographs of current or former employees of an agency's OIG or internal audit department whose duties include auditing or investigating waste, fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline. It also creates a public record exemption for the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such employees. In addition, the names and locations of schools and day care facilities attended by the employees' children are exempt from public records requirements.

The bill provides for repeal of the exemption on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

The bill may have a minimal fiscal impact on the state and local governments. *See* Fiscal Comments section.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

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

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[2] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.[3]

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

Exemptions for Agency Personnel Identification and Location Information

Current law provides public record exemptions for personal identification and location information of certain current or former agency personnel and their spouses and children.[5] Categories of personnel covered by these exemptions include, but are not limited to, law enforcement officers, justices and judges, code enforcement officers, investigators or inspectors of the Department of Business and Professional Regulation, and county tax collectors.

Although the types of exempt information vary, the following information is exempt[6] from public records requirements for all personnel listed above:

- Home addresses and telephone numbers[7] of the named personnel;

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[1] Section 24(c), Art. I of the State Constitution.
[2] *See* s. 119.15, F.S.
[3] Section 119.15(6)(b), F.S.
[4] Section 119.15(3), F.S.
[5] *See* s. 119.071(4)(d), F.S.
[6] There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates as *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 (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 2004); and *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, the record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* 85-62 Fla. Op. Att'y Gen. (1985).

- Home addresses, telephone numbers, and places of employment of the spouses and their children; and
- Names and locations of schools and day care facilities attended by their children.

If exempt information is held by an agency that is not the employer of the protected personnel, he or she must submit a written request to the non-employing agency to maintain the public record exemption.[8]

Currently, personal identification and location information of personnel employed in an agency's office of inspector general or those whose duties include conducting internal audits is not exempt from public disclosure.

Inspectors General

Authorized under s. 20.055, F.S., an Office of Inspector General (OIG) is established in each state agency[9] to provide a central point for the coordination and responsibility for activities that promote accountability, integrity, and efficiency in government. Section 14.32, F.S., creates the Office of the Chief Inspector General (CIG) within the Executive Office of the Governor. The CIG monitors the activities of the agency inspectors general under the Governor's jurisdiction.

Each agency OIG is responsible for the following:

- Advising in the development of performance measures, standards, and procedures for the evaluation of state agency programs;
- Assessing the reliability and validity of information provided by the agency on performance measures and standards;
- Reviewing the actions taken by the agency to improve agency performance, and making recommendations, if necessary;
- Supervising and coordinating audits, investigations, and reviews relating to the programs and operations of the state agency;
- Conducting, supervising, or coordinating other activities carried out or financed by the agency for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;
- Providing central coordination of efforts to identify and remedy waste, abuse, and deficiencies to the agency head,[10] or the CIG for agencies under the jurisdiction of the Governor; recommending corrective action concerning fraud, abuses, and deficiencies; and reporting on the progress made in implementing corrective action;
- Coordinating agency-specific audit activities between the Auditor General, federal auditors, and other governmental bodies to avoid duplication;
- Reviewing rules relating to the programs and operations of the agency and making recommendations concerning their impact;
- Ensuring that an appropriate balance is maintained between audit, investigative, and other accountability activities; and

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[7] The term "telephone numbers" includes home, personal cellular, and personal pager telephone numbers, and telephone numbers associated with personal communications devices. *See* s. 119.071(4)(d)1., F.S.

[8] Section 119.071(4)(d)3., F.S.

[9] Section 20.055(1)(d), F.S., defines "state agency" as each department created pursuant to chapter 20, F.S., and also includes the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation of the Financial Services Commission, the Office of Financial Regulation of the Financial Services Commission, the Public Service Commission, the Board of Governors of the State University System, the Florida Housing Finance Corporation, the Agency for State Technology, the Office of Early Learning, and the state courts system.

[10] Section 20.055(1)(a), F.S., defines "agency head" as the Governor, a Cabinet officer, a secretary as defined in s. 20.03(5), F.S., or an executive director as defined in s. 20.03(6), F.S. It also includes the chair of the Public Service Commission, the Director of the Office of Insurance Regulation of the Financial Services Commission, the Director of the Office of Financial Regulation of the Financial Services Commission, the board of directors of the Florida Housing Finance Corporation, the executive director of the Office of Early Learning, and the Chief Justice of the State Supreme Court.

- Complying with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.[11]

Effect of Proposed Changes

The bill amends s. 119.071, F.S., to exempt from public records requirements the home addresses, telephone numbers, dates of birth, and photographs of current or former employees of an agency's OIG or internal audit department whose duties include auditing or investigating waste, fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline. The bill also exempts from public records requirements the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such employees. In addition, the names and locations of schools and day care facilities attended by the employees' children are exempt.

The bill requires the employee to have made a reasonable effort to protect such information from being accessible through means available to the public in order for the information to be protected under the exemption.

The bill provides a public necessity statement as required by the State Constitution, specifying that it is a public necessity to protect the identifying and location information for these employees and their families because they may become targets for revenge perpetrated by people who have been investigated or audited.

The bill provides for repeal of the exemption on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

[11] Section 20.055(2), F.S.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

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

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

Breadth of Exemption
Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for the identification and location information of current or former employees of an agency's OIG or internal audit department whose duties include auditing or investigating waste, fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline. The identification and location information of such employees' spouses and children is also exempt. As such, the exemption does not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 26, 2016, the Government Operations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Narrowed the scope of the public record exemption by making it applicable to current or former personnel employed in an agency's office of inspector general or internal audit department whose duties include auditing or investigating waste, fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline;
- Removed the public record exemption for social security numbers for the personnel and their spouses and children;
- Removed the public record exemption for photographs of the spouses and children; and
- Amended the public necessity statement to conform to the changes made to the public record exemption.

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

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; providing an exemption from public records requirements for certain identifying and location information of current or former personnel employed in an agency's office of inspector general or internal audit department whose duties include auditing or investigating certain activities that could lead to criminal prosecution or administrative discipline and the spouses and children thereof; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

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

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

(4) AGENCY PERSONNEL INFORMATION.—

(d)1. For purposes of this paragraph, the term "telephone numbers" includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

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

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

(III) Sub-sub-subparagraph (II) is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

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

and photographs of firefighters certified in compliance with s. 633.408; the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1).

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

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

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

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

(III) Sub-sub-subparagraph (II) is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

e. The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the general magistrate, special magistrate,

judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer provides a written statement that the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer has made reasonable efforts to protect such information from being accessible through other means available to the public.

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

g. The home addresses, telephone numbers, dates of birth, and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt

from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

i. The home addresses, telephone numbers, dates of birth, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children

of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

(II) The names of the spouses and children of the specified agency personnel identified in sub-sub-subparagraph (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

k. The home addresses, telephone numbers, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such current or former investigators

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

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

m. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel of the Department of Health whose duties include, or result in, the determination

or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities licensed by the Department of Health; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the personnel have made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

n. The home addresses, telephone numbers, dates of birth, and photographs of current or former impaired practitioner consultants who are retained by an agency or current or former employees of an impaired practitioner consultant whose duties result in a determination of a person's skill and safety to practice a licensed profession; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such consultants or their employees; and the names and locations of schools and day care facilities attended by the children of such consultants or employees are

exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if a consultant or employee has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

o. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel employed in an agency's office of inspector general or internal audit department whose duties include auditing or investigating waste, fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the personnel have made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

3. An agency that is the custodian of the information

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

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

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

Section 2. (1) The Legislature finds that it is a public necessity that the following identifying and location information be exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution, if the personnel have made reasonable efforts to protect such information from being accessible through other means available to the public:

(a) The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel employed in an agency's office of inspector general or internal audit department whose duties include auditing or investigating waste, fraud, abuse, theft, exploitation, or other activities that

could lead to criminal prosecution or administrative discipline;

(b) The names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and

(c) The names and locations of schools and day care facilities attended by the children of such personnel.

(2) The Legislature finds that the release of such identifying and location information might place such personnel and their family members in danger of physical and emotional harm from disgruntled individuals who may react inappropriately to investigations, audits, and other actions carried out by such personnel, or to scrutiny of their business or professional practices. Audits and investigations done by such personnel can lead to employment termination, wage garnishment, and criminal prosecution, and persons under such audits and investigations have threatened such personnel, which resulted in an agency's having to heighten security by posting pictures of individuals who have made threats against such personnel, installing security cameras, and involving law enforcement. As a result, such personnel and their family members may become targets for acts of revenge by those who are investigated or audited. The risk continues after such personnel leave employment as a disgruntled individual may wait to commit an act of revenge until the employment of such personnel ends. The Legislature further finds that the harm that may result from the release of such personal identifying and location information outweighs any

public benefit that may be derived from the disclosure of the information.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 981 Administrative Procedures
SPONSOR(S): Richardson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1226

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Rulemaking Oversight & Repeal Subcommittee	13 Y, 0 N	Stranburg	Rubottom
2) Appropriations Committee	21 Y, 0 N	White	Leznoff
3) State Affairs Committee		Moore	Camechis

SUMMARY ANALYSIS

A Statement of Estimated Regulatory Costs (SERC) must be prepared during promulgation of agency rules that are expected to affect small businesses or have a significant economic impact. The bill revises the requirements for preparing a SERC to clarify for agencies the time frame for which costs must be evaluated so that decision makers and affected constituencies may understand the economic and policy impacts of proposed rules. The bill creates s. 120.541(5), F.S., to specify that adverse impacts and regulatory costs likely to occur within five years after implementation of a rule include adverse impacts and regulatory costs estimated to occur within five years after the effective date of the rule. The bill also specifies that if any provision of a rule is not fully implemented upon the effective date of the rule, the adverse impacts and regulatory costs associated with such provision must be adjusted to include any additional adverse impacts and regulatory costs estimated to occur within five years after implementation of such provision.

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

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Agency Rulemaking

One important aspect of the Administrative Procedure Act (APA)[1] is the emphasis on public notice and opportunity for participation in agency rulemaking. A rule is an agency statement of general applicability interpreting, implementing, or prescribing law or policy, including the procedure and practice requirements of an agency, as well as certain types of forms.[2] The APA provides specific requirements agencies must follow in order to adopt rules.[3]

With some exceptions,[4] required rulemaking begins with an agency publishing a notice of rule development in the Florida Administrative Register (F.A.R.).[5] If the agency conducts public rule development workshops,[6] the persons responsible for preparing the draft rule under consideration must be available to explain the proposal and respond to public questions or comments.[7]

Once the final form of the proposed rule is developed (whether the proposal creates a new rule or amends or repeals an existing rule), the agency must publish a notice of the proposed rule before it may be adopted.[8] The publication of this notice triggers certain deadlines for the rulemaking process.[9] Each notice must include the full text of the proposed rule and other additional information, such as a summary of the agency's statement of estimated regulatory costs (SERC). The notice must indicate that interested parties may provide the agency with information pertaining to the SERC or propose a lower cost regulatory alternative to the proposed rule. The notice must also state the procedure to request a hearing on the proposed rule.[10]

Agency staff must be available to explain the proposed rule and respond to public questions or comments at a public rulemaking hearing. Material pertaining to the proposed rulemaking submitted to the agency between the date of publishing the notice of proposed rule and the end of the final public hearing must be considered by the agency and made a part of the rulemaking record.[11] If a person substantially affected by the proposed rule demonstrates that the proceeding does not provide adequate opportunity to protect those interests, and the agency concurs, the agency must suspend the rulemaking proceeding and convene a separate, more formal proceeding, including referring the matter

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[1] Ch. 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 120.54, F.S.
[4] Rule repeals do not require initial rule development. Section 120.54(2)(a), F.S. Emergency rulemaking proceeds separately under s. 120.54(4), F.S.
[5] Section 120.54(2)(a), F.S. The APA is silent on the initial, internal process an agency follows prior to initiating public rule development. *Adam Smith Enterprises, Inc. v. Dept. of Environmental Regulation*, 553 So. 2d 1260, 1265, n. 4 (Fla. 1st DCA 1990).
[6] An agency must conduct public workshops if so requested in writing by any affected person unless the agency head explains in writing why a workshop is not necessary. Section 120.52(c), F.S.
[7] Section 120.52(c), F.S.
[8] Section 120.54(3)(a)1., F.S.
[9] Persons affected by the proposed rule have 21 days from the date of publication to request a hearing on the proposed rule. Section 120.54(3)(c), F.S. Those wanting to submit a lower cost regulatory alternative to the proposed rule have the same 21 day time limit. Sections 120.54(3)(a)1., 120.541(1)(a), F.S. The agency must wait at least 28 days from the date of publication before filing the proposed rule for final adoption. Section 120.54(3)(a)2., (3)(e)1., F.S.
[10] Section 120.54(3)(a)1., F.S.
[11] Section 120.54(3)(c)1., F.S.

to the Division of Administrative Hearings (DOAH). Once the separate proceeding concludes, the rulemaking proceeding resumes.[12]

Subsequent to the final rulemaking hearing, if the agency makes any substantial change to the proposed rule, the agency must provide additional notice and publish a notice of change in the F.A.R. at least 21 days before the rule may be filed for adoption.[13] If the change increases the regulatory costs of the rule, the agency must revise its SERC.[14]

Statement of Estimated Regulatory Costs (SERC)

According to s. 120.541(2), F.S., a SERC is an agency estimate of the potential impact of a proposed rule on the public, particularly the potential costs to the public of complying with the rule as well as to the agency and other governmental entities to implement the rule. Agencies are encouraged to prepare a SERC before adopting, amending, or repealing any rule,[15] but are required to prepare a SERC if:

- The proposed rule will have an adverse impact on small businesses;[16]
- The proposed rule is likely to directly or indirectly increase aggregate regulatory costs by more than $200,000 in the first year after the rule is implemented;[17] or
- If a substantially affected person submits a proposal for a lower cost regulatory alternative to the proposed rule. The proposal must substantially accomplish the same objectives in the law being implemented by the agency.[18]

Each SERC, at a minimum, must contain the following elements:

- An economic analysis of the proposed rule's potential direct or indirect impacts,[19] including whether any of the following exceed an aggregate of $1,000,000 in the first five years after implementing the rule:
  - Any adverse impact on economic growth, private sector job creation or employment, or private sector investment;[20]
  - Any adverse impact on business competitiveness (including the ability to compete with businesses in other states or markets), productivity, or innovation;[21] or
  - Any likely increase in regulatory costs (including transactional costs).[22]
- A good faith estimate of the number and a general description of the individuals and entities required to comply with the rule.[23]
- A good faith estimate of the cost of implementing the rule to the agency and any other state or local governmental entities, including any anticipated impacts on state or local revenues.[24]
- A good faith estimate of the transactional costs members of the public and local governmental entities are likely to incur to comply with the rule.[25]

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[12] Section 120.54(3)(c)2., F.S.
[13] Section 120.54(3)(d)1., F.S.
[14] Section 120.541(1)(c), F.S.
[15] Section 120.54(3)(b)1., F.S.
[16] Sections 120.54(3)(b)1.a. & 120.541(1)(b), F.S.
[17] Sections 120.54(3)(b)1.b. & 120.541(1)(b), F.S.
[18] Section 120.541(1)(a), F.S. Upon the submission of the lower cost regulatory alternative, the agency must revise its initial SERC, or prepare one if not done previously, and either adopt the proposed alternative or state its reasons for rejecting the proposal.
[19] Section 120.541(2)(a), F.S.
[20] Section 120.541(2)(a)1., F.S.
[21] Section 120.541(2)(a)2., F.S.
[22] Section 120.541(2)(a)3., F.S.
[23] Section 120.541(2)(b), F.S.
[24] Section 120.541(2)(c), F.S.
[25] Section 120.541(2)(d), F.S. The definition of "transactional costs" is discussed later in this analysis.

- An analysis of the impact of the rule on small businesses, including the agency's explanation for not implementing alternatives which could reduce adverse impacts, and of the impact on small counties and small cities.[26]
- A description of each lower cost regulatory alternative submitted to the agency with a statement adopting the alternative or explaining the reasons for rejection.[27]

Additional information may be included if the agency determines it would be useful.[28] The agency's failure to prepare a SERC when required or failure to respond to a written proposed lower cost regulatory alternative[29] is a material failure to follow the APA rulemaking requirements.[30] Consequently, if challenged, the rule could be found to be an invalid exercise of delegated legislative authority.[31] Even when the agency properly prepares a SERC and responds to all proposed lower cost regulatory alternatives, the resulting rule could be challenged as an invalid exercise of delegated legislative authority if the rule imposes regulatory costs greater than a proposed alternative which substantially accomplishes the same result.[32]

The specific SERC requirements found in s. 120.541, F.S., were adopted in 1996 as part of the comprehensive revision of the APA.[33] The revisions resulted from the final report of the Governor's Administrative Procedure Act Review Commission (Commission), which was appointed to study and recommend improvements to the APA, particularly in rulemaking and making agencies more accountable to the Legislature and the public.[34] The Commission found the purpose for economic impact statements was to assist both the government and the public in understanding the potential financial impacts of a rule before adoption, but "(t)he quality of economic analyses ... prepared by state agencies is inadequate, and existing law requirements ... are ineffective."[35] Although the Commission recommended a number of revisions to improve the evaluation of costs, which serve as the basis for the present statute, these recommendations provided little guidance on the actual cost components relevant to evaluating the potential impact of a proposed rule.[36]

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[26] Section 120.541(2)(e), F.S. This statute incorporates the definitions of "small city" and "small county" in ss. 120.52(18) & 120.52(19), F.S., respectively. The statute also incorporates the definition of "small business" in s. 288.703, F.S. *Compare*, s. 120.54(3)(b)2., F.S., which uses similar language requiring agencies to consider the impact of every proposed rule, amendment, or repeal on small businesses, small cities, and small counties but also permits agencies to rely on expanded versions of these definitions if necessary to more adapt the rule for more specific needs or problems. Section 120.54(3)(b)2.a., F.S., specifies 5 methods agencies must consider to reduce the rule's impact on small businesses, cities, and counties. If the agency determines the rule will affect defined small businesses, notice of the rule must be sent to the rules ombudsman in the Executive Office of the Governor. Section 120.54(3)(b)2.b.(I), F.S. The agency must adopt regulatory alternatives reducing impacts on small businesses timely offered by the rules ombudsman or provide JAPC a written explanation for failing to do so. Section 120.54(3)(b)2.b.(II), (III), F.S.

[27] Section 120.541(2)(g), F.S.

[28] Section 120.541(2)(f), F.S.

[29] The party submitting a proposal to the agency must designate it as a lower cost regulatory alternative or at a minimum discuss cost issues with the proposed rule in order to inform the agency of the purpose of the submittal. A party challenging the validity of a school board rule argued the board failed to prepare a SERC after receiving a lower cost regulatory alternative. The administrative law judge (ALJ) found the proposal submitted to the board neither referenced s. 120.541, F.S., nor asserted it would result in lower costs. The ALJ ruled the failure to demonstrate the proposal presented a lower cost alternative meant the agency was not informed of the purpose of the submission and thus had a duty to prepare a SERC or respond to a lower cost regulatory alternative. *RHC and Associates, Inc. v. Hillsborough County School Board*, Final Order, DOAH Case no. 02-3138RP at http://www.doah.state.fl.us/ALJ/searchDOAH/ (accessed 1/28/2014).

[30] Section 120.541(1)(e), F.S. Unlike other failures to follow the APA rulemaking requirements, this provision prevents the challenged agency from rebutting the presumed material failure by proving the substantial interests of the petitioner and the fairness of the proceedings were not impaired. Section 120.56(1)(c), F.S. This limitation applies only if the challenge is brought by a substantially affected person within one year from the rule going into effect. Section 120.541(1)(f), F.S.

[31] Section 120.52(8)(a), F.S.

[32] Section 120.52(8)(f), F.S. This type of challenge must be to the agency's rejection of a lower cost regulatory alternative and brought by a substantially affected person within a year of the rule going into effect. Section 120.541(1)(g), F.S.

[33] Ch.96-159, s. 11, LOF.

[34] *Final Report of the Governor's Administrative Procedure Act Review Commission*, 1 (Feb. 20, 1996), at http://japc.state.fl.us/research.cfm (accessed 1/29/2014).

[35] *Final Report of the Governor's APA Review Commission*, supra at 31.

[36] *Final Report of the Governor's APA Review Commission*, supra at 32.

For example, neither a definition nor examples of "regulatory costs" are found in the APA although the concept is important to an agency's economic analysis. "Transactional costs" are defined as direct costs of compliance, readily ascertainable based on standard business practices, including:

- Filing fees;
- Costs to obtain a license;
- Costs of equipment installed or used for rule compliance;
- Costs of procedures required for compliance;
- Additional operating costs;
- Costs for monitoring and reporting; and
- Any other necessary costs of compliance.[37]

The statute does not provide guidance or reference on how agencies are to identify and apply standard business practices in the development of required SERCs. As a result, some agencies with access to, and familiarity with, cost impact data from entities affected by specific rules provide comprehensive analyses of such impacts in SERCs.[38] Other agencies, less familiar with costs to individuals and entities to conduct the regulated activities and comply with specific rules, prepare SERCs which do not reflect the full impact of particular rules, particularly when a rule contains delayed impacts.[39]

Effect of Proposed Changes

The bill creates s. 120.541(5), F.S., to clarify the time frame for which agencies must evaluate costs and impacts when preparing SERCs. The bill specifies that adverse impacts and regulatory costs likely to occur within five years after implementation of a rule include adverse impacts and regulatory costs estimated to occur within five years after the effective date of the rule. The bill also specifies that if any provision of a rule is not fully implemented upon the effective date of the rule, the adverse impacts and regulatory costs associated with such provision must be adjusted to include any additional adverse impacts and regulatory costs estimated to occur within five years after implementation of such provision. The required economic analysis must still analyze the proposed rule's impact on regulatory costs, which will include all costs and impacts estimated in the SERC.

B. SECTION DIRECTORY:

Section 1. Amends s. 120.541, F.S., creating s. 120.541(5), F.S., clarifying the impacts and costs agencies must evaluate when preparing a SERC.

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

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[37] Section 120.541(2)(d), F.S.

[38] Presentations of Curt Kiser, General Counsel, and Bill McNulty, Economic Analyst, of the Public Service Commission, at scheduled meeting of Rulemaking Oversight & Repeal Subcommittee on November 5, 2013, at http://myfloridahouse.gov/VideoPlayer.aspx?eventID=2443575804_2013111059&committeeID=2727 (accessed 1/31/2014).

[39] Presentation of Dept. of Elder Affairs at scheduled meeting of RO&RS on March 27, 2013. *See*, 3-27-2013 Subcommittee Action Packet, 45-52. The agency was revising several rules in Ch. 58A-5, F.A.C., including increased training and testing requirements for administrators, managers, and staff of assisted living facilities (ALF). The SERC prepared by the agency initially concluded the proposed rules would increase regulatory costs by less than $1,000,000 over the first five years of implementation. However, as adduced by the Subcommittee during the agency's presentation, a number of cost factors were not considered in preparing the SERC, including the time and expense for testing to *all* applicants (not merely those passing the test), increased training and labor costs to ALFs, and even the costs of implementation and operation to the agency. The SERC also did not account for the delayed effective dates for some of the rules, resulting in the agency measuring cost impacts for the first 5 years from the initial effective date of some rules rather than a full 5 years for each rule. When questioned on these assumptions, the agency conceded the SERC should have indicated an overall cost impact exceeding $1,000,000 for the first 5 years of full implementation of all the subject rules. An audio recording of the meeting is at http://myfloridahouse.gov/FileStores/AdHoc/PodCasts/03_27_2013/Rulemaking_Oversight_Repeal_2013_03_27.mp3 (accessed 1/31/2014).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill may have an indeterminate but likely insignificant fiscal impact on state government. *See* FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill is expected to provide a more accurate estimate of the economic impacts of agency rules and better opportunities for local governmental and private entities to participate in rulemaking and in estimating regulatory costs. In addition, more complete estimates of regulatory costs and economic impacts may bring more agency rules under the scrutiny of legislative ratification prior to their becoming effective.

D. FISCAL COMMENTS:

Currently, state agencies are required to comply with notice, publication, and hearing requirements for preparing SERCs. Compliance with the additional requirements created in this bill may require agencies to devote more resources to preparing SERCs, but the impact is likely insignificant.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not create any additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to administrative procedures; amending s. 120.541, F.S.; providing additional requirements for the calculation of estimated adverse impacts and regulatory costs; providing an effective date.

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

Section 1. Subsection (5) is added to section 120.541, Florida Statutes, to read:

120.541 Statement of estimated regulatory costs.—

(5) For purposes of subsections (2) and (3), adverse impacts and regulatory costs likely to occur within 5 years after implementation of the rule include adverse impacts and regulatory costs estimated to occur within 5 years after the effective date of the rule. However, if any provision of the rule is not fully implemented upon the effective date of the rule, the adverse impacts and regulatory costs associated with such provision must be adjusted to include any additional adverse impacts and regulatory costs estimated to occur within 5 years after implementation of such provision.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HR 1001 Anti-Israel Boycott, Divestment, & Sanctions Campaigns
SPONSOR(S): Berman and others
TIED BILLS: **IDEN./SIM. BILLS:** SR 1184

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	17 Y, 0 N	Walker	Kiner
2) State Affairs Committee		Camechis	Camechis

SUMMARY ANALYSIS

The Boycott, Divestment, and Sanctions (BDS) Movement is a global campaign targeting Israel in an attempt to increase economic and political pressure on the country to comply with the movement's stated goals, which are:

- Ending its occupation and colonization of all Arab lands occupied in June 1967 and dismantling the wall;
- Recognizing the fundamental rights of the Arab-Palestinian citizens of Israel to full equality; and
- Respecting, protecting, and promoting the rights of Palestinian refugees to return to their homes and properties as stipulated in UN Resolution 194.

The BDS Movement promotes the boycott, divestment, and sanction of Israel and has gained support from many academics, trade unions, political parties, and citizens around the world. However, opposition to the movement is widespread, and critics have claimed the movement is ineffective, immoral, based on false or biased information, and could end up harming the Palestinian cause.

This resolution pronounces that the members of the Florida House of Representatives condemn the international BDS Movement against the State of Israel and calls upon Florida governmental institutions to denounce hatred and discrimination.

Resolutions are not subject to action by the Governor and do not have the effect of law. In addition, they are not subject to the constitutional single-subject limitation or title requirements.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

United States-Israel relations

United States-Israel relations are characterized by support, cultural resonance, and cooperative mutual interests. In 1948, the United States was the first country to recognize Israel as a state.[1] Relations have evolved through legislation as well as diplomatic memoranda of understanding, resulting in important benefits to the United States including economic, scientific, military, and trade agreements.[2]

Today, Israel is America's "most reliable partner in the Middle East." [3] The United States' continued commitment to Israel's security and well-being is demonstrated by its continued economic and security assistance to Israel.[4]

Boycott, Divestment, and Sanctions against Israel

The Boycott, Divestment, and Sanctions (BDS) Movement is a global campaign targeting Israel in an attempt to increase economic and political pressure on the country to comply with the movement's stated goals, which are:

- Ending its occupation and colonization of all Arab lands occupied in June 1967 and dismantling the wall;
- Recognizing the fundamental rights of the Arab-Palestinian citizens of Israel to full equality; and
- Respecting, protecting, and promoting the rights of Palestinian refugees to return to their homes and properties as stipulated in UN Resolution 194.[5]

The BDS Movement promotes the boycott, divestment, and sanction of Israel and has gained support from many academics, trade unions, political parties, and citizens around the world.[6] However, opposition to the movement is widespread, and critics have claimed the movement is ineffective,[7] immoral,[8] based on false or biased information,[9] and could end up harming the Palestinian cause.[10]

In response to the BDS Movement, some states have enacted legislation that condemns BDS activities. In 2015, Illinois passed a law that requires state-funded retirement systems to divest of

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[1] *U.S. Relations with Israel*, U.S. DEPARTMENT OF STATE, http://www.state.gov/r/pa/ei/bgn/3581.htm (last visited Jan. 12, 2016).
[2] Michael Eisenstadt and David Pollock, *Friends with Benefits: Why the U.S.-Israeli Alliance Is Good for America*, THE WASHINGTON INSTITUTE, https://www.foreignaffairs.com/articles/2012-11-07/friends-benefits?gp=135637%3A36ce918050c21605 (Last Visited Jan. 15, 2016).
[3] *U.S. Relations with Israel*, U.S. DEPARTMENT OF STATE, http://www.state.gov/r/pa/ei/bgn/3581.htm (last visited Jan. 12, 2016).
[4] Id.
[5] BDS Movement, *Introducing the BDS Movement*, http://bdsmovement.net/bdsintro (last visited Jan. 14, 2016).
[6] BDS Movement, *BDS in 2015: Seven ways our movement broke new ground against Israeli settler-colonialism and apartheid*, http://bdsmovement.net/2015/7-ways-our-movement-broke-new-ground-13634 (last visited Jan. 14, 2016).
[7] *Boycotting Israel: New pariah on the block*, THE ECONOMIST (Sept. 13, 2007), *available at* http://www.economist.com/node/9804231.
[8] Naftalia Balanson, *The Moral Argument Against BDS*, ZEEK (Nov. 29, 2010), *available at* http://zeek.forward.com/articles/117084/.
[9] *Hundreds in academic world sign anti-BDS petition*, JEWISH TELEGRAPHIC AGENCY (Sept. 22, 2014), *available at* http://www.jta.org/2014/09/22/news-opinion/united-states/hundreds-of-academics-sign-anti-bds-petition.
[10] *Chomsky says BDS tactics won't work, may be harmful to Palestinians*, THE JERUSALEM POST (July 3, 2014), *available at* http://www.jpost.com/Diplomacy-and-Politics/Chomsky-says-BDS-tactics-wont-work-may-be-harmful-to-Palestinians-361417.

holdings in companies that boycott Israel under certain circumstances.[11] South Carolina also enacted anti-BDS legislation that prohibits the state or a political subdivision of the state from accepting a proposal from or procuring goods or services from a business that engages in the boycott of a person or an entity based on race, color, religion, gender, or national origin.[12] Other states, including Tennessee, Indiana, Pennsylvania, and New York, have passed resolutions condemning the BDS Movement. States considering anti-BDS legislation include Ohio, New York, and New Jersey.

In June of 2015, President Obama signed into law the first federal anti-BDS legislation. With respect to an agreement that is proposed to be entered into with the Transatlantic Trade and Investment Partnership countries, the law specifies that the principal negotiating objectives of the United States regarding commercial partnerships are the following:

- To discourage actions by potential trading partners that directly or indirectly prejudice or otherwise discourage commercial activity solely between the United States and Israel.
- To discourage politically motivated actions to boycott, divest from, or sanction Israel and to seek the elimination of politically motivated nontariff barriers on Israeli goods, services, or other commerce imposed on the State of Israel.
- To seek the elimination of state-sponsored unsanctioned foreign boycotts against Israel or compliance with the Arab League Boycott of Israel by prospective trading partners.

Effect of the Resolution

This resolution pronounces that the members of the Florida House of Representatives condemns the international Boycott, Divestment, and Sanctions Movement against the State of Israel and calls upon Florida governmental institutions to denounce hatred and discrimination.

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.

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[11] *Illinois Gov. Signs First Anti-BDS Bill Into Law*, THE WASHINGTON FREE BEACON (July 23, 2015), http://freebeacon.com/issues/ill-gov-signs-first-anti-bds-bill-into-law/.

[12] Miles Terry, *South Carolina: The First State in the Country to Stand with Israel Against the BDS Movement*, ACLJ, http://aclj.org/israel/south-carolina-the-first-state-in-the-country-to-stand-with-israel-against-the-bds-movement (last visited Jan 14, 2016).

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable.

2. Other: None.

B. RULE-MAKING AUTHORITY: Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

House Resolution

A resolution condemning the Boycott, Divestment, and Sanctions (BDS) movement and the increasing incidents of anti-Semitism.

WHEREAS, the citizens of the State of Florida have long opposed bigotry, oppression, discrimination, and injustice as a matter of public policy, and

WHEREAS, Florida and Israel have enjoyed a long history of friendship and are great allies in support of each other's interests, and

WHEREAS, the State of Israel, the only democracy in the Middle East, is the greatest friend and ally of the United States in that region, and

WHEREAS, the elected representatives of the state recognize the importance of expressing Florida's unwavering support of the Jewish people and the State of Israel's right to exist and right to self-defense, and

WHEREAS, there are increasing incidents of anti-Semitism throughout the world, including in the United States and in Florida, reflected in official hate crime statistics, and

WHEREAS, the international Boycott, Divestment, and Sanctions (BDS) movement is one of the main vehicles for spreading anti-Semitic perspectives and advocating the elimination of the Jewish State, and

WHEREAS, activities promoting Boycott, Divestment, and Sanctions against Israel have increased in the State of Florida, including on university campuses and in other Florida communities, and contribute to the promotion of anti-Semitic and anti-Zionist propaganda, and

WHEREAS, the increase in BDS campaign activities on college campuses around the country has resulted in increased confrontation, intimidation, and discrimination against Jewish students, and

WHEREAS, leaders of the BDS movement express that their goal is to eliminate Israel as the national home of the Jewish people, and

WHEREAS, the BDS campaign's call for academic and cultural boycotts has been condemned by many of our nation's largest academic associations, more than 250 university presidents, and many other leading scholars as a violation of the bedrock principle of academic freedom, NOW, THEREFORE,

Be It Resolved by the House of Representatives of the State of Florida:

That the Florida House of Representatives condemns the international Boycott, Divestment, and Sanctions (BDS) movement against the State of Israel and calls upon its governmental institutions to denounce hatred and discrimination whenever they appear.

BE IT FURTHER RESOLVED that copies of this resolution be presented to the President of the United States, the President and Secretary of the United States Senate, the Speaker and Clerk of the United States House of Representatives, and the Israeli Embassy in Washington, D.C., for transmission to the proper authorities of the State of Israel as a tangible token of the sentiments expressed herein.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1165 Pub. Rec./Office of Insurance Regulation
SPONSOR(S): Insurance & Banking Subcommittee; Hager
TIED BILLS: CS/HB 1163 **IDEN./SIM. BILLS:** SB 1416

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Bauer	Luczynski
2) State Affairs Committee		Williamson	Camechis
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The National Association of Insurance Commissioners has adopted two new insurance model acts that give state insurance regulators like the Office of Insurance Regulation (OIR) new solvency regulatory tools – the Own Risk and Solvency Assessment (ORSA) and the Corporate Governance Annual Disclosure (CGAD). CS/HB 1163 implements the new ORSA and CGAD requirements in the Insurance Code.

This bill, which is linked to the passage of CS/HB 1163, amends s. 624.4212, F.S., to provide that the following information held by the OIR is confidential and exempt from public records requirements:

- An ORSA summary report or a substantially similar ORSA report;
- A CGAD; and
- Supporting documents.

The exemption does not apply to information obtained by the OIR that would otherwise be subject to public inspection.

The bill provides for repeal of the exemption on October 2, 2021, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill provides an effective date that is contingent upon the passage of CS/HB 1163 or similar legislation enacted in the same legislative session or an extension thereof.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands the OIR public records exemption to include certain insurer regulatory reports and supporting documents held by the OIR; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of the legislative, executive, or judicial branches of government.[1] The Legislature, however, may provide by general law for the exemption of records from the constitutional requirements.[2] An exemption must state with specificity the public necessity justifying the exemption and may be no broader than necessary to accomplish the stated purpose of the law.[3] A bill enacting an exemption must pass by a two-thirds vote of the members present and voting.[4]

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.[5] A public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a government program, which administration would be significantly impaired without the exemption;
- Protects personal identifying information that, if released, would be defamatory or would jeopardize an individual's safety; or
- Protects trade or business secrets.[6]

The Act requires the automatic repeal of an exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[7]

National Association of Insurance Commissioners Accreditation

The Office of Insurance Regulation (OIR) is a member of the National Association of Insurance Commissioners (NAIC), an organization consisting of state insurance regulators. As a member of the NAIC, the OIR is required to participate in the organization's accreditation program. NAIC accreditation is a certification that a state insurance department is fulfilling legal, regulatory, and organizational oversight standards and practices. Once accredited, a member state is subject to a full accreditation review every five years. The NAIC also periodically reviews its solvency standards as set forth in its model acts, and revises accreditation requirements to adapt to evolving industry standards.

Confidential & Exempt Treatment of Insurer Regulatory Reports

In 2014, the Legislature enacted s. 624.4212, F.S., which makes "proprietary business information" contained in certain insurer regulatory documents held by the OIR confidential and exempt[8] from s.

[1] FLA. CONST., art. I, s. 24(a).
[2] FLA. CONST., art. I, s. 24(c).
[3] *Id.*
[4] *Id.*
[5] s. 119.15, F.S.
[6] s. 119.15(6)(b), F.S.
[7] s. 119.15(3), F.S.
[8] There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates as *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 (Fla. 5th DCA 2004), review denied 892 So.2d

119.07(1), F. S., and s. 24(a), Art. I of the State Constitution.[9] Such documents include the principle-based valuation report, the enterprise risk report, and the insurance holding company registration, which are required to be filed with the OIR as part of related legislation enacted in 2014.[10] In some instances, OIR may disclose this confidential and exempt proprietary business information, such as to other state, federal, and international agencies and law enforcement agencies.

"Proprietary business information" means information, regardless of form or characteristics, that is owned or controlled by an insurer, or a person or affiliated person who seeks acquisition of controlling stock in a domestic stock insurer or controlling company, and that:

- Is intended to be and is treated by the insurer or the person as private in that the disclosure of the information would cause harm to the insurer, the person, or the company's business operations and has not been disclosed unless disclosed pursuant to a statutory requirement, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public;
- Is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as requested by the office; and
- Includes:
    - Trade secrets as defined in s. 688.002, F.S.,[11] and that comply with s. 624.4213, F.S.[12]
    - Information relating to competitive interests the disclosure of which would impair the competitive business of the provider of the information.
    - The source, nature, and amount of the consideration used or to be used in carrying out a merger or other acquisition of control in the ordinary course of business, including the identity of the lender, if the person filing a statement regarding consideration so requests.
    - Information relating to bids or other contractual data the disclosure of which would impair the efforts of the insurer or its affiliates to contract for goods or services on favorable terms.
    - Internal auditing controls and reports of internal auditors.[13]

CS/HB 1163 (2016): Insurer Regulatory Reporting

The NAIC has adopted two new insurance model acts that give state insurance regulators like the OIR new solvency regulatory tools – the Own Risk and Solvency Assessment (ORSA) and the Corporate Governance Annual Disclosure (CGAD). Effective January 1, 2018, ORSA is a NAIC accreditation standard. Both model acts require that states must keep these documents confidential.

CS/HB 1163, implements the new ORSA and CGAD requirements in the Insurance Code.

1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *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, the record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* 85-62 Fla. Op. Att'y Gen. (1985).

[9] Ch. 2014-100, Laws of Fla. This public records bill was enacted along with the 2014 OIR insurer solvency bill, ch. 2014-101, Laws of Fla. Passage of several components in these bills was necessary for the OIR to maintain its NAIC accreditation.

[10] Ch. 2014-101, Laws of Fla.

[11] Section 688.002(4), F.S., defines the term "trade secret" to mean information, including a formula, pattern, compilation, program, device, method, technique, or process that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

[12] Section 624.4213, F.S., contains a process for submitting trade secret documents to the OIR or the Department of Financial Services, including marking each document as a trade secret.

[13] s. 624.4212(1), F.S.

Effect of the Bill

The bill amends s. 624.4212, F.S., to provide that ORSA summary reports, substantially similar ORSA reports, CGAD reports, and supporting documents held by the OIR pursuant to a new s. 628.8015, F.S. (created by CS/HB 1163), are confidential and exempt from public records requirements. The bill also makes conforming changes to the exemption, and provides that the exemption does not apply to information obtained by the OIR that would otherwise be available for public inspection.

Unlike the other insurer regulatory reports protected by this statute, the bill makes confidential and exempt the ORSA and CGAD documents in their entirety, not just portions of those reports that contain "proprietary business information."

The bill provides a statement of public necessity and provides for repeal of the exemption on October 2, 2021, unless reviewed and saved from repeal by the Legislature.

B. SECTION DIRECTORY:

Section 1. Amends s. 624.4212, F.S., relating to confidentiality of proprietary business and other information.

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

Section 3. Provides that the bill takes effect on the same date that HB 1163 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill likely could create a minimal fiscal impact on OIR, because staff responsible for complying with public records requests could require training related to creation of the new public records exemption. The OIR noted the bill is expected to have an insignificant impact on OIR technology systems.[14]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

[14] Office of Insurance Regulation, Agency Analysis of 2016 House Bill 1165, on p. 6 (Jan. 22, 2016).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This public records exemption bill will have an indeterminate positive impact on the private sector by protecting insurers' ORSA summary reports, CGAD reports, and supporting documents, which contain highly sensitive and strategic financial information.

D. FISCAL COMMENTS:

None.

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:

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

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

Breadth of Exemption
Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands the current public records exemption to include the ORSA summary report, a CGAD, and supporting documents, and excludes information obtained by the OIR that is otherwise available for public inspection.

B. RULE-MAKING AUTHORITY:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues
The bill provides that certain information submitted to OIR is confidential and exempt from public records requirements; however, the public necessity statement only addresses the need to keep such information exempt from public disclosure. As such, the public necessity statement should be amended to conform to the public records exemption by addressing the need to keep the information confidential and exempt.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 25, 2016, the Insurance & Banking Subcommittee considered and adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarified that the exemption does not apply to information obtained by the OIR that would otherwise be available for public inspection.

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

A bill to be entitled

An act relating to public records; amending s. 624.4212, F.S.; providing an exemption from public records requirements for certain reports and documents submitted to the Office of Insurance Regulation related to an own-risk and solvency assessment by an insurer or insurance group; providing an exemption from public records requirements for a corporate governance annual disclosure and supporting documents submitted to the office; revising the actuarial board to which the office may disclose certain information; providing for and revising future legislative review and repeal; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Present subsections (3), (4), and (5) of section 624.4212, Florida Statutes, are redesignated as subsections (4), (5), and (6), respectively, and amended, and a new subsection (3) is added to that section, to read:

624.4212 Confidentiality of proprietary business and other information.—

(3) Except for information obtained by the office that is otherwise available for public inspection, the following information held by the office is confidential and exempt from

s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) An ORSA summary report, a substantially similar ORSA report, and supporting documents submitted pursuant to s. 628.8015.

(b) A corporate governance annual disclosure and supporting documents submitted pursuant to s. 628.8015.

(4) ~~(3)~~ Information received from the NAIC, a ~~or another~~ governmental entity in this or another state, the Federal Government, or a government of another nation which is confidential or exempt if held by that entity and which is held by the office for use in the ~~office's~~ performance of its duties relating to insurer valuation and solvency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(5) ~~(4)~~ The office may disclose information made confidential and exempt under this section:

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

(b) Pursuant to a court order;

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

(d) To other states, federal and international agencies, the National Association of Insurance Commissioners and its

affiliates and subsidiaries, and state, federal, and international law enforcement authorities, including members of a supervisory college described in s. 628.805 if the recipient agrees in writing to maintain the confidential and exempt status of the document, material, or other information and has certified in writing its legal authority to maintain such confidentiality; or

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

(6) ~~(5)~~ This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and is repealed on October 2, 2021 ~~2019~~, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity that the own-risk and solvency assessment (ORSA) summary report, a substantially similar ORSA report, and supporting documents submitted to and held by the Office of Insurance Regulation pursuant to s. 628.8015, Florida Statutes, be exempt from public records requirements. In conducting this required internal assessment, an insurer or insurance group identifies and evaluates the material and relevant risks to the insurer or insurance group and the adequacy of capital resources to support these risks. The ORSA summary report, substantially similar ORSA report, and supporting documents contain highly

sensitive and strategic financial information about an insurer or insurer group. Having a comprehensive and unbiased assessment will provide the office with an effective early warning mechanism for preventing insolvencies and protecting policyholders and promote a stable insurance market. Divulging the ORSA summary report, substantially similar ORSA summary report, and supporting documents will injure the insurer or insurance group by providing competitors with detailed insight into their financial position, risk management strategies, business plans, pricing and marketing strategies, management systems, and operational protocols.

(2) The Legislature finds that it is a public necessity that the corporate governance annual disclosure and supporting documents submitted to and held by the office be exempt from public records requirements. The corporate governance annual disclosure describes an insurer's governance structure and the internal practices and procedures used in conducting the business affairs of the company, making strategic operational decisions affecting its competitive position, and managing its financial condition. Broad disclosure will give state regulators a thorough understanding of the corporate governance structure and internal policies and practices used by insurers and promote market integrity. Effective governance mechanisms will enable insurers to take any necessary corrective actions and achieve strategic goals.

Section 3. This act shall take effect on the same date

that CS/HB 1163 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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 Hager offered the following:

Amendment

Remove lines 73-103 and insert:

be confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State Constitution. In conducting this required internal assessment, an insurer or insurance group identifies and evaluates the material and relevant risks to the insurer or insurance group and the adequacy of capital resources to support these risks. The ORSA summary report, substantially similar ORSA report, and supporting documents contain highly sensitive and strategic financial information about an insurer or insurer group. Having a comprehensive and unbiased assessment will provide the office with an effective early warning mechanism for preventing insolvencies and protecting policyholders and promote a stable insurance market. Divulging

the ORSA summary report, substantially similar ORSA summary report, and supporting documents will injure the insurer or insurance group by providing competitors with detailed insight into their financial position, risk management strategies, business plans, pricing and marketing strategies, management systems, and operational protocols.

(2) The Legislature finds that it is a public necessity that the corporate governance annual disclosure and supporting documents submitted to and held by the office be confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State Constitution. The corporate governance annual disclosure describes an insurer's governance structure and the internal practices and procedures used in conducting the business affairs of the company, making strategic operational decisions affecting its competitive position, and managing its financial condition. Release of the corporate governance annual disclosure and supporting documents will injure the insurer or insurance group in the marketplace by providing competitors with the insurer's or the insurance group's confidential business information. Broad disclosure will give state regulators a thorough understanding of the corporate governance structure and internal policies and practices used by insurers and promote market integrity. Effective governance mechanisms will enable insurers to take any necessary corrective actions and achieve strategic goals while allowing the office to perform its regulatory duties effectively and efficiently.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1205 Fumigation
SPONSOR(S): Magar
TIED BILLS: **IDEN./SIM. BILLS:** SB 1498

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

SUMMARY ANALYSIS

Individuals who perform fumigation must be licensed by the Department of Agriculture and Consumer Services (DACS) and follow the safety procedures set forth in rule. In addition, each brand of pesticide that is distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state must be registered with DACS.

The bill updates DACS' rulemaking authority relating to safety procedures for fumigation to:

- Require that fumigators notify DACS where the fumigation will be performed at least 24 hours in advance of any general fumigation, rather than notify a DACS inspector;
- Authorize DACS to specify circumstances when notification of less than 24 hours in advance is allowed, rather than only during an authentic and verifiable emergency; and
- Authorize DACS to require safety procedures for the clearance of residential structures before reoccupation after fumigation.

Further, the bill updates DACS' rulemaking authority to allow DACS to place conditions on fumigant registration including:

- Requiring registrants to train distributors and end users in safety measures, proper use, safe storage, and the management of fumigant materials;
- Obtaining continuing education program approval for stewardship training programs;
- Conducting quality assurance reviews;
- Reporting to DACS probation and stop-sale notifications issued to end users. DACS must notify other sulfuryl fluoride registrants of the reported probation or stop-sale notice; and
- Assisting DACS upon its request with the removal of fumigant containers from distributors and end users for compliance with permanent or extended stop-sales.

The bill appears to have an insignificant negative fiscal impact on DACS, which can be absorbed within existing resources. The bill may have an insignificant negative fiscal impact on licensees who apply fumigants and on individuals who register fumigants. See Fiscal Analysis & Economic Impact Statement.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

A "fumigant" is a chemical which, at a required temperature and pressure, can exist in the gaseous state in sufficient concentration to be lethal to a given organism.[1] "Fumigation" is the use, within an enclosed space or in or under a structure or tarpaulins, of a fumigant in concentrations that may be hazardous to human beings.[2] The Department of Agriculture and Consumer Services (DACS) regulates fumigation and registering fumigants.

Fumigation Requirements

Individuals who perform fumigation must obtain a special identification card from DACS or be a certified fumigation operator.[3] At least 24 hours before performing general fumigation, a fumigator must notify the DACS inspector having jurisdiction over the location to be fumigated via DACS' website or facsimile.[4] This requirement may be waived during a verifiable emergency when notification is not possible.[5]

A fumigator must follow the instructions on the fumigant's label, possess any keys or access devices to gain entry into the structure, possess a self-contained breathing apparatus, and possess and maintain two clearance devices.[6] The structure or enclosed space to be fumigated may not be occupied during fumigation.[7] The fumigator must inspect the structure or enclosed space to make sure no persons remain.[8] Further, the structure or enclosed space must be made as gas-tight as possible.[9] Prior to application of the fumigant, the fumigators must affix and conspicuously post warning signs that meet standards adopted by DACS.[10]

After fumigation, the structure must be aerated.[11] The aeration process includes a minimum one-hour active aeration and a minimum five-hour passive aeration.[12] An active aeration requires the doors and windows of the structure to be opened and fans used to allow the fumigant to dissipate.[13] The passive aeration occurs after the active aeration and requires the structure to be re-secured.[14] Currently, fumigators are not required to provide DACS with the initiation time of the aeration process.[15] Once aeration is complete, the certified operator in charge must personally inspect the structure or enclosed space to assure the space has been safely ventilated as required by the fumigant's label.[16] The space must be inspected with suitable gas-detecting equipment or devices required by the fumigant's label to assure the structure is safe for human entry and occupancy.[17] Currently, licensees are required to

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[1] Section 482.021(9), F.S.
[2] Section 482.021(10), F.S.
[3] Section 482.151(1), F.S.; Rule 5E-14.108(1), F.A.C.
[4] Section 482.051(4), F.S.; Rule 5E-14.110(1), F.A.C.
[5] Section 482.051(4), F.S.; Rule 5E-14.110(2), F.A.C.
[6] Rule 5E-14.108, F.A.C.
[7] Rule 5E-14.111(2), F.A.C.
[8] Rule 5E-14.111(4), F.A.C.
[9] Rule 5E-14.111(7), F.A.C.
[10] Rules 5E-14.112(1) through (6), F.A.C.
[11] DACS, Agency Analysis of 2016 House Bill 1205, p. 1 (January 15, 2016).
[12] Id.
[13] Id.
[14] Id.
[15] Id.
[16] Rule 5E-14.113(1), F.A.C.
[17] Rule 5E-14.113(2), F.A.C.

maintain evidence of device calibration, but are not required to provide these records to DACS unless requested.[18] Once the structure or enclosed space is safe for reentry and reoccupancy, the certified operator must certify his final personal inspection and monitoring examination and must conspicuously post the certification on all entrances.[19]

Pesticide Registration

Each brand of pesticide[20] that is distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state must be registered with DACS, and such registration must be renewed biennially.[21] Applicants seeking to register a pesticide must submit:

- Product chemistry data demonstrating a pesticide's relative susceptibility to leaching into groundwater and its relative stability in groundwater;
- Toxicology data demonstrating human risk assessment and environmental risk assessment;
- Environmental fate data demonstrating chemical degradation, metabolic transformation, persistence (half-life), bioaccumulation potential, and mobility of the pesticide;
- Residue chemistry data that describes pesticide residues detected in or on applicable crops, processed foods, and animal feed; and
- Worker and applicator safety data demonstrating that use of the pesticide in accordance with the label does not pose any unreasonable risk to applicators or agricultural workers exposed to treated areas or commodities.[22]

DACS may approve the pesticide registration, conditionally approve the product with limitations, or deny registration and state the basis for denial.[23]

If DACS finds a pesticide is being offered or exposed for sale, used, or held in violation of its pesticide regulations, it may issue and enforce a stop-sale, stop-use, removal, or hold order.[24] This order may require the pesticide or device to be held at a designated place until the pesticide regulations are complied with and the pesticide or device is released, in writing, by DACS.[25]

If a pesticide registered in the state is suspended or canceled to prevent harm to the public or the environment, the registrant must reclaim and provide reimbursement for that pesticide from any distributor, dealer, user, or other party possessing it in this state and provide for the proper removal or disposal of the pesticide within 90 days.[26]

Office of Inspector General Review

On January 6, 2016, DACS' Office of Inspector General issued a report on structural fumigation regulations and processes.[27] The report makes several recommendations to improve public safety, including increasing aeration time, increasing reporting requirements, requiring proof that chemical

[18] DACS, Agency Analysis of 2016 House Bill 1205, p. 1 (January 15, 2016).
[19] Rule 5E-14.113(2), F.A.C.
[20] Section 487.021(49), F.S., defines the term "pesticide" to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, or other forms of plant or animal life or viruses, except viruses, bacteria, or fungi on or in living humans or other animals, which the department by rule declares to be a pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
[21] Section 487.041(1)(a), F.S.
[22] Rule 5E-2.031(3), F.A.C.
[23] Rule 5E-2.031(6) and (7), F.A.C.
[24] Section 487.101(1), F.S.
[25] Id.
[26] Section 487.15, F.S.
[27] DACS, Review of the Division of Agricultural and Environmental Services, Structural Fumigation Regulation Regulations and Processes, available at http://media.wptv.com/image/Report.pdf?_ga=1.26570170.646122863.1452805180 (last visited January 14, 2016).

detection devices are properly calibrated, requiring notice of aeration times, changing warning requirements, and adding notification requirements for alternative methods of termite control.[28]

Effect of the Proposed Bill

The bill amends s. 482.051, F.S., to update DACS' rulemaking authority relating to safety procedures for fumigation. Specifically, the bill:

- Requires fumigators to notify DACS of where a fumigation will be performed at least 24 hours in advance of any general fumigation, rather than notify a DACS inspector;
- Authorizes DACS to specify circumstances when notification of less than 24 hours in advance is allowed, rather than only during an authentic and verifiable emergency; and
- Authorizes DACS to require safety procedures for the clearance of residential structures before reoccupation after fumigation.

The bill amends s. 487.051, F.S., to update DACS' rulemaking authority to allow DACS to place conditions on fumigant registration. Specifically, the bill authorizes DACS to establish conditions for the registration or continued registration of fumigants, including:

- Requiring registrants to train distributors and end users in safety measures, proper use, safe storage, and the management of fumigant materials;
- Obtaining continuing education program approval for stewardship training programs;
- Conduct quality assurance reviews;
- Reporting to DACS probation and stop-sale notifications issued to end users. DACS must notify other sulfuryl fluoride registrants of the reported probation or stop-sale notice; and
- Assisting DACS, upon its request, with the removal of fumigant containers from distributors and end users for compliance with permanent or extended stop-sales.

B. SECTION DIRECTORY:

Section 1. Amends s. 482.051, F.S., relating to general fumigation notification requirements.

Section 2. Amends s. 487.051, F.S., relating to establishing certain conditions for the registration or continued registration of fumigants.

Section 3. Providing an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The department is authorized to revise rules, which can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

[28] Id. at 4 – 5.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill authorizes the department by rule to require manufacturers to train distributors and end users in safety measures, to obtain continuing education and to conduct quality assurance reviews. Since manufacturers already train distributors and users, they will continue to work with the department to fortify the training. This may have an insignificant negative fiscal impact on registrants and licensees who apply fumigants and on individuals who register fumigants.

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:

The bill grants additional rulemaking authority to DACS to regulate fumigation safety procedures and place conditions on the registration of fumigants. The bill will likely require DACS to revise its rules to conform to the changes made in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to fumigation; amending s. 482.051, F.S.; revising general fumigation notification requirements; authorizing the Department of Agriculture and Consumer Services to adopt safety procedures for the clearance of residential structures before reoccupation after fumigation; amending s. 487.051, F.S.; authorizing the department to establish certain conditions for the registration or continued registration of fumigants; providing an effective date.

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

Section 1. Section 482.051, Florida Statutes, is amended to read:

482.051 Rules.—The department may ~~has authority to~~ adopt rules ~~pursuant to ss. 120.536(1) and 120.54~~ to implement the provisions of this chapter. Before ~~Prior to~~ proposing the adoption of a rule, the department shall counsel with members of the pest control industry concerning the proposed rule. The department shall adopt rules for the protection of the health, safety, and welfare of pest control employees and the general public which require:

(1) That all pesticides or economic poisons be used only in accordance with the registered labels and labeling or as

directed by the United States Environmental Protection Agency or the department.

(2) That vehicles and trailers used in pest control be permanently marked with the licensee's name that is registered with the department. However, vehicles that are used to perform only sales and solicitation may have temporary or removable markers.

(3) That written contracts be required for providing termites and other wood-destroying organisms pest control, that provisions necessary to assure consumer protection as specified by the department be included in such contracts, and that require licensees to comply with the contracts issued.

(4) That a licensee, before performing general fumigation, notify in writing the department of ~~inspector having jurisdiction over~~ the location where the fumigation is to be performed, which notice must be received by the department ~~inspector~~ at least 24 hours before the fumigation and must contain such information as the department requires. The department may specify circumstances under which notification of less than 24 hours is allowed and what notice is required in those circumstances. ~~However, in an authentic and verifiable emergency, when 24 hours' advance notice is not possible, advance notice may be given by telephone, facsimile, or any other form of acceptable electronic communication, but such notice must be immediately followed by written confirmation providing the required information.~~

(5) That any pesticide used as the primary preventive treatment for subterranean termites in new construction be applied in the amount, concentration, and treatment area in accordance with the label; that a copy of the label of the registered pesticide being applied be carried in a vehicle at the site where the pesticide is being applied; and that the licensee maintain for 3 years the record of each preconstruction treatment, indicating the date of treatment, the location or address of the property treated, the total square footage of the structure treated, the type of pesticide applied, the concentration of each substance in the mixture applied, and the total amount of pesticide applied.

(6) That the department may issue an immediate stop-use or stop-work order for fumigation performed in violation of fumigant label requirements or department rules, or in a manner that presents an immediate serious danger to the health, safety, or welfare of the public, including, but not limited to, failure to use required personal protective equipment, failure to use a required warning agent, failure to post required warning signs, failure to secure a structure's usual entrances as required, or using a fumigant in a manner that will likely result in hazardous exposure to humans, animals, or the environment.

(7) That the department may require safety procedures for the clearance of residential structures before reoccupation after fumigation.

Section 2. Paragraph (f) is added to subsection (1) of

section 487.051, Florida Statutes, to read:

487.051 Administration; rules; procedure.—

(1) The department may by rule:

(f) Establish conditions for the registration or continued registration of fumigants, including:

1. Requiring registrants to train distributors and end users in safety measures, proper use, safe storage, and the management of fumigant materials;

2. Obtaining continuing education program approval for stewardship training programs;

3. Conducting quality assurance reviews;

4. Reporting to the department probation and stop-sale notifications issued to end users. The department shall notify other sulfuryl fluoride registrants of the reported probation or stop-sale notice; and

5. Assisting the department upon its request with the removal of fumigant containers from distributors and end users for compliance with permanent or extended stop-sales.

Section 3. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 1225 Preventing Voting by Noncitizens
SPONSOR(S): Metz
TIED BILLS: **IDEN./SIM. BILLS:** SM 1514

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	12 Y, 4 N	Walker	Kiner
2) State Affairs Committee		Toliver	Camechis

SUMMARY ANALYSIS

The National Voter Registration Act of 1993 (NVRA) requires states to use a specified federal form to register voters for federal elections. The form requires the registrant to indicate whether he or she is a U.S. citizen. The U.S. Supreme Court has recently held that because the federal government has pre-empted the states on this matter, states may not require any additional verification of a registrant's citizenship. In addition, a provision of the NVRA has also been interpreted to prohibit states from conducting a program removing noncitizens from the list of eligible voters within 90 days of a primary or general election for federal office.

The Immigration Reform and Control Act (IRCA) authorized the creation of the Systematic Alien Verification for Entitlements (SAVE) program database. The SAVE database verifies the immigration status of individuals seeking certain benefits. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) allows federal, state, or local government agencies to request the citizenship status of individuals subject to certain conditions.

HM 1225 calls upon the U.S. Congress to amend the NVRA to clarify that states have the authority to require documentary proof of citizenship for applicants who seek to register to vote using the federal form. The memorial further requests that Congress amend the IRCA and the IIRIRA to expressly grant the states immediate access to the SAVE program database to confirm immigration status information for purposes of voter registration. Finally, the memorial requests that Congress amend the NVRA to clarify that noncitizen voters may be removed from voter rolls within the 90 day period before a federal election.

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 state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The National Voter Registration Act of 1993 (NVRA) was enacted to increase voter registration and participation by allowing voters to register with the Department of Highway Safety and Motor Vehicles.[1] The NVRA also requires states to "accept and use" a standard federal form to register voters by mail for elections for federal office.[2] The federal form is created by the Election Assistance Commission[3] in consultation with the chief election officers of the states and contains a provision asking whether the applicant is a U.S. citizen.[4] However, the form does not require verification of the applicant's citizenship.[5] In 2004, Arizona voters adopted Proposition 200, which required the rejection of "any application for registration that is not accompanied by satisfactory evidence of United States Citizenship."[6] The law was challenged, and in 2013, the U.S. Supreme Court found the Arizona law invalid because the matter was pre-empted to the federal government by the NVRA.[7] Since the NVRA mandated that states use the federal form, states, the Court opined, could not require verification of an individual's citizenship beyond the 'check-the-box' provision contained in the federal form.[8] In order to supersede the Court's ruling, Congress would have to amend the NVRA to allow or require additional proof of citizenship.

The NVRA allows states to remove the names of persons from the official list of eligible voters in specific circumstances.[9] Additionally, the NVRA allows states to conduct programs to systematically remove the names of certain ineligible voters.[10] However, a provision of the NVRA requires states that are conducting such a program to complete the program before 90 days prior to a primary or general election for federal office. [11] Currently, courts have interpreted this 90 day provision to mean that a program that systematically removes registrants from the voter rolls on the basis of *citizenship* must conclude at least 90 days before any federal election.[12]

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) provides a mechanism to verify immigration status,[13] but sharply limits the number and reasons for inquiries.[14] However, another potential mechanism for immigration status verification exists. In 1986 the Immigration Reform and Control Act (IRCA)[15] authorized what is presently the Systematic Alien Verification for Entitlements (SAVE) database,[16] administered by U.S. Citizenship and Immigration

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[1] National Voter Registration Act of 1993 (Motor Voter Law), Pub. L. 103-31 (1993), codified as 52 U.S.C. §§ 20501-20511.
[2] 52 U.S.C. § 20505(a)(1).
[3] *Id.*
[4] 52 U.S.C. § 20508(a)(2).
[5] THE DEPARTMENT OF JUSTICE, About the National Voter Registration Act, *available at* http://www.justice.gov/crt/about-national-voter-registration- (last visited Jan. 25, 2016).
[6] Ariz. Rev. Stat. Ann. §16-166(f) (West Supp. 2012).
[7] *Arizona v. Inter Tribal Council of Arizona, Inc.*, 133 S. Ct. 2247 (2013).
[8] *Id.* at 2257.
[9] 52 U.S.C. § 20507(a)(3).
[10] 52 U.S.C. § 20507(a)(4).
[11] 52 U.S.C. § 20507(c)(2)(A).
[12] *Arcia v. Sec'y of Fla.*, 772 F.3d 1335, 1348 (11th Cir. 2014). The *Arcia* court also noted that the 90 day provision only applies to programs which "systematically" removes the names of ineligible voters. "As a result, the 90 day provision would not bar a state from investigating potential non-citizens and removing them on the basis of *individualized* information, even within the 90-day window." (emphasis added).
[13] 8 U.S.C. § 1373(c).
[14] Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. 104-208 (1996).
[15] Immigration Reform and Control Act of 1986, Pub L. 99-603 (1986).
[16] *See* 7 C.F.R. § 272.11.

Services which is within the Department of Homeland Security.[17] SAVE is presently used to determine eligibility for the receipt of benefits or licenses.[18] The SAVE database contains more than 100 million immigration status records.[19]

Since the NVRA was enacted in 1993, the population of foreign born residents has increased from approximately 19 million, accounting for 7.9 percent of the population, to approximately 40 million, accounting for 12.9 percent of the population.[20] Of those, the population of unauthorized foreign born residents has increased from approximately 3.5 million in 1993 to 11.3 million in 2014.[21] Of the 40 million total foreign born residents, 44 percent are naturalized citizens eligible to vote.[22] The national average of foreign born citizens as a percent of total state population is 12.9 compared to 19.4 percent of Florida's population.[23]

Effect of the Memorial

HM 1225 calls upon the U.S. Congress to amend the NVRA to clarify that states have the authority to require documentary proof of citizenship for applicants who seek to register to vote using the federal form. The memorial further requests that Congress amend the IRCA and IIRIRA to expressly grant the states immediate access to the SAVE program database to confirm immigration status information for purposes of voter registration. Finally, the memorial requests that Congress amend the NVRA to clarify that noncitizen voters may be removed from voter rolls within the 90 day period before a federal election.

B. SECTION DIRECTORY: N/A

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:

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[17] *See also* AMERICAN IMMIGRATION COUNSEL, The Systematic Alien Verification for Entitlements (SAVE) Program: A Fact Sheet, *available at* http://www.immigrationpolicy.org/just-facts/systematic-alien-verification-entitlements-save-program-fact-sheet (last accessed Jan. 29, 2016).
[18] *Supra* fn. 16.
[19] U.S. DEPARTMENT OF HOMELAND SECURITY: U.S. CITIZENSHIP AND IMMIGRATION, What is *SAVE?*, *available at* https://www.uscis.gov/save/what-save/what-save (last visited Jan. 25, 2016).
[20] U.S. CENSUS BUREAU, The Foreign-Born Population in the United States, *available at* https://www.census.gov/newsroom/pdf/cspan_fb_slides.pdf(last accessed Jan. 29, 2016).
[21] PEW RESEARCH CENTER, *5 facts about illegal immigration in the U.S.*, *available at* http://www.pewresearch.org/fact-tank/2015/11/19/5-facts-about-illegal-immigration-in-the-u-s/ (last visited Jan. 29, 2016).
[22] *Supra* fn. 20.
[23] *Id.*

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The memorial 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.

House Memorial

A memorial to the Congress of the United States, urging Congress to amend certain federal laws to remove obstacles to states exercising their authority and obligation, under state and federal law, to protect the integrity of elections by ensuring that only United States citizens are registered to vote.

WHEREAS, one of the most fundamental and cherished rights under the Constitution of the United States is the right to vote, and

WHEREAS, the right to vote is rightly conferred only upon citizens of the United States, and

WHEREAS, when noncitizens are able to vote notwithstanding the legal prohibition against it, the votes of lawful citizens are diluted and election outcomes affected, and

WHEREAS, with an estimated 11 million to 20 million illegal immigrants present in the United States, state and local voter registration entities must be able to exercise their authority to prevent the registration of noncitizens and remove noncitizens who register to vote, and

WHEREAS, in order to increase voter registration, Congress passed the National Voter Registration Act of 1993 (NVRA), which requires states to "accept and use" a uniform "Federal Form" to register voters for federal elections, and

WHEREAS, the Federal Form developed by the Federal Election

Assistance Commission requires only that an applicant aver, under penalty of perjury, that he or she is a citizen of the United States of America and does not require any accompanying documentary evidence of citizenship, and

WHEREAS, in 2004, Arizona voters approved a ballot proposition that required voter registration officials to "reject any application for registration that is not accompanied by satisfactory evidence of United States citizenship," including the Federal Form, and

WHEREAS, in the case of *Arizona et al. v. Inter Tribal Council of Arizona, Inc., et al.*, 133 S. Ct. 2247 (2013), the United States Supreme Court held that Arizona's evidence of citizenship requirement, as applied to Federal Form applicants, is preempted by the NVRA's mandate that states "accept and use" the Federal Form, and

WHEREAS, the holding in *Arizona v. Inter Tribal Council of Arizona, Inc.*, is grounded upon a statutory interpretation that the NVRA requirement that states "accept and use" the Federal Form does not allow states to require an applicant to submit documentary proof of citizenship supporting a response on the Federal Form that he or she is a citizen of the United States of America, and

WHEREAS, the holding in *Arizona v. Inter Tribal Council of Arizona, Inc.*, can be superseded by Congress amending the NVRA to clarify that states have the authority to require documentary proof of citizenship for applicants who seek to register to vote

using the Federal Form, and

WHEREAS, the Immigration Reform and Control Act (IRCA), Pub. L. No. 99-603, required the Federal Government to establish a system that would allow for immediate verification of the immigration status of noncitizen applicants for, and recipients of, certain types of federally funded benefits and to make the system available to federal, state, and local governmental entities that issue such benefits, which resulted in the creation of the Systematic Alien Verification for Entitlements (SAVE) program database, and

WHEREAS, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. No. 104-208, mandated that the federal agency charged with enforcement of immigration laws "shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information," but also limited the number of inquiries state agencies may make, limited the circumstances under which a state agency may inquire, and authorized the federal agency charged with enforcement of immigration laws to limit its responses to inquiring agencies, and

WHEREAS, the SAVE program uses an online system that checks the immigration status of an individual against millions of Department of Homeland Security database records, allowing

states and local agencies access to the most accurate and up-to-date information regarding immigration status, and, to facilitate the states' efforts to ensure that noncitizens are not registered to vote, Congress should clarify existing federal statutory law and expressly grant states the right of immediate access to the SAVE program database in order to allow the states to confirm immigration status information for purposes of voter registration, and

WHEREAS, Congress should amend the NVRA to clarify that the 90-day provision codified in 52 U.S.C. s. 20507(c)(2)(A) does not preclude removal of noncitizens from the voter registration rolls within 90 days before an election and that the general removal provision codified in 52 U.S.C. s. 20507(c)(2)(B) allows removal of noncitizens from the voter registration rolls at any time, and

WHEREAS, the foregoing statutory changes are necessary in order to ensure the integrity of voter registration rolls in Florida and throughout the United States of America and in particular to prevent illegal immigrants from registering to vote, NOW, THEREFORE,

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

That the Legislature of the State of Florida requests the United States Congress to amend the NVRA to clarify that states have authority to require documentary proof of citizenship for

applicants who seek to register to vote using the Federal Form; amend the IRCA and the IIRIRA to expressly grant the states immediate access to the SAVE program database, allowing states to confirm immigration status information for purposes of voter registration; and amend the NVRA to clarify that the 90-day provision codified in 52 U.S.C. s. 20507(c)(2)(A) does not preclude removal of noncitizens from the voter registration rolls within 90 days before an election and that the general removal provision codified in 52 U.S.C. s. 20507(c)(2)(B) allows removal of noncitizens from the voter registration rolls at any time.

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, 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.

CS/HM 1319

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HM 1319 Declaration of War Against Global Islamic Terrorist Organizations
SPONSOR(S): Local & Federal Affairs Committee; Ahern and others
TIED BILLS: **IDEN./SIM. BILLS:** SM 1710

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	16 Y, 0 N, As CS	Darden	Kiner
2) State Affairs Committee		Camechis	Camechis

SUMMARY ANALYSIS

The Islamic State of Iraq and the Levant (ISIL), al-Qaeda, and other global Islamist terrorist organizations have engaged in acts of terrorism leading to the loss of innocent life in the United States and other nations around the world, including the November 13, 2015, attacks in Paris where 130 people were killed and hundreds more were wounded.

The memorial urges Congress to exercise its power pursuant by Article I, Section 8 of the United States Constitution, to authorize the use of military force against ISIL, al-Qaeda, and all other global Islamist terrorist organizations that engage in acts of terrorism against the United States and its allies.

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

Declarations of War

The United States Constitution vests Congress with the power to declare war.[1] This power has been exercised on eleven occasions in the nation's history:[2]

- United Kingdom (1812)
- Mexico (1846)
- Spain (1898)
- Germany (1917)
- Austria-Hungary (1917)
- Japan (1941)
- Germany (1941)
- Italy (1941)
- Bulgaria (1942)
- Hungary (1942)
- Romania (1942)

Congress's power to declare war has also been understood to include the power to authorize the use of military force.[3] Since the earliest days of the Republic, American jurisprudence has drawn a distinction between general war, in which "one whole nation is at war with another whole nation... in every place, and under every circumstance," and limited war, "confined in its nature and extent... as to places, persons, and things."[4] During the 19th century, formal declarations of war were reserved for conflicts against other nations, while authorizations for the use of military force (AUMF) allowed the President to take action against pirates and other non-state actors.[5]

Since the Second World War, the United States Congress has only adopted AUMFs.[6] These authorizations have included both non-state actors[7] and broad expressions of Presidential authority against nations.[8] Two factors led to the shift away from formal declarations of war. First, nations generally have moved away from issuing formal declarations of war, with at least one commentator asserting that no formal declaration of war has been delivered by diplomatic channels since 1945.[9]

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[1] U.S. Const., art. I, s. 8, cl. 11.
[2] *See* Jennifer K. Elsea and Richard F. Grimmett, *Declarations of War and Authorizations for the Use of Military Force: Historical Background and Legal Implications* 81-87, Congressional Research Service, available at https://www.fas.org/sgp/crs/natsec/RL31133.pdf (text of each formal declaration of war approved by Congress) (last visited Jan. 22, 2016).
[3] *Id.* at 24.
[4] *Id.*, quoting *Bas v. Tingby*, 4 Dall. 37, 40 (1800).
[5] *Id.*
[6] *Id.* at 23.
[7] *See* Authorization for the President To Employ the Armed Forces of the United States for Protecting the Security of Formosa, the Pescadores, and Related Positions and Territories of That Area, Pub. L. No. 84-4, H.J. Res. 159, 84th Cong (Jan. 29, 1955) (authorizing the President to use force in defense of Formosa, part of the Republic of China (Taiwan), against the then-unrecognized People's Republic of China).
[8] Authorization of the Use of Force Against Iraq Resolution of 2002, Pub. L. 107-243, H.J. Res. 114, 107th Cong (Oct. 16, 2002) (authorizing the President to use force "as he determines to be necessary and appropriate" to defend the national security and enforce United Nations Security Council resolutions regarding Iraq).
[9] Elsea and Grimmett, at 23.

Nations have increasingly attempted to maintain diplomatic and commercial relationships to the extent possible during conflicts, with the historical tendency to abrogate treaties replaced by a tendency to deem treaties as remaining in effect to the maximum possible extent.[10] Second, a formal declaration of war is the operative event in many statutes to confer special powers on the President, many of which directly affect domestic concerns.[11] These special powers include:

- Interdiction of trade;[12]
- Ordering manufacturing plants to produce arms and seizing them if they fail to comply;[13]
- Taking control of the transportation system;[14] and
- Taking control of communications systems.[15]

The most vital powers relevant to conducting a military operation, however, are triggered by either a declaration of war or an AUMF. Both types of resolutions eliminate the time limits imposed on military deployments by the War Powers Resolution[16] and authorize the capture and detention of enemy combatants through the duration of hostilities.[17]

Islamic State of Iraq and the Levant (ISIL)

The Islamic State of Iraq and the Levant (ISIL) is a terrorist organization primarily operating in Iraq and Syria. The group is the current manifestation of earlier terrorist groups operating in Iraq from 2002 to 2006.[18] The group's leader was killed by American forces in 2006, after which the remaining organization rebranded as the Islamic State of Iraq.[19] By the time American forces left Iraq in 2011, the group had been weakened, but still existed.[20] The group would later rebrand as ISIL in 2013, after a merger with the al-Nusra Front in Syria.[21] In June 2014, ISIL's leadership declared the reestablishment of the caliphate[22] and began referring to themselves as the Islamic State.[23]

In addition the group's fighters in Iraq and Syria, ISIL has received pledges of support from various terrorist groups in the Middle East, Africa, and South Asia.[24] Prior to 2015, the majority of the group's attacks were concentrated in Iraq and Syria, but the attacks elsewhere in 2015 resulted in more than 1,000 deaths.[25] It is believed active ISIL cells currently operate in Yemen, Egypt, Algeria, Saudi Arabia, Libya, Afghanistan, and Nigeria.[26]

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[10] *Id.*
[11] *Id.* at 25. Some of these powers are also triggered in the event the President declares a national emergency.
[12] 50 U.S.C. s. 1702.
[13] 10 U.S.C. s. 2538
[14] 10 U.S.C. s. 2644
[15] 47 U.S.C. s. 606.
[16] Elsea and Grimmett, at 25.
[17] *Id,* citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 518 (2004) (O'Connor, J., plurality opinion) and *Hamdi v. Rumsfeld*, 542 U.S. 507, 588-89 (2004) (Thomas, J., dissenting).
[18] John W. Rollins and Heidi M. Peters, *The Islamic State—Frequently Asked Questions: Threats, Global Implications, and U.S. Policy Responses* 1, Congressional Research Services, available at https://www.fas.org/sgp/crs/mideast/R44276.pdf.
[19] *Id.*
[20] *Id.*
[21] *What is 'Islamic State'?*, BBC (Dec. 2, 2015), http://www.bbc.com/news/world-middle-east-29052144.
[22] A "caliphate," a state governed by a "caliph," refers to the religious and political successors of Muhammad. Disputes over succession form the basis of the early fissures in Islam. Gerhard Bowering, *The Princeton Encyclopedia of Islamic Political Thought* 202 (1st ed. 2013).
[23] Rollins and Peters, at 1.
[24] Christopher M. Blanchard and Carla E. Humud, *The Islamic State and U.S. Policy* 4, Congressional Research Service, available at https://fas.org/sgp/crs/mideast/R43612.pdf.
[25] Rollins and Peters, at 2.
[26] *Id.*

November 2015 Paris Attacks

On November 13, 2015, ISIL conducted a series of coordinated terrorist attacks in and around Paris, France. Attacks against Stade de France, the Bataclan theatre, and four other sites left 130 people dead and more than 350 injured.[27] ISIL claimed responsibility for the attack in a statement issued November 14, calling Paris "the lead carrier of the cross in Europe" and threatening violence against all nations opposed to their activities in Iraq and Syria.[28]

Operation Inherent Resolve

On June 15, 2014, the United States and its allies launched Operation Inherent Resolve to combat ISIL.[29] As of January 19, 2016, American and coalition forces have conducted 9,782 airstrikes against ISIL in Syria and Iraq.[30] The American-led coalition contains 60 nations and partner organizations conducting military operations, stopping the flow of fighters and funds to ISIL, and addressing humanitarian crises that ISIL has previously exploited as a recruitment tool.[31] As a result of the operation, Kurdish forces and Arab allies have been able to recapture portions of Iraq and northern Syria.[32] It is unclear what impact Operation Inherent Resolve has had on the number of fighters ISIL is able to field in Iraq and Syria, with some reports suggesting the group has been forced to resort to conscription in some areas, while others suggest ISIL is still being replenished with significant numbers of foreign fighters.[33]

In addition to the efforts of the American-led coalition, Russian forces have engaged in the conflict.[34] While initially acting in support of Syrian President Bashir al-Assad, Russian efforts have been focused on ISIL since the group targeted a Russian airliner on October 31, 2015, killing all 224 passengers.[35]

Legal Status of Operation Inherent Resolve

Operation Inherent Resolve was initially launched under a claim of Presidential authority pursuant to the President's Article II powers as commander-in-chief.[36] However, later statements of the Obama administration cited to the authorizations for the use of military force against al-Qaeda and Iraq as providing the legal basis for the strikes.[37] The President also indicated in November 2014 that he intended to seek explicit Congressional authorization to specifically target ISIL, in order to "right-size and update" the earlier authorizations.[38]

Debates over a new authorization for the use of military force are still on-going. The Senate Foreign Relations Committee voted to approve a new AUMF in December 2014, but final passage was

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[27] Matthew Dalton, et al., *Seven Militants Led Deadly Paris Attacks*, Wall St. Journal (Nov. 14, 2015) http://www.wsj.com/articles/paris-attacks-were-an-act-of-war-by-islamic-state-french-president-francois-hollande-says-1447498080.
[28] Swati Sharma, *Islamic State claims responsibility for Paris attacks*, Washington Post (Nov. 14, 2015), https://www.washingtonpost.com/news/worldviews/wp/2015/11/14/islamic-state-claims-responsibility-for-paris-attacks/.
[29] *See* Chris Carroll, *Global War on Terrorism Expeditionary Medal authorized for Operation Inherent Resolve*, Stars and Stripes (Oct. 31, 2014), http://www.stripes.com/news/global-war-on-terrorism-expeditionary-medal-authorized-for-operation-inherent-resolve-1.311466 (declaring June 15, 2014 as beginning of eligibility period for troops engaged in Operation Inherent Resolve).
[30] United States Dept. of Defense, *Operation Inherent Resolve: Targeted Operations against ISIL Terrorists*, http://www.defense.gov/News/Special-Reports/0814_Inherent-Resolve (last visited Jan. 23, 2016).
[31] Rollins and Peters, at 3.
[32] Blanchard and Humud, at 5.
[33] *Id.*
[34] Rollins and Peters, at 4.
[35] *Id.*
[36] *Id.* at 5.
[37] *Id.*
[38] *Id.*

hindered by concerns of whether the authority granted to the President was too restricted.[39] The issue was again raised after the Obama administration announced in November 2015 that 50 special operations forces were being sent to Syria to act as advisors to allied rebel groups.[40]

Pending Legislation

There are currently several proposals pending in Congress authorizing the President to use military force against ISIL.

Senate Joint Resolution 29 would authorize the President to use "all necessary and appropriate force" to defend the national security of the United States against ISIL and associated forces, organizations, and persons as well as any successor organizations.[41] The resolution would also require the President to submit a report to Congress at least once every sixty days to provide updates on matters relevant to the resolution.

An earlier measure, Senate Joint Resolution 26, contains virtually identical language.[42] Senate Joint Resolution 26 has a companion measure in the House.[43]

The broad contours of these resolutions appear to derive from a joint resolution filed in 2015.[44] House Joint Resolution 33 would authorize the President to use force against ISIL and associated persons and forces. The resolution would have also repealed the 2002 authorization for the use of military force against Iraq.

Another resolution, House Joint Resolution 27, is structured more narrowly to only allow the President to use force against ISIL.[45] The resolution would also repeal the 2001 and 2002 authorizations for the use of military force against al-Qaeda and Iraq, respectively.

House Joint Resolution 73 asserts that a "state of war" exists between the United States and ISIL and authorizes the President to "use the Armed Forces of the United States to carry on war against the Islamic State."[46]

Effect of the Memorial

The memorial urges Congress to exercise its power, pursuant to Article I, Section 8 of the United States Constitution, to authorize the use of military force against al-Qaeda, ISIL, and all other global Islamic terrorist organizations that similarly engage in acts of terrorism against the United States, its people, and allied and friendly governments and peoples.

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.

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[39] Karen DeYoung, *Senate committee approves military action against Islamic State*, Washington Post (Dec. 11, 2014), https://www.washingtonpost.com/world/national-security/senate-committee-approves-military-action-against-islamic-state/2014/12/11/48dbd0fc-815b-11e4-9f38-95a187e4c1f7_story.html.

[40] Karoun Demirjian, *Boots on the ground in Syria have lawmakers calling for a new AUMF*, Washington Post (Nov. 1, 2015), https://www.washingtonpost.com/news/powerpost/wp/2015/11/01/boots-on-the-ground-in-syria-has-lawmakers-calling-for-a-new-aumf/.

[41] S.J.Res 29, 114th Cong. (2016).

[42] S.J.Res. 26, 114th Cong (2015). S.J. Res 29 contains a precatory clause about ISIL's use of social media and its online magazine in an attempt to radicalize Americans and inspire attacks within the United States.

[43] H.Con.Res. 106, 114th Cong (2016).

[44] H.J.Res. 33, 114th Cong. (2015).

[45] H.J.Res. 27, 114th Cong. (2015).

[46] H.J.Res. 73, 114th Cong. (2015).

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.

B. SECTION DIRECTORY: Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other: None.

B. RULE-MAKING AUTHORITY: The memorial does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 27, 2016, the Local & Federal Affairs Committee adopted one amendment and reported the memorial favorably as a committee substitute. The amendment urges the Congress of the United States to authorize the use of military force and makes a technical correction to one of the precatory clauses.

This analysis is drawn to the bill as amended.

House Memorial

A memorial to the Congress of the United States, urging Congress to authorize the use of military force against al-Qaeda, the Islamic State of Iraq and the Levant (ISIL), and all other global Islamic terrorist organizations that similarly engage in acts of terrorism.

WHEREAS, the attacks on the United States of September 11, 2001, were organized and financed by al-Qaeda, and

WHEREAS, another global Islamic terrorist organization, whether known as the Islamic State of Iraq and the Levant (ISIL), the Islamic State of Iraq and Syria (ISIS), the Islamic State, or by the Arabic acronym Daesh, claimed responsibility for coordinated attacks launched against six sites across Paris, France, on November 13, 2015, resulting in the loss of at least 129 innocent lives and the severe wounding of many hundreds, and

WHEREAS, ISIL systematically targets, kidnaps, and kills innocent men, women, and children throughout Iraq and Syria, continues to expand its terror influence, and is responsible for recent attacks in Egypt, Lebanon, Tunisia, and France, and

WHEREAS, al-Qaeda, ISIL, and other global Islamic terrorist organizations have committed unprovoked acts of war against the government and people of the United States and against allied and friendly governments and their populations, NOW, THEREFORE,

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

That the Congress of the United States, by the power vested in it by Section 8, Article I of the United States Constitution, is urged to approve an authorization for the use of military force against al-Qaeda, the Islamic State of Iraq and the Levant (ISIL), and all other global Islamic terrorist organizations that similarly engage in acts of terrorism against the United States and its people and against allied and friendly governments and their populations.

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 #: HB 4035 Pesticide Registration
SPONSOR(S): Combee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N	Gregory	Harrington
2) Agriculture & Natural Resources Appropriations Subcommittee	13 Y, 0 N	Lolley	Massengale
3) State Affairs Committee		Gregory	Camechis

SUMMARY ANALYSIS

Generally, each brand of pesticide distributed, sold, or offered for sale within the state must be registered with the Department of Agriculture and Consumer Services (DACS) biennially and is subject to a registration fee. In 2009, the Legislature created a supplemental biennial registration fee (supplemental fee) for each registered brand of pesticide that contains an active ingredient for which the United States Environmental Protection Agency (EPA) has established a food tolerance limit to defray the expense of the Chemical Residue Laboratory. DACS uses the supplemental fee to support the Chemical Residue Laboratory, which performs chemical analyses of poisonous or deleterious chemical residues remaining in or on human food produced or marketed in Florida.

The bill eliminates the supplemental fee for each registered brand of pesticide that contains an active ingredient for which the EPA has established a food tolerance limit.

The House proposed Fiscal Year 2016-2017 General Appropriations Act provides $1,801,131 from the General Revenue Fund to support the Chemical Residue Laboratory.

The bill will have a positive fiscal impact on individuals who distribute, sell, or offer to sell pesticides by eliminating the supplemental fee.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Pesticide Registration

Effective January 1, 2009, each brand of pesticide[1] distributed, sold, or offered for sale, except as otherwise provided, within the state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state, must be registered with the Department of Agriculture and Consumer Services (DACS) and is subject to a biennial registration fee.[2] DACS assesses each pesticide registration beginning in an odd-numbered year a fee of $700 per brand of pesticide and a fee of $200 for each special local need label and experimental use permit.[3] The registration expires on December 31 of the following year.[4] DACS assesses each pesticide registration beginning in an even-numbered year a fee of $350 per brand of pesticide and fee of $100 for each special local need label and experimental use permit.[5] That registration expires on December 31 of that year.[6]

Supplemental Registration Fee

In 2009, the Legislature amended s. 487.041, F.S., to defray the expense of the Chemical Residue Laboratory by creating a supplemental biennial registration fee (supplemental fee) for each registered brand of pesticide that contains an active ingredient for which the United States Environmental Protection Agency (EPA) has established a food tolerance limit in 40 C.F.R. part 180.[7] DACS must biennially publish by rule a list of the pesticide active ingredients for which a brand of pesticide is subject to the supplemental fee.[8] DACS assesses each registration beginning in an odd-numbered year a supplemental registration fee of $630 per brand of pesticide that is subject to the supplemental fee.[9] DACS assesses each registration beginning in an even-numbered year a supplemental registration fee of $315 per brand of pesticide that is subject to the supplemental fee.[10]

The revenue from these two fees, less those costs determined by DACS to be nonrecurring or one-time costs, must be deferred over the 2-year registration period, deposited in the General Inspection Trust Fund, and used by DACS to carry out the provisions of the Florida Pesticide Law.[11] Revenues collected from the supplemental fee may also be used by DACS to test pesticides for food safety.[12]

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[1] Section 487.021(49), F.S., defines the term "pesticide" to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, or other forms of plant or animal life or viruses, except viruses, bacteria, or fungi on or in living humans or other animals, which the department by rule declares to be a pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant. The term does not include any article that is a "new animal drug" within the meaning of s. 201(w) of the Federal Food, Drug, and Cosmetic Act, has been determined by the Secretary of the US Department of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article; or is an animal feed within the meaning of s. 201(x) of the Federal Food, Drug, and Cosmetic Act.
[2] Section 487.041(1), F.S.
[3] Section 487.041(1)(c), F.S.
[4] Id.
[5] Id.
[6] Id.
[7] Section 32, ch. 2009-66, Laws of Fla.
[8] Section 487.041(1)(d)1., F.S.
[9] Section 487.041(1)(d)2., F.S.
[10] Id.
[11] Section 487.041(1)(e), F.S.
[12] Id.

Chemical Residue Laboratory

For food safety purposes, the Chemical Residue Laboratory tests food for pesticides. The Chemical Residue Laboratory performs chemical analyses of poisonous or deleterious chemical residues remaining in or on human food produced or marketed in Florida.[13] The Bureau of Chemical Residue Laboratories uses the laboratory for the regulatory enforcement of federal pesticide and antibiotic residue tolerances and guidelines adopted by the state for raw agricultural produce.[14] DACS operates the Chemical Residue Laboratory in Tallahassee.[15] This is the only state laboratory in Florida dedicated to chemical residue analysis in foods.[16]

Prior to the creation of the supplemental fee in 2009, DACS received General Revenue to support the Chemical Residue Laboratory.[17] Currently, DACS uses revenues received from the supplemental fee to fund the Chemical Residue Laboratory.[18]

Effect of the Proposed Changes

The bill eliminates the supplemental fee for each registered brand of pesticide that contains an active ingredient for which the EPA has established a food tolerance limit in 40 C.F.R. part 180 by repealing paragraph 487.041(1)(d), F.S., and removing references to the supplemental fee throughout the section.

B. SECTION DIRECTORY:

Section 1. Amends s. 487.041, F.S., relating to pesticide registration.

Section 2. 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.

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[13] DACS, *Bureau of Chemical Residue Laboratory*, http://www.freshfromflorida.com/Divisions-Offices/Food-Safety/Bureaus-and-Sections/Bureau-of-Chemical-Residue-Laboratory (last visited November 17, 2015).
[14] Id.
[15] Id.
[16] DACS, Agency Analysis of 2016 House Bill 4035, p. 1 (November 16, 2015).
[17] Full Appropriations Council on General Government and Health Care, 2009 House of Representatives Staff Analysis for House Bill 5125, p. 2 (April 7, 2009).
[18] DACS, Agency Analysis of 2016 House Bill 4035, p. 1 (November 16, 2015).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have a positive fiscal impact on individuals who distribute, sell, or offer to sell pesticides by eliminating the supplemental fee for each registered brand of pesticide that contains an active ingredient for which the EPA has established a food tolerance limit in 40 C.F.R. part 180.

D. FISCAL COMMENTS:

The House proposed Fiscal Year 2016-2017 General Appropriations Act provides $1,801,131 from the General Revenue Fund to support the Chemical Residue Laboratory.

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 pesticide registration; amending s. 487.041, F.S.; deleting provisions relating to supplemental registration fees for certain pesticides that contain active ingredients for which the United States Environmental Protection Agency has established food tolerance limits; providing an effective date.

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

Section 1. Section 487.041, Florida Statutes, is amended to read:

487.041 Registration.—

(1)(a) Effective January 1, 2009, each brand of pesticide, as defined in s. 487.021, which is distributed, sold, or offered for sale, except as provided in this section, within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state must be registered in the office of the department, and such registration shall be renewed biennially. Emergency exemptions from registration may be authorized in accordance with the rules of the department. The registrant shall file with the department a statement including:

1. The name, business mailing address, and street address of the registrant.

2. The name of the brand of pesticide.

3. An ingredient statement and a complete current copy of the labeling accompanying the brand of pesticide, which must conform to the registration, and a statement of all claims to be made for it, including directions for use and a guaranteed analysis showing the names and percentages by weight of each active ingredient, the total percentage of inert ingredients, and the names and percentages by weight of each "added ingredient."

(b) Effective January 1, 2009, for the purpose of defraying expenses of the department in connection with carrying out the provisions of this part, each registrant shall pay a biennial registration fee for each registered brand of pesticide. The registration of each brand of pesticide shall cover a designated 2-year period beginning on January 1 of each odd-numbered year and expiring on December 31 of the following year.

(c) Each registration issued by the department to a registrant for a period beginning in an odd-numbered year shall be assessed a fee of $700 per brand of pesticide and a fee of $200 for each special local need label and experimental use permit, and the registration shall expire on December 31 of the following year. Each registration issued by the department to a registrant for a period beginning in an even-numbered year shall be assessed a fee of $350 per brand of pesticide and fee of $100 for each special local need label and experimental use permit, and the registration shall expire on December 31 of that year.

~~(d)1. Effective January 1, 2009, in addition to the fees assessed pursuant to paragraphs (b) and (c), for the purpose of defraying the expenses of the department for testing pesticides for food safety, each registrant shall pay a supplemental biennial registration fee for each registered brand of pesticide that contains an active ingredient for which the United States Environmental Protection Agency has established a food tolerance limit in 40 C.F.R. part 180. The department shall biennially publish by rule a list of the pesticide active ingredients for which a brand of pesticide is subject to the supplemental registration fee.~~

~~2. Each registration issued by the department to a registrant for a period beginning in an odd-numbered year shall be assessed a supplemental registration fee of $630 per brand of pesticide that is subject to the fee pursuant to subparagraph 1. Each registration issued by the department to a registrant for a period beginning in an even-numbered year shall be assessed a supplemental registration fee of $315 per brand of pesticide that is subject to the fee pursuant to subparagraph 1. The department shall retroactively assess the supplemental registration fee for each brand of pesticide that registered on or after January 1, 2009, and that is subject to the fee pursuant to subparagraph 1.~~

(d) ~~(e)~~ All revenues collected, less those costs determined by the department to be nonrecurring or one-time costs, shall be deferred over the 2-year registration period, deposited in the

General Inspection Trust Fund, and used by the department in carrying out the provisions of this chapter. ~~Revenues collected from the supplemental registration fee may also be used by the department for testing pesticides for food safety.~~

(e)~~(f)~~ If the renewal of a brand of pesticide, including the special local need label and experimental use permit, is not filed by January 31 of the renewal year, an additional fee of $25 per brand of pesticide shall be assessed per month and added to the original fee. This additional fee may not exceed $250 per brand of pesticide. The additional fee must be paid by the registrant before the renewal certificate for the registration of the brand of pesticide is issued. The additional fee shall be deposited into the General Inspection Trust Fund.

(f)~~(g)~~ This subsection does not apply to distributors or retail dealers selling brands of pesticide if such brands of pesticide are registered by another person.

(g)~~(h)~~ All registration fees, including ~~supplemental fees and~~ late fees, are nonrefundable.

(h)~~(i)~~ For any currently registered pesticide product brand that undergoes labeling revisions during the registration period, the registrant shall submit to the department a copy of the revised labeling along with a cover letter detailing such revisions before the sale or distribution in this state of the product brand with the revised labeling. If the labeling revisions require notification of an amendment review by the United States Environmental Protection Agency, the registrant

shall submit an additional copy of the labeling marked to identify those revisions.

(i) ~~(j)~~ Effective January 1, 2013, all payments of any pesticide registration fees, including ~~supplemental fees and~~ late fees, shall be submitted electronically using the department's Internet website for registration of pesticide product brands.

(2) The department shall adopt rules governing the procedures for the registration of a brand of pesticide and~~,~~ for the review of data submitted by an applicant for registration of the brand of pesticide~~, and for biennially publishing the list of active ingredients for which a brand of pesticide is subject to the supplemental registration fee pursuant to subparagraph (1)(d)1~~. The department shall determine whether the brand of pesticide should be registered, registered with conditions, or tested under field conditions in this state. The department shall determine whether each request for registration of a brand of pesticide meets the requirements of current state and federal law. The department, whenever it deems it necessary in the administration of this part, may require the manufacturer or registrant to submit the complete formula, quantities shipped into or manufactured in the state for distribution and sale, evidence of the efficacy and the safety of any pesticide, and other relevant data. The department may review and evaluate a registered pesticide if new information is made available that indicates that use of the pesticide has caused an unreasonable

adverse effect on public health or the environment. Such review shall be conducted upon the request of the State Surgeon General in the event of an unreasonable adverse effect on public health or the Secretary of Environmental Protection in the event of an unreasonable adverse effect on the environment. Such review may result in modifications, revocation, cancellation, or suspension of the registration of a brand of pesticide. The department, for reasons of adulteration, misbranding, or other good cause, may refuse or revoke the registration of the brand of any pesticide after notice to the applicant or registrant giving the reason for the decision. The applicant may then request a hearing, pursuant to chapter 120, on the intention of the department to refuse or revoke registration, and, upon his or her failure to do so, the refusal or revocation shall become final without further procedure. The registration of a brand of pesticide may not be construed as a defense for the commission of any offense prohibited under this part.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4041 Write-in Candidates
SPONSOR(S): Geller
TIED BILLS: **IDEN./SIM. BILLS:** SB 410

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	10 Y, 0 N	Toliver	Williamson
2) Transportation & Economic Development Appropriations Subcommittee	11 Y, 0 N	Cobb	Davis
3) State Affairs Committee		Toliver LT	Camechis

SUMMARY ANALYSIS

The Florida Constitution sets forth residency requirements for legislators, county commissioners, justices and judges, and the governor, lieutenant governor, and members of the cabinet. The constitutional residency requirement for legislators, county commissioners, justices and judges has been interpreted by Florida courts to mean that residency within the district represented by the office sought is required at the time of election or at the time the candidate assumes office.

The Florida Statutes provide a residency requirement for write-in candidates. Section 99.0615, F.S., requires a write-in candidate to reside within the district represented by the office sought at the time of qualification. Florida's First and Fourth District Courts of Appeal recently found the statute unconstitutional because it conflicts with the residency requirements within the Florida Constitution, which requires residency at the time of election and not at the time of qualification. Both cases have been appealed to the Florida Supreme Court, which has heard oral arguments but not issued an opinion in either case.

This bill repeals s. 99.0615, F.S., which was found unconstitutional by the First and Fourth District Courts of Appeal.

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:

Residency Requirements for Candidates

The Florida Constitution sets forth eligibility requirements, including residency requirements, for legislators,[1] county commissioners,[2] justices,[3] judges,[4] and the governor, lieutenant governor, and members of the cabinet.[5] The Florida Supreme Court has held that the legislature is prohibited from imposing any additional eligibility requirements upon candidates for these offices;[6] however, the legislature is allowed to mandate certain qualifications solely for the purpose of entry onto the ballot, such as full and public disclosure of financial interests, taking an oath, and paying filing fees.[7]

The Florida Constitution sets forth the following residency requirements:

- A legislator must be an elector and resident of the district in which elected, and must have resided in the state for two years prior to the election.[8]
- A county commissioner must be elected from the district from which he or she resides.[9]
- A justice or judge must reside in the territorial jurisdiction of the court from which elected.[10]
- The governor, lieutenant governor, and members of the cabinet must be an elector who has resided in the state for the seven years preceding the election.[11]

The Florida Constitution requires the governor, lieutenant governor, and members of the cabinet to meet residency requirements at the time of election.[12] In addition, state courts have interpreted the Florida Constitution to establish specific dates by which residency requirements must be met for certain constitutional officers. Legislators[13] and county commissioners[14] must be residents of the district represented by the office sought at the time of election, while justices and judges must be residents at the time of assuming office.[15]

The Florida Statutes also provide residency requirements in certain instances. For example, section 1001.361, F.S., provides that notwithstanding any local law or county charter, each candidate for district school board member must, at the time of qualification, be a resident of the district school board member residence area from which the candidate seeks election. Section 1001.463, F.S., provides that the office of district school superintendent is automatically vacated if the superintendent moves from the district he or she represents.

As for municipal elections, s. 100.3605, F.S., provides that The Florida Election Code governs the conduct of a municipality's election in the absence of an applicable special act, charter, or ordinance provision. As such, city commissioners must be residents of the district represented by the office

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[1] Article III, s. 15(c), FLA. CONST.
[2] Article VIII, s. 1(e), FLA. CONST.
[3] Article V, s. 8, FLA. CONST.
[4] *Id.*
[5] Article IV, s. 5, FLA. CONST.
[6] *State v. Grassi*, 532 So.2d 1055 (Fla. 1988).
[7] *Matthews v. Steinberg*, 153 So.3d 295, 297 (Fla. 1st DCA 2014) citing *Norman v. Ambler*, 46 So.3d 178, 182-83 (Fla. 1st DCA 2010).
[8] Article III, s. 15(c), FLA. CONST.
[9] Article VIII, s. 1(e), FLA. CONST.
[10] Article V, s. 8, FLA. CONST.
[11] Article IV, s. 5(b), FLA. CONST.
[12] Article IV, s. 5, Fla. Const.
[13] *Norman*, 46 So.3d at 183.
[14] *Grassi*, 532 So.2d at 1056.
[15] *Miller v. Mendez*, 804 So.2d 1243, 1247 (2001).

sought at the time of assuming office, unless otherwise provided by special act, charter, or ordinance provision.[16]

Residency Requirements for Write-in Candidates

Section 99.0615, F.S., requires a write-in candidate to reside, at the time of qualification, within the district represented by the office.

Litigation Concerning Residency Requirements for Write-in Candidates

In September 2014, the Florida Fourth District Court of Appeal held in *Francois v. Brinkmann* that s. 99.0615, F.S., was unconstitutional because "the timing of its residency requirement for write-in candidates conflicts with the timing of the residency requirement for county commission candidates as established by Article VIII, section 1(e) of the Florida Constitution."[17] The case involved a county commission primary where five candidates were on the ballot and an additional candidate, Mr. Francois, entered the race as a write-in candidate.[18] Mr. Francois did not live in the district represented by the office sought at the time of filing his papers to qualify as a write-in candidate.[19] In *Francois*, the court reasoned that s. 99.0615, F.S., imposed qualifications in contravention to those specified in the constitution and, therefore, the statute was unconstitutional.[20]

One month following the *Francois* decision, the Florida First District Court of Appeal also held s. 99.0615, F.S., unconstitutional in *Matthews v. Steinberg*.[21] The *Matthews* case involved a write-in candidate for state representative who did not "reside within the district he wished to represent at the time he filed his qualifying paperwork with the Division of Elections."[22] The *Matthews* court, like the *Francois* court,[23] found that the statutory requirement that residency occur at the time of qualification was in direct contravention of the Florida Constitution's requirement of residency at the time of election and, therefore, was unconstitutional.[24]

Both cases, *Francois* and *Matthews*, were appealed to the Florida Supreme Court.[25] The Florida Supreme Court ordered the proceedings for the *Matthews* case stayed pending disposition of the *Francois* case.[26] The Florida Supreme Court heard oral arguments for the *Francois* case on April 9, 2015, but has not issued an opinion.[27]

Effect of the Bill

The bill repeals s. 99.0615, F.S., which was found unconstitutional by the First and Fourth District Courts of Appeal. As a result, write-in candidates for constitutional offices with residency requirements must comply with residency requirements either at the time of election or at the time the candidate assumes office, rather than at the time of qualification.

B. SECTION DIRECTORY:

Section 1 repeals s. 99.0615, F.S., relating to write-in candidate residency requirements.

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[16] Division of Elections Opinion 94-04 (1994).
[17] *Francois v. Brinkmann*, 147 So.3d 613, 616 (Fla. 4th DCA 2014); appeal filed with the Florida Supreme Court *(Brinkmann v. Francois*, SC14-1899).
[18] *Id.*
[19] *Id.*
[20] *Francois*, 147 So.3d at 616.
[21] *Matthews*, 153 So.3d 295; appeal filed with the Florida Supreme Court (*Steinberg v. Matthews*, SC14-2202).
[22] *Id.*
[23] *Id.* at 297 citing *Francois*, 147 So.3d at 615 ("The statutory requirement directly contravenes and adds to the constitutional fiat that legislators reside in the district at the time of election.")
[24] *Id.* at 298
[25] *Brinkmann v. Francois*, SC14-1899; *Steinberg v. Matthews*, SC14-2202.
[26] *Steinberg v. Matthews*, SC14-2202, Order Stay Proceedings, 11/17/2014, available at http://jweb.flcourts.org/pls/docket/ds_docket?p_caseyear=2014&p_casenumber=2202 (last visited 12/11/2015).
[27] *Brinkmann v. Francois*, SC14-1899.

Section 2 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   The constitutionality of s. 99.0615, F.S., is currently before the Florida Supreme Court in *Brinkmann v. Francois*, SC14-1899; however, the Florida Supreme Court has not issued an opinion in the case.

B. RULE-MAKING AUTHORITY:

The bill does not appear to require any additional rulemaking authority for the Division of Elections, 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 write-in candidates; repealing s. 99.0615, F.S., relating to a requirement that a write-in candidate reside within the district of the office sought at the time of qualification; providing an effective date.

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

Section 1. Section 99.0615, Florida Statutes, is repealed.

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