



Government Operations Subcommittee

**Tuesday, March 17, 2015
8:00 AM
Webster Hall (212 Knott)**

Meeting Packet

**Steve Crisafulli
Speaker**

**Michael Bileca
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Government Operations Subcommittee

Start Date and Time: Tuesday, March 17, 2015 08:00 am
End Date and Time: Tuesday, March 17, 2015 11:00 am
Location: Webster Hall (212 Knott)
Duration: 3.00 hrs

Consideration of the following bill(s):

HB 109 Federal Write-In Absentee Ballot by Broxson
CS/HB 583 Single-Sex Public Facilities by Civil Justice Subcommittee, Artiles
HB 647 City of Jacksonville, Duval County by Ray
HB 913 State Board of Administration by Trumbull
HB 1283 Inspectors General by Rader
HB 1309 Publicly Funded Retirement Plans by Drake
HB 4043 Write-in Candidates by Geller
HB 7041 Public Records/Customer E-mail Addresses/DHSMV by Highway & Waterway Safety Subcommittee, Steube

Consideration of the following proposed committee substitute(s):

PCS for HB 1279 -- Retirement

Consideration of the following proposed committee bill(s):

PCB GVOPS 15-06 -- OGSR Credit History Information and Credit Scores
PCB GVOPS 15-07 -- OGSR Stalking Victims

NOTICE FINALIZED on 03/13/2015 16:18 by Love.John

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 109 Federal Write-In Absentee Ballot
SPONSOR(S): Broxson and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 184

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Toliver <i>LT</i>	Williamson <i>Raw</i>
2) Transportation & Economic Development Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Absent uniformed services voters and overseas voters may vote via three different types of ballots: state absentee ballots, state write-in absentee ballots, or federal write-in absentee ballots.

Federal write-in absentee ballots (FWABs) are available to absent uniformed services voters and overseas voters who apply for, but do not receive, a state absentee ballot. FWABs can be used to vote in any general election for federal office, and in state or local elections involving two or more candidates. Approximately 2,268 voters used FWABs in Florida in the 2012 general election, which is approximately 2.6 percent of the total absentee ballots cast by uniformed services and overseas voters.

The bill expands the permitted uses of FWABs to include uncontested races, merit retention races, and ballot measures. Additionally, the bill delays the canvassing of FWABs to 10 days after the presidential preference primary or general election.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Federal Write-in Absentee Ballots

The federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) requires each state to permit absent uniformed services and overseas voters who apply for, but do not receive, a state absentee ballot to use a federal write-in absentee ballot (FWAB) to vote in any general election for federal office.¹ Florida law expands the use of a FWAB to include state or local elections involving two or more candidates.² Therefore, FWABs are not permitted for an uncontested race, a merit retention race (in which there is only one candidate), or a ballot measure (in which there are no candidates).³

Absent uniformed services and overseas voters may obtain a FWAB through the Federal Voting Assistance Program (FVAP).⁴ FVAP provides assistance for absent uniformed services and overseas voters. FVAP's website provides a step-by-step guide for voters to either request an absentee ballot or fill out a FWAB. The website includes information regarding how and where to mail the FWAB once completed.

In an election for federal office, the voter completes the FWAB by writing the name of the candidate in boxes designated for President/Vice President, U.S. Senator, and U.S. Representative. In an election for state or local office, the voter completes the section designated as "addendum" for non-federal races by writing the title of each office and the name of the candidate for whom the voter is voting.⁵

Except for primary, special primary, or nonpartisan elections, the voter may write in the name of a political party as opposed to the name of the candidate. In federal, state, and local elections, a voter's designation of a political party must be counted as a vote for the candidate of that party if there is a party candidate in the race.⁶

For races with joint candidacy, such as President/Vice President or Governor/Lieutenant Governor, a vote for one or both candidates on the same ticket constitutes a vote for the joint candidacy.⁷ If a candidate in the election is affiliated with a political party whose name includes the word "Independent," "Independence," or a similar term, a voter's designation on the FWAB of "No Party Affiliation" or "Independent," or any other minor variation, misspelling, or abbreviation thereof is considered a designation for the candidate, except for a write-in candidate who qualified to run with no party affiliation. If more than one candidate qualifies with no party affiliation, the voter's designation does not count for any candidate unless there is a valid, additional designation of the candidate's name.⁸

In determining the validity of a FWAB, any abbreviation, misspelling, or other minor variation in the form of the name of an office, the name of a candidate, or the name of a political party must be disregarded.⁹

An absent uniformed services or overseas voter who submits a FWAB and later receives an official absentee ballot may still submit the official absentee ballot. A voter in this situation should make every

¹ 52 U.S.C. § 20302 (2014).

² FLA. STAT. § 101.6952(2) (2014).

³ The FWAB permits the use of ballot measures, but Florida law currently precludes the use of a FWAB to vote on a ballot measure.

⁴ Federal Voting Assistance Program, available at: <http://www.fvap.gov/> (last viewed January 27, 2015).

⁵ FLA. STAT. § 101.6952(2)(b) (2014).

⁶ *Id.*

⁷ FLA. STAT. § 101.6952(2)(c) (2014).

⁸ FLA. STAT. § 101.6952(2)(d) (2014).

⁹ FLA. STAT. § 101.6952(2)(e) (2014).

reasonable effort to inform the local supervisor of elections that he or she has submitted more than one ballot.¹⁰ If both an official absentee ballot and a FWAB are received by 7 p.m. on election day, the FWAB is invalid and the official absentee ballot is canvassed.¹¹

Absent voters must mail FWABs to the supervisor of elections of the county where they reside. FWABs may not be canvassed before 7 p.m. on the day of the election.¹² FWABs not received by 7 p.m. on the day of the election will not be counted.¹³

FWABs must be submitted and processed in the same manner provided by law for state absentee ballots for the state in which the voter is voting. A FWAB is not valid if the voter is an overseas voter (*not* an absent uniformed services voter) who submits the ballot from any location within the United States. A FWAB is not counted if the application for an absentee ballot is received by the state election official after a certain deadline.¹⁴ An application for an absentee ballot must be timely received in order for a FWAB to count.¹⁵

Approximately 2,268 voters submitted FWABs in Florida in the 2012 general election, which is approximately 2.6 percent of the total absentee ballots cast by uniformed services and overseas voters.¹⁶

State Absentee Ballots

The UOCAVA requires each state to permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for federal office.¹⁷ Florida law also permits the use of state absentee ballots for all state and local elections involving two or more candidates.¹⁸ Any voter may obtain an absentee ballot by submitting a request to his or her supervisor of elections in person, by phone, or in writing (online or by mail, fax, or e-mail).¹⁹ Absent uniformed services and overseas voters may receive their state absentee ballots by forwardable mail, e-mail, or fax machine transmission.²⁰ The voter may designate in the absentee ballot request the preferred method of transmission.²¹ The ballot must be delivered by mail if the voter does not designate the method of transmission.²²

State absentee ballots for uniformed services and overseas voters may only be returned by mail, by fax, in person, or through someone else on behalf of the voter.²³ To be accepted and counted, the ballots must be received by the supervisor of elections by 7 p.m. on election day.²⁴ For state absentee ballots returned by absent uniformed services and overseas voters in a presidential preference primary or general election, the ballot is counted if it is postmarked or dated no later than the date of the election, and it is received by the supervisor of elections no later than 10 days after the date of the election.²⁵

¹⁰ FLA. STAT. § 101.6952(3)(a) (2014); 52 U.S.C. § 20303(b) (2014).

¹¹ FLA. STAT. § 101.6952(3)(b) (2014).

¹² *Id.*

¹³ *Id.*

¹⁴ 52 U.S.C. § 20303(b)(2) (2014). The deadline is the later of the state's deadline or 30 days before the general election.

¹⁵ 52 U.S.C. § 20303(a)(1) (2014).

¹⁶ U.S. Election Assistance Commission, *2012 Uniformed and Overseas Citizens Absentee Voting Act Report*, July 2013, available at: http://www.eac.gov/research/uocava_studies.aspx (last viewed January 27, 2015).

¹⁷ 52 U.S.C. § 20302(a)(1) (2014).

¹⁸ FLA. STAT. § 101.6952(2)(a) (2014).

¹⁹ FLA. STAT. § 101.62(1)(a)-(b) (2014).

²⁰ FLA. STAT. § 101.62(4)(c)(2) (2014).

²¹ *Id.*

²² *Id.*

²³ FLA. ADMIN. CODE R. 1S-2.030(4) (2014).

²⁴ FLA. STAT. § 101.67(2) (2014).

²⁵ FLA. STAT. § 101.6952(5) (2014).

As of 2014, more than 450,000 U.S. Department of Defense employees are stationed overseas.²⁶ Approximately 57,285 uniformed services voters used state absentee ballots in Florida in the 2012 general election.²⁷

State Write-in Absentee Ballots

An overseas voter also may request, no earlier than 180 days before a general election, a state write-in absentee ballot (SWAB) from his or her supervisor of elections. The voter must state that due to military or "other contingencies" that preclude normal delivery, the voter cannot vote a state absentee ballot during the normal absentee voting period. SWABs must be made available to voters 90 to 180 days prior to a general election.²⁸ The SWAB must contain all offices (federal, state, and local) for which the voter would otherwise be entitled to vote.²⁹ On the SWAB, the voter may indicate the name of the candidate or a political party, in which case the ballot is counted for the candidate of that political party, if there is a party candidate on the ballot.³⁰ Any abbreviation, misspelling, or other minor variation in the form of a candidate or a political party must be disregarded in determining the validity of the ballot if there is a clear indication on the ballot that the voter has made a definite choice.³¹ For the retention of justices of the Supreme Court and judges of a district court of appeal, the supervisor must print the names of the incumbent justices and judges scheduled to be on the ballot for retention in the election on the SWAB.³²

Department of State Rulemaking Authority

The Department of State (DOS) generally is authorized to adopt rules to obtain and maintain uniformity in the interpretation and implementation of the election laws.³³ Section 102.166(4)(b), F.S., requires DOS to adopt rules for FWABs and specifies the minimum issues the rules must address. DOS has adopted a rule providing the standards for determining a voter's choice on a FWAB.³⁴

Effect of Proposed Changes

The bill expands the permitted uses of FWABs to include uncontested races, merit retention races,³⁵ and ballot measures.

For uncontested races, a voter indicates the uncontested race in the first blank of the FWAB. In the second blank, the voter indicates the candidate's name or political party.

For ballot measures, a voter indicates in the first blank the ballot measure and, in the second blank, indicates a yes or no vote. The bill requires that any abbreviation, misspelling, or other minor variation in the form of the ballot measure be disregarded in determining the validity of the ballot. The bill does not explicitly specify what methods a voter can use to indicate which ballot measure he or she intends to vote (i.e., "Ballot Measure 1," "Tax Measure," etc.).

A vote cast in a judicial merit retention election is treated in the same manner as a vote cast for a ballot measure. In the second blank of the FWAB, the voter may only indicate "yes" or "no." The bill does not explicitly specify what methods a voter would use to indicate which judicial officer he or she intends to vote for or against (i.e., "Florida Supreme Court Justice," "John Smith," "Supreme Court Justice/John Smith," etc.). It appears that DOS has sufficient rulemaking authority to address these issues.

²⁶ U.S. Dept. of Defense website, available at: <http://www.defense.gov/about/> (last viewed January 27, 2015).

²⁷ U.S. Election Assistance Commission, *2012 Uniformed and Overseas Citizens Absentee Voting Act Report*, July 2013, available at: http://www.eac.gov/research/uocava_studies.aspx (last viewed January 28, 2015).

²⁸ FLA. STAT. § 101.6951(1) (2014). The SWAB form is established by FLA. ADMIN. CODE R 1S-2.028 (2003).

²⁹ FLA. STAT. § 101.6951(4) (2014).

³⁰ FLA. STAT. § 101.6951(2) (2014).

³¹ FLA. STAT. § 101.6951(3) (2014).

³² FLA. ADMIN. CODE R. 1S-2.028 (2003).

³³ FLA. STAT. § 97.012(1) (2014).

³⁴ See FLA. ADMIN. CODE R 1S-2.051 (2013).

³⁵ See FLA. CONST. art. V, § 10.

The bill requires that a FWAB from an overseas voter for use in a presidential preference primary or a general election cannot be canvassed until 10 days after the election. The bill specifies that if an official state absentee ballot is received before 10 days after the election then the FWAB will be invalid and the state absentee ballot will be counted in its stead.

The bill expands DOS's required rulemaking regarding the FWAB to include changes made by the bill.

The bill makes various editorial changes.

B. SECTION DIRECTORY:

Section 1: amends s. 101.6952, F.S., relating to absentee ballots for absent uniformed services voters and overseas voters.

Section 2: amends s. 102.166, F.S., revising minimum requirements for DOS rules.

Section 3: provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

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:

None.

B. RULE-MAKING AUTHORITY:

The bill expands existing rulemaking to include changes made by the bill. Specifically, it directs DOS to include "ballot measures" within its rules concerning the interpretation of a voter's choice on a FWAB.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

27 (3), and subsection (5) of section 101.6952, Florida Statutes,
 28 is amended to read:

29 101.6952 Absentee ballots for absent uniformed services
 30 and overseas voters.—

31 (2)(a) An absent uniformed services voter or an overseas
 32 voter who makes timely application for but does not receive an
 33 official absentee ballot may use the federal write-in absentee
 34 ballot to vote in any federal, election and any state, or local
 35 election ~~involving two or more candidates.~~

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

44 2. In ~~an election for~~ a state or local election ~~office,~~ an
 45 elector may vote in the section of the federal write-in absentee
 46 ballot designated for nonfederal races by writing on the ballot
 47 the title of each office and by writing on the ballot the name
 48 of the candidate for whom the elector is voting. Except for a
 49 primary, special primary, or nonpartisan election, the elector
 50 may alternatively designate a candidate by writing the name of a
 51 political party on the ballot. A written designation of the
 52 political party shall be counted as a vote for the candidate of

53 that party if there is such a party candidate in the race. In
54 addition, the elector may vote on any ballot measure presented
55 in such election by identifying the ballot measure on which he
56 or she desires to vote and specifying his or her vote on the
57 measure. For purposes of this section, a vote cast in a judicial
58 merit retention election shall be treated in the same manner as
59 a ballot measure in which the only allowable responses are "Yes"
60 or "No."

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

65 (d) For purposes of this subsection and except when ~~where~~
66 the context clearly indicates otherwise, such as when ~~where~~ a
67 candidate in the election is affiliated with a political party
68 whose name includes the word "Independent," "Independence," or a
69 similar term, a voter designation of "No Party Affiliation" or
70 "Independent," or any minor variation, misspelling, or
71 abbreviation thereof, shall be considered a designation for the
72 candidate, other than a write-in candidate, who qualified to run
73 in the race with no party affiliation. If more than one
74 candidate qualifies to run as a candidate with no party
75 affiliation, the designation may ~~shall~~ not count for any
76 candidate unless there is a valid, additional designation of the
77 candidate's name.

78 (e) Any abbreviation, misspelling, or other minor

79 variation in the form of the name of an office, the name of a
 80 candidate, the ballot measure, or the name of a political party
 81 must be disregarded in determining the validity of the ballot.
 82 (3)
 83 (b) A federal write-in absentee ballot may not be
 84 canvassed until 7 p.m. on the day of the election. A federal
 85 write-in absentee ballot from an overseas voter in a
 86 presidential preference primary or general election may not be
 87 canvassed until the conclusion of the 10-day period specified in
 88 subsection (5). Each federal write-in absentee ballot received
 89 by 7 p.m. on the day of the election shall be canvassed pursuant
 90 to ss. 101.5614(5) and 101.68, unless the elector's official
 91 absentee ballot is received by 7 p.m. on election day. Each
 92 federal write-in absentee ballot from an overseas voter in a
 93 presidential preference primary or general election received by
 94 10 days after the date of the election shall be canvassed
 95 pursuant to ss. 101.5614(5) and 101.68, unless the overseas
 96 voter's official absentee ballot is received by 10 days after
 97 the date of the election. If the elector's official absentee
 98 ballot is received by 7 p.m. on election day, or, for an
 99 overseas voter in a presidential preference primary or general
 100 election, no later than 10 days after the date of the election,
 101 the federal write-in absentee ballot is invalid and the official
 102 absentee ballot shall be canvassed. The time shall be regulated
 103 by the customary time in standard use in the county seat of the
 104 locality.

105 (5) An absentee ballot from an overseas voter in any
 106 presidential preference primary or general election which is
 107 postmarked or dated no later than the date of the election and
 108 is received by the supervisor of elections of the county in
 109 which the overseas voter is registered no later than 10 days
 110 after the date of the election shall be counted as long as the
 111 absentee ballot is otherwise proper.

112 Section 2. Subsection (4) of section 102.166, Florida
 113 Statutes, is amended to read:

114 102.166 Manual recounts of overvotes and undervotes.—

115 (4)(a) A vote for a candidate or ballot measure shall be
 116 counted if there is a clear indication on the ballot that the
 117 voter has made a definite choice.

118 (b) The Department of State shall adopt specific rules for
 119 the federal write-in absentee ballot and for each certified
 120 voting system prescribing what constitutes a "clear indication
 121 on the ballot that the voter has made a definite choice." The
 122 rules shall be consistent, to the extent practicable, and may
 123 not:

124 1. Exclusively provide that the voter must properly mark
 125 or designate his or her choice on the ballot; or

126 2. Contain a catch-all provision that fails to identify
 127 specific standards, such as "any other mark or indication
 128 clearly indicating that the voter has made a definite choice."

129 (c) The rule for the federal write-in absentee ballot must
 130 address, at a minimum, the following issues:

131 1. The appropriate lines or spaces for designating a
 132 candidate choice and, for state and local races, the office or
 133 ballot measure to be voted, including the proximity of each to
 134 the other and the effect of intervening blank lines.

135 2. The sufficiency of designating a candidate's first or
 136 last name when no other candidate in the race has the same or a
 137 similar name.

138 3. The sufficiency of designating a candidate's first or
 139 last name when an opposing candidate has the same or a similar
 140 name, notwithstanding generational suffixes and titles such as
 141 "Jr.," "Sr.," or "III." The rule should contemplate the
 142 sufficiency of additional first names and first initials, middle
 143 names and middle initials, generational suffixes and titles,
 144 nicknames, and, in general elections, the name or abbreviation
 145 of a political party.

146 4. Candidate designations containing both a qualified
 147 candidate's name and a political party, including those in which
 148 ~~where~~ the party designated is the candidate's party, is not the
 149 candidate's party, has an opposing candidate in the race, or
 150 does not have an opposing candidate in the race.

151 5. Situations where the abbreviation or name of a
 152 candidate is the same as the abbreviation or name of a political
 153 party to which the candidate does not belong, including those in
 154 which ~~where~~ the party designated has another candidate in the
 155 race or does not have a candidate in the race.

156 6. The use of marks, symbols, or language, such as arrows,

157 quotation marks, or the word "same" or "ditto," to indicate that
 158 the same political party designation applies to all listed
 159 offices or the elector's approval or disapproval of all listed
 160 ballot measures.

161 7. Situations in which ~~where~~ an elector designates the
 162 name of a qualified candidate for an incorrect office.

163 8. Situations in which ~~where~~ an elector designates an
 164 otherwise correct office name that includes an incorrect
 165 district number.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 583 Single-Sex Public Facilities
SPONSOR(S): Civil Justice Subcommittee; Artiles and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1464

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	9 Y, 4 N, As CS	Bond	Bond
2) Government Operations Subcommittee		Moore <i>AM</i>	Williamson <i>Law</i>
3) Judiciary Committee			

SUMMARY ANALYSIS

Commonly held social conventions provide that persons should honor single-sex facilities such as bathrooms, locker rooms, changing rooms, and other similar facilities. However, no statute specifically prohibits a person of one sex from entering a facility intended for use by the other sex. Recently, local governments have enacted ordinances specifically allowing persons to use any single-sex facility with which such person identifies.

The bill:

- Provides definitions, including defining the terms “female” and “male.”
- Provides that it is a second degree misdemeanor criminal offense for a person of one sex to enter a single-sex facility designated for persons of the opposite sex;
- Creates a civil cause of action against a person of one sex who enters a single-sex facility designated for persons of the opposite sex;
- Creates a civil cause of action against an entity that does not take steps to prevent persons of one sex from entering a single-sex facility designated for persons of the opposite sex;
- Provides exceptions that appear to conform to social norms allowing persons of one sex to enter into a single-sex facility of the opposite sex;
- Provides that exclusion of a person from a single-sex facility of the opposite sex does not violate state discrimination laws; and
- Pre-empts local ordinances that are in conflict.

The bill does not appear to have a fiscal impact on state government. The bill may have an indeterminate negative fiscal impact on local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Commonly held social conventions provide that persons should honor single-sex facilities such as bathrooms, locker rooms, changing rooms, and other similar facilities, with certain exceptions. However, no current law specifically prohibits a person of one sex from entering a facility intended for use by the opposite sex.

It is possible that current criminal laws on voyeurism¹ and trespass² may provide for punishment of a person of one sex who enters a facility designated for the opposite sex in violation of social norms; however, there would be barriers to prosecution.³ It is possible that common law civil causes of action for intentional infliction of emotional distress or invasion of privacy will apply to situations where a person of one sex enters a facility designated for the opposite sex.

Some persons born to one sex identify themselves as a person of the opposite sex. These persons are commonly referred to as "transgender."⁴ The United States Department of State will issue a passport designating the opposite sex of birth if the gender transition is certified by a physician to be in process or complete.⁵ The Florida Department of Highway Safety and Motor Vehicles will issue a driver license in the other sex if the "customer is undergoing appropriate clinical treatment for gender transition."⁶ The department's policy provides that "[s]exual reassignment surgery is not a prerequisite for a driver license or identification card issuance," and the "Department's policy on gender change requirements follow standards established by the World Professional Association for Transgender Health (WPATH), recognized as the authority in this field by the American Medical Association."⁷

Effect of the Bill

The bill creates the following legislative intent:

The purpose of this act is to secure privacy and safety for all individuals using single-sex public facilities. The Legislature finds that:

- There is a longstanding history of restricting access to single-sex public facilities on the basis of sex.
- There is an expectation of privacy in single-sex public facilities.
- Users of single-sex public facilities reasonably expect not to be exposed to individuals of the other sex while using those facilities.
- Single-sex public facilities are places of increased vulnerability and present the potential for crimes against individuals using those facilities, including, but not limited to, assault, battery, molestation, rape, voyeurism, and exhibitionism.

¹ Section 810.14, F.S.

² Section 810.08, F.S.

³ Voyeurism requires proof that observation of the victim be done with "lewd, lascivious, or indecent intent" and requires that the observation be secret. Trespass requires either unauthorized entry or refusal to leave after request. No Florida case has found that trespass law means that a person is not authorized to enter a single sex facility of the opposite sex.

⁴ The term "transgender" is an "umbrella term for people whose gender identity and/or gender expression differs from what is typically associated with the sex they were assigned at birth." Definition from the GLAAD Media Reference Guide, available at <http://www.glaad.org/reference/transgender> (last accessed March 5, 2015).

⁵ U.S. Department of State, Bureau of Consular Affairs, *Gender Reassignment Applicants*, <http://travel.state.gov/content/passports/english/passports/information/gender.html> (last accessed March 13, 2015).

⁶ Florida Department of Highway Safety and Motor Vehicles, *Gender Reassignment*, <http://fdhsmv.rapidinstites.com/answer/gender-reassignment> (last accessed March 13, 2015).

⁷ *Id.*

Definitions

The bill defines the term:

- "Female" to mean either a biological female or a person recognized as female in a driver license or U.S. passport.
- "Male" to mean either a biological male or a person recognized as male in a driver license or U.S. passport.
- "Person" to mean a natural person or human being.
- "Public accommodations" to have the same meaning as provided in s. 760.02, F.S.⁸
- "Single-sex public facilities" to mean bathrooms, restrooms, dressing rooms, fitting rooms, locker rooms, showers, and other similar facilities where there is a reasonable expectation of privacy; that are maintained by a government or by an owner of public accommodations, a school, or a place of employment; that are conspicuously designated with appropriate signage for use by persons of only one sex; and that are designed or designated to be used by more than one person at a time.
- "Sex" to mean a person's gender as male or female.

Criminal Penalty

The bill provides that single-sex public facilities designated for females are restricted to females, and facilities for males are restricted to males.

A person who knowingly and willfully enters a single-sex public facility designated for or restricted to persons of the other biological sex commits a second degree misdemeanor. A second degree misdemeanor is punishable by up to 60 days confinement in the county jail and/or a fine up to \$500.

Civil Cause of Action

The bill creates two separate civil causes of action:

- A person who knowingly and willfully enters a single-sex public facility designated for the other biological sex is liable in a civil action to any person who is lawfully using the same single-sex public facility at the time of the unlawful entry for the damages caused by the unlawful entry, together with reasonable attorney fees and costs.
- An owner of public accommodations, a school, or a place of employment who maintains single-sex public facilities and knowingly advertises, promotes, or encourages use of those facilities by persons of the opposite sex, or fails to take reasonable remedial measures after learning of such use, is liable in a civil action to any person who is lawfully using those facilities at the time

⁸ Section 760.02, F.S., defines the term to mean "places of public accommodation, lodgings, facilities principally engaged in selling food for consumption on the premises, gasoline stations, places of exhibition or entertainment, and other covered establishments. Each of the following establishments which serves the public is a place of public accommodation within the meaning of this section:

(a) Any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than four rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his or her residence.

(b) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment, or any gasoline station.

(c) Any motion picture theater, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment.

(d) Any establishment which is physically located within the premises of any establishment otherwise covered by this subsection, or within the premises of which is physically located any such covered establishment, and which holds itself out as serving patrons of such covered establishment."

of the unlawful entry for the damages caused by the unlawful entry, together with reasonable attorney fees and costs.

Exemptions Applicable to Criminal and Civil Actions

The bill creates numerous exemptions that are applicable to both criminal and civil actions:

- The prohibitions do not apply to public facilities that are gender-neutral or that are conspicuously designated for unisex or family use.
- The prohibitions do not apply to a public facility that is designated for use by only one person at a time.
- A person may use an opposite-sex facility if it is the only facility reasonably available at the time.
- A family member or designee may enter an opposite-sex facility as necessary to assist a person.
- A person who needs assistance may enter an opposite-sex facility if accompanied by a family member or designee of the opposite sex who will provide assistance.
- A person may enter an unoccupied facility designated for persons of the opposite sex provided that another person waits outside the to notify others that an opposite-sex person is in the single-sex facility;
- A person may enter an unoccupied facility designated for persons of the opposite sex provided that the person locks the door.
- An employee who is performing cleaning or maintenance may enter an opposite-sex facility.

Relation to Other Laws

The bill provides that it does not require any place of public accommodation, school, or place of employment to construct or maintain single-sex public facilities or to modify existing public facilities; and provides that restricting access to single-sex public facilities in the manner required by the bill is not unlawful discrimination under s. 760.08, F.S.⁹

Preemption of Local Ordinances

The provisions of this bill specifically preempt any law, regulation, policy, or decree enacted or adopted by any city, county, municipality, or other political subdivision within the state that purports to permit or require owners of public accommodations, schools, or places of employment to permit use of single-sex public facilities by persons whose biological sex is different from the sex for which such facilities are designated.

B. SECTION DIRECTORY:

Section 1 provides legislative intent.

Section 2 creates s. 760.55, F.S., regarding privacy for persons using single-sex public facilities.

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

⁹ Section 760.08, F.S., entitled "Discrimination in places of public accommodation," provides that: "All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this chapter, without discrimination or segregation on the ground of race, color, national origin, sex, handicap, familial status, or religion."

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill creates a new misdemeanor offense that may increase the local expenditures related to local law enforcement and jail costs. The potential cost is indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. Where state preemption applies, however, it precludes a local government from exercising authority in that particular area. Preemption may be either express or implied.¹⁰ The bill appears to create express preemption over certain local ordinances.

This bill may implicate the Equal Protection Clause of the United States Constitution¹¹ and/or the similar clause in the Florida Constitution.¹² No controlling court has ruled on the appropriate standard of review of a law regarding public facilities, and no controlling court has ruled on whether a law like the one created by this bill violates the Equal Protection Clause. Case law in this area has focused on employment discrimination. In general, sex-based discrimination by a state government is subject to intermediate scrutiny. This standard requires the government to show that its gender classification

¹⁰ Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).

¹¹ The 14th Amendment reads in pertinent part: "No State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws."

¹² Article I, s. 2, Fla. Const., reads in pertinent part: "All natural persons, female and male alike, are equal before the law"

is substantially related to a sufficiently important government interest. Federal courts have found that employment discrimination based on "gender stereotype"¹³ or based on an employee's status as a transgender person¹⁴ violates the federal Equal Protection Clause. It is possible that the legislative findings in Section 1 of the bill provide sufficiently important government interests to justify the sex-based discrimination created by this bill.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Several Florida local governments have enacted ordinances prohibiting discrimination based on "gender identity or gender expression." Some of these explicitly, and others appear to, have the effect, in part, of allowing persons of one sex to access public facilities designated for use by persons of the opposite sex where the person assumes the opposite gender identity. Those ordinances would be partially affected by the preemption provision in this bill.¹⁵ It is believed that there are approximately 20 local government ordinances as of December 2014¹⁶ that may be affected by the preemption created by this bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 4, 2015, the Civil Justice Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The amendments:

- Recognize that a person who has changed his or her sexual category on their passport or their driver license is classified as a person of the opposite or new sex. The bill previously required persons to use the public facility of their sex at birth.
- Specify that government-owned public facilities are covered by the bill.
- Reduce the criminal offense level from a first degree misdemeanor to a second degree misdemeanor.
- Add exceptions that allow use of the opposite-sex public facility if it is the only facility reasonably available at the time; if it is necessary to assist a family member or other person in need; if another person stands at the door to notify others that an opposite-sex person is in the single-sex facility; if the facility is unoccupied when entering and the person locks the door; and if the entry is by cleaning and maintenance employees.

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

¹³ *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989).

¹⁴ *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011).

¹⁵ See, e.g., Miami-Dade ordinance at art. III, s. 11A-19, as amended by Legislative Item File Number 141932 on December 2, 2014.

¹⁶ *Miami-Dade commission to hold final vote on transgender-protections law*, The Miami Herald, December 1, 2014, viewable at <http://www.miamiherald.com/news/local/community/miami-dade/article4232851.html> (last accessed March 5, 2015)(access may be limited without subscription).

1 A bill to be entitled
 2 An act relating to single-sex public facilities;
 3 providing purpose and legislative findings; creating
 4 s. 760.55, F.S.; providing definitions; requiring that
 5 use of single-sex public facilities be restricted to
 6 persons of the sex for which the facility is
 7 designated; prohibiting knowingly and willfully
 8 entering a single-sex public facility designated for
 9 or restricted to persons of the other sex; providing
 10 criminal penalties; providing a private cause of
 11 action against violators; providing exemptions;
 12 providing applicability with respect to other laws;
 13 providing for preemption; providing an effective date.

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

17 Section 1. (1) The purpose of this act is to secure
 18 privacy and safety for all individuals using single-sex public
 19 facilities.

20 (2) The Legislature finds that:

21 (a) There is a longstanding history of restricting access
 22 to single-sex public facilities on the basis of sex.

23 (b) There is an expectation of privacy in single-sex
 24 public facilities.

25 (c) Users of single-sex public facilities reasonably
 26 expect not to be exposed to individuals of the other sex while

27 | using those facilities.

28 | (d) Single-sex public facilities are places of increased
 29 | vulnerability and present the potential for crimes against
 30 | individuals using those facilities, including, but not limited
 31 | to, assault, battery, molestation, rape, voyeurism, and
 32 | exhibitionism.

33 | Section 2. Section 760.55, Florida Statutes, is created to
 34 | read:

35 | 760.55 Privacy for persons using single-sex public
 36 | facilities.—

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

38 | (a) "Female" means a biological female or a person who has
 39 | a valid driver license or United States passport that describes
 40 | the person as female on the license or passport.

41 | (b) "Male" means a biological male or a person who has a
 42 | valid driver license or United States passport that describes
 43 | the person as male on the license or passport.

44 | (c) "Person" means a natural person or human being.

45 | (d) "Public accommodations" has the same meaning provided
 46 | in s. 760.02.

47 | (e) "Single-sex public facilities" means bathrooms,
 48 | restrooms, dressing rooms, fitting rooms, locker rooms, showers,
 49 | and other similar facilities where there is a reasonable
 50 | expectation of privacy; that are maintained by a government or
 51 | an owner of public accommodations, a school, or a place of
 52 | employment; that are conspicuously designated with appropriate

53 | signage for use by persons of only one sex; and that are
 54 | designed or designated to be used by more than one person at a
 55 | time.

56 | (f) "Sex" means a person's gender as male or female.

57 | (2) PROHIBITED CONDUCT.—

58 | (a) Single-sex public facilities designated for females
 59 | shall be restricted to females.

60 | (b) Single-sex public facilities designated for males
 61 | shall be restricted to males.

62 | (c) A person who knowingly and willfully enters a single-
 63 | sex public facility designated for or restricted to persons of
 64 | the other sex commits a misdemeanor of the second degree,
 65 | punishable as provided in s. 775.082 or s. 775.083.

66 | (3) PRIVATE CAUSE OF ACTION.—

67 | (a) A person who knowingly and willfully enters a single-
 68 | sex public facility designated for the other sex is liable in a
 69 | civil action to any person who is lawfully using the same
 70 | single-sex public facility at the time of the unlawful entry for
 71 | the damages caused by the unlawful entry, together with
 72 | reasonable attorney fees and costs.

73 | (b) An owner of public accommodations, a school, or a
 74 | place of employment who maintains single-sex public facilities
 75 | and knowingly advertises, promotes, or encourages use of those
 76 | facilities in violation of subsection (2), or fails to take
 77 | reasonable remedial measures after learning of such use, is
 78 | liable in a civil action to any person who is lawfully using

79 | those facilities at the time of the unlawful entry for the
 80 | damages caused by the unlawful entry, together with reasonable
 81 | attorney fees and costs.

82 | (4) EXEMPTIONS.—This section does not apply to:

83 | (a) Gender-neutral public facilities or public facilities
 84 | that are conspicuously designated for unisex use or family use.

85 | (b) Public facilities that are designated to be used by
 86 | only one person at a time.

87 | (c) A person of one sex who uses a single-sex facility
 88 | designated for the opposite sex, if such single-sex facility is
 89 | the only facility, single-sex, gender neutral, or otherwise,
 90 | reasonably available at the time of the person's use of the
 91 | facility.

92 | (d) A family member or legal guardian of a person who
 93 | reasonably needs assistance in using a single-sex facility, or
 94 | someone designated by a family member or legal guardian of the
 95 | person, if the family member or legal guardian or his or her
 96 | designee enters a single-sex public facility that is designated
 97 | for the sex of the person in need of assistance in order to
 98 | assist the person in need of assistance.

99 | (e) A person who needs assistance in using a single-sex
 100 | facility when the person in need of assistance enters a single-
 101 | sex facility that is designated for the opposite sex, if the
 102 | person in need of assistance enters a single-sex facility with a
 103 | family member or legal guardian or his or her designee who is
 104 | the designated sex of the single-sex facility in order to assist

105 | the person in need of assistance.

106 | (f) A person who enters an unoccupied single-sex facility
 107 | that is designated for the opposite sex and either locks the
 108 | door or while another person waits outside the entrance to the
 109 | facility notifying others that a person of the opposite sex is
 110 | using the facility.

111 | (g) A person employed to clean or maintain a single-sex
 112 | facility.

113 | (5) RELATION TO OTHER LAWS.—

114 | (a) This section does not require any place of public
 115 | accommodation, school, or place of employment to construct or
 116 | maintain single-sex public facilities or to modify existing
 117 | public facilities.

118 | (b) Restricting access to single-sex public facilities in
 119 | the manner required by subsection (2) is not unlawful
 120 | discrimination under s. 760.08.

121 | (6) PREEMPTION.—This section preempts any law, regulation,
 122 | policy, or decree enacted or adopted by any city, county,
 123 | municipality, or other political subdivision within the state
 124 | that purports to permit or require owners of public
 125 | accommodations, schools, or places of employment to permit use
 126 | of single-sex public facilities by persons whose sex is
 127 | different from the sex for which such facilities are designated.

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



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 583 (2015)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Government Operations
 2 Subcommittee

3 Representative Artiles offered the following:

4
 5 **Amendment**

6 Between lines 112 and 113, insert:

7 (h) A journalist or media representative entering a
 8 single-sex facility, including, but not limited to, an athletic
 9 team's locker room, for bona fide journalistic purposes such as
 10 interviewing athletes or gathering information.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 647 City of Jacksonville, Duval County
SPONSOR(S): Ray
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	12 Y, 0 N	Zaborske	Miller
2) Government Operations Subcommittee		Toliver <i>LT</i>	Williamson <i>Raw</i>
3) Local & Federal Affairs Committee			

SUMMARY ANALYSIS

HB 647 is a local bill amending provisions of the Charter of the City of Jacksonville relating to the civil service board. Because City of Jacksonville's Civil Service and Personnel Rules and Regulations (Rules and Regulations) have been updated periodically, HB 647 makes changes to the Charter for the purpose of reconciling contradictions between the Charter and the Rules and Regulations. HB 647 amends provisions relating to the duties of the City of Jacksonville's civil service board (CSB) by:

- Providing that the CSB hears appeals initiated by *permanent* employees covered by the Rules and Regulations and charged with violations of the personnel provisions of the Rules and Regulations.
- Clarifying that the CSB hears and determines appeals concerning disciplinary action that *violates* the Rules and Regulations, rather than disciplinary action that is *inconsistent* with them.
- Providing that the CSB hears and determines complaints *initiated by any person covered by* the Rules and Regulations, rather than complaints by employees and prospective employees.
- Clarifying that the CSB hears complaints concerning alleged violations of *grievable* rules or regulations, rather than alleged violations of Rules and Regulations relating to hiring and promotion.
- Providing that if the CSB determines a violation of any *grievable* Rules and Regulations exists, then it is to order compliance with those Rules and Regulations.
- Providing that the CSB hears and determines grievances initiated by a person covered by the Rules and Regulations, rather than any person who simply may be entitled to be covered by them.
- Clarifying that grievances initiated by a person covered by the Rules and Regulations regarding action taken in the administration of *grievable* Rules and Regulations which pertain to employment or employment rights, *including hiring and promotions*, and that if the CSB determines the action is inconsistent with *grievable* Rules and Regulations then its order provides that the action be modified to comply with the *grievable* Rules and Regulations.

The bill will have an insignificant fiscal impact on the City of Jacksonville.

The act shall take effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Charter of the City of Jacksonville – Civil Service Board Duties

The Legislature created the Charter of the City of Jacksonville in 1967.¹ The Charter was amended in 1978,² and in 1992 it was codified.³ Article 17 of the Charter, as codified, establishes a civil service system for the employees of the “consolidated” government.⁴ The Charter provides that a civil service board will be comprised of seven elected members, serving 4-year terms,⁵ and sets forth the duties of the civil service board (CSB). The Charter sets forth the following CSB member duties:

- Periodically reviewing the operation and effect of the Charter’s personnel provisions, the classification plan, and the pay plan, and reporting its findings to the council and the mayor.
- Hearing and determining appeals initiated by employees charged with violations of the personnel provisions of the Charter and the civil service regulations authorized by ordinance or adopted civil service rules. If after review the CSB determines that the disciplinary action is inconsistent with such provisions, rules, or regulations, or concludes it is manifestly unjust under the circumstances, it must order that the disciplinary action be increased or decreased, or provide such other action as it deems appropriate, and set forth in its final order the specific reasons for its action.
- Hearing and determining complaints by employees and prospective employees concerning alleged violations of civil service rules or regulations with respect to hiring and promotion. If after review the CSB determines that a violation exists, it must order such action as it deems appropriate to ensure compliance with the rules or regulations pertaining to hiring and promotion.
- Hearing and determining the grievance of any person covered by the civil service rules or regulations or the grievance of any person who may be entitled to be covered by such civil service rules or regulations concerning any action taken in the administration of the rules and regulations pertaining to employment or employment rights. If after review the CSB determines the action taken is inconsistent with the rules or regulations, it must order that the action be modified by the appropriate office, department, board, or independent agency in order to ensure consistency and compliance with the rules and regulations.
- Performing other duties and responsibilities as prescribed by ordinance.

City of Jacksonville’s Civil Service and Personnel Rules and Regulations

The Charter requires the personnel department to establish the personnel policy by civil service and personnel rules and regulations adopted by the personnel department in accordance with the charter and the ordinances of the city.⁶ Before a proposed rule or regulation can take effect, the personnel department must forward the rule or regulation to the CSB and City Council for approval.⁷ Pursuant to this authority, the City of Jacksonville’s Civil Service and Personnel Rules and Regulations (Rules and

¹ Ch. 67-1320, Laws of Fla.

² Ch. 78-536, Laws of Fla.

³ Ch. 92-341, Laws of Fla.

⁴ Ch. 92-341, s. 1, at Art. 17, Laws of Fla.

⁵ Ch. 92-341, s. 1, at s. 17.02, Laws of Fla.

⁶ Ch. 92-341, s. 1, at s. 17.05(d), Laws of Fla.

⁷ *Id.*

Regulations) have been promulgated.⁸ The Rules and Regulations, which have been amended numerous times over the year, set forth comprehensive policies and procedures for the Board relating to civil service positions and employees within the City of Jacksonville, as authorized by the Charter and the Jacksonville Ordinance Code.⁹ The Rules and Regulations govern unless a contrary provision is negotiated as part of a collective bargaining agreement.¹⁰

Pursuant to the Rules and Regulations, upon any appointment to a classified position under Civil Service, an employee is classified as probationary, provisional, or permanent.¹¹ For permanent employees all of the Rules and Regulations generally apply, but for any other class of employee or a prospective employee only those Rules and Regulations specifically designated as applicable to those employees apply. An employee attains permanent status in a class upon satisfactory completion of the required probationary period. Once an employee has attained permanent status in any class, the employee has permanent status throughout the period of his or her continuous employment in the Civil Service.¹² The Rules and Regulations as applied to permanent status employees specifically designate instances as not grievable¹³ or instances as not subject to review.¹⁴ In contrast, for probationary employees, the Rules and Regulations specifically designate instances as "grievable." For example, a probationary employee who is separated from a class under rule nine of the Rules and Regulations only has a "grievable" cause of action with the CSB if the separation is undocumented.¹⁵

CSB Confusion Because of Conflicts between Charter and Rules and Regulations

The judgments and findings of the CSB are subject to review by the circuit court of the State of Florida having jurisdiction within Duval County.¹⁶ The Circuit Court of the Fourth Judicial Circuit, Duval County, has held that the City of Jacksonville's CSB violated individuals' due process rights where the CSB, relying on provisions in the Rules and Regulations which were narrower than those set forth in the Charter, refused to review the grievances.¹⁷ The court determined that the Rules and Regulations cannot remove the jurisdiction of the CSB that the Charter does not grant.¹⁸ In another case, the CSB dismissed a grievance seeking review of a promotional examination because the grieving employee, as part of the timed examination, had to complete a section that another individual was not required to complete because the section was eliminated.¹⁹ The CSB dismissed the grievance for lack of jurisdiction because the Rules and Regulations gave the head of personnel discretion in voiding or declaring an examination invalid, thereby giving the head of personnel final authority to decide the validity of examinations.²⁰ However, the court held that because the Charter provided that the CSB "shall . . . [h]ear and determine complaints by employees and prospective employees concerning

⁸ City of Jacksonville's Civil Service and Personnel Rules and Regulations, <http://www.coj.net/departments/employee-services/civil-service-and-personnel-rules-and-regulations.aspx> (last visited 03/03/2015).

⁹ *Id.* at s. .01.

¹⁰ *Id.*

¹¹ *Id.* at 6.01.

¹² *Id.* at 6.03.

¹³ *Id.* at s. 4.03(4)(a)2.

¹⁴ *Id.* at s. 7.02(4)(f).

¹⁵ *Id.* at s. 6.03(1)(f).

¹⁶ Ch. 92-341, s. 1, at s. 17.08, Laws of Fla

¹⁷ *Toliver v. Jacksonville Sheriff's Office*, Case No. 2014-CA-005550 (Fla 4th Cir. Ct. Nov. 10, 2014)("To the extent that Rule 7.02(4)(f) of the Civil Service Rules divests the CSB of jurisdiction, it conflicts with §17.04(d) of the Charter."); *James v. The City of Jacksonville*, Case No. 16-2007-6247 (Fla. 4th Cir. Ct. June 23, 2009).

¹⁸ *Id.*

¹⁹ *James v. The City of Jacksonville*, Case No. 16-2007-6247, at p. 3 (Fla. 4th Cir. Ct. June 23, 2009).

²⁰ *Id.*

alleged violations of civil services rules or regulations with respect to hiring and promotion," the individual was entitled to file a grievance.²¹

Effect of Proposed Changes

HB 647 amends the provisions of the Charter of the City of Jacksonville relating to the duties of the CSB with the objective of reconciling contradictions between the Charter and the Rules and Regulations. Specifically, HB 647:

- Provides that the CSB hears appeals initiated by any *permanent* employee covered by the Rules and Regulations who is charged with violations of the personnel provisions of the Rules and Regulations.
- Clarifies that the CSB hears and determines appeals concerning a disciplinary action that *violates* the Rules and Regulations, rather than a disciplinary action that is *inconsistent* with the Rules and Regulations.
- Provides that the CSB hears and determines complaints *initiated by any person covered by* the Rules and Regulations, rather than complaints by employees and prospective employees.
- Clarifies that the CSB hears complaints concerning alleged violations of *grievable* Rules and Regulations authorized by ordinance or the Rules and Regulations adopted pursuant to s. 17.05 of the Charter, rather than alleged violations of those Rules and Regulations related to hiring and promotion.
- Clarifies that if the CSB determines a violation exists the order should ensure compliance with *grievable* Rules and Regulations, rather than ensuring compliance with Rules and Regulations pertaining to hiring and promotion.
- Provides that the CSB hears and determines the grievance authorized by ordinance or the Rules and Regulations adopted pursuant to s. 17.05 of the Charter and initiated by a person covered by the Rules and Regulations, rather than any person who simply may be entitled to be covered by the Rules and Regulations.
- Clarifies that such grievances concern an action taken in the administration of *grievable* Rules and Regulations which pertain to his or her employment or employment rights, *including hiring and promotions*, and that if the CSB determines the action is inconsistent with *grievable* Rules and Regulations then the CSB will order the action be modified to comply with the *grievable* Rules and Regulations.

B. SECTION DIRECTORY:

Section 1: Amends the Charter of the City of Jacksonville, s. 17.04, Ch. 92-341, Laws of Fla., relating to the duties of the civil service board.

Section 2: The act shall take effect upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? November 18, 2014

WHERE? Daily Record, Jacksonville, Florida

²¹ *Id.*, citing Charter of the City of Jacksonville, Fla., s. 17.04(c) (2006) (internal quotation marks omitted).

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Charter provides that "[t]here shall be a civil service system for the employees of the consolidated government which shall promote the effective, efficient, and fair conduct of the public business."²² The Rules and Regulations allow prospective employees to appeal to the CSB. It is unclear whether the CSB, currently or with the amendments under HB 647, has the requisite authority to hear such appeals.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to the City of Jacksonville, Duval
 3 County; amending chapter 92-341, Laws of Florida, as
 4 amended; revising the authority of the civil service
 5 board to hear appeals, complaints, and grievances;
 6 providing an effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Section 17.04 of chapter 92-341, Laws of
 11 Florida, as amended, is amended to read:

12 Section 17.04. Duties of civil service board.—The civil
 13 service board shall:

14 (a) Periodically review the operation and effect of the
 15 personnel provisions of this charter, the classification plan,
 16 and the pay plan, and report their findings to the council and
 17 the mayor.

18 (b) Hear and determine appeals initiated by any permanent
 19 employee covered by the civil service rules and regulations
 20 ~~employees~~ who is ~~are~~ charged with violations of the personnel
 21 provisions of ~~this chapter and~~ the civil service rules and
 22 regulations authorized by ordinance or civil service rules
 23 adopted pursuant to section 17.05. If after review the civil
 24 service board determines that the disciplinary action violates
 25 ~~is inconsistent with such provisions,~~ rules, or regulations, or
 26 concludes that the disciplinary action is manifestly unjust

27 | under the circumstances, it shall order the reduction or
 28 | increase of the disciplinary action or provide such other action
 29 | as it deems appropriate. Should the board order a reduction,
 30 | increase, or other action with respect to the disciplinary
 31 | action, then the specific reasons for the board's actions shall
 32 | be set forth in the board's final order rendered at the appeal
 33 | hearing.

34 | (c) Hear and determine complaints initiated by any person
 35 | covered by the civil service rules and regulations ~~employees and~~
 36 | ~~prospective employees~~ concerning alleged violations of grievable
 37 | civil service rules or regulations authorized by ordinance or
 38 | civil service rules adopted pursuant to section 17.05 ~~with~~
 39 | ~~respect to hiring and promotion~~. If after review the civil
 40 | service board determines that such a violation exists, it shall
 41 | order such action as it deems appropriate in order to ensure
 42 | compliance with grievable ~~such~~ rules or regulations ~~pertaining~~
 43 | ~~to hiring and promotion~~.

44 | (d) Hear and determine the grievance authorized by
 45 | ordinance or civil service rules adopted pursuant to section
 46 | 17.05 which was initiated by ~~of~~ any person covered by the civil
 47 | service rules or regulations ~~of the consolidated government or~~
 48 | ~~the grievance of any person who may be entitled to be covered by~~
 49 | ~~such civil service rules or regulations~~ concerning any action
 50 | taken in the administration of grievable ~~such~~ rules and
 51 | regulations which pertain ~~pertains~~ to his or her employment or
 52 | employment rights, including hiring and promotions. If after

53 | review the civil service board determines the action taken to be
54 | inconsistent with the grievable rules or regulations, it shall
55 | order the modification of the action taken by the appropriate
56 | office, department, board, or independent agency in order to
57 | ensure consistency and compliance with such grievable rules and
58 | regulations.

59 | (e) Issue subpoenas to compel the attendance of witnesses
60 | and the production of books, papers, and records at hearings
61 | before the Civil Service Board. By Civil Service Board
62 | procedure, the Board may delegate the power to issue subpoenas
63 | to the Chairperson of the Civil Service Board, the Chief
64 | Administrative Officer, or other such Civil Service Board
65 | employee as the Board may specifically designate.

66 | (f) Perform such further duties and responsibilities as
67 | may be hereafter prescribed by ordinance.

68 | Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 913 State Board of Administration
SPONSOR(S): Trumbull
TIED BILLS: **IDEN./SIM. BILLS:** SB 7024

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Harrington	Williamson <i>DA</i>
2) Appropriations Committee			<i>RAW</i>

SUMMARY ANALYSIS

The State Board of Administration (SBA) is created in the State Constitution. The Governor, the Chief Financial Officer, and the Attorney General serve as the trustees of the SBA. The SBA provides a variety of investment services to various governmental entities at both the state and local government levels. The SBA has responsibility for oversight of the Florida Retirement System (FRS) Pension Plan investments and the FRS Investment Plan. The FRS is the primary retirement system for employees of the state, universities, state colleges, school boards, counties, and various other local governments.

Current law requires the SBA to determine the existence of affirmative action taken to eliminate the ethnic or religious discrimination practiced by the government of Northern Ireland, or with agencies or instrumentalities thereof. To assure compliance with the statutory restrictions, the SBA subscribes to several research services, which collect and analyze employment and other data on businesses operating within Northern Ireland. Since 2011, there have been no shareowner proposals submitted covering Northern Ireland.

The SBA administers the Local Government Surplus Trust Fund (Trust Fund), currently known as "Florida Prime." It is open to all units of local government for the purpose of investing surplus funds of the local government. In November 2007, the Trust Fund experienced an unanticipated liquidity crisis when participants withdrew an unprecedented \$14 billion in funds in a single month. Faced with this liquidity crisis, the SBA's trustees implemented a temporary four-day freeze on withdrawals and deposits and created a separate, second fund, the "Fund B Surplus Funds Trust Fund," to hold these distressed securities. As of September 2014, Fund B participants have received 100 percent of their original principal. Since returning the principal balance, additional returns and legal settlements have produced a residual balance within Fund B of approximately \$43 million.

The bill repeals the current limitation on the authority of the SBA to invest the funds of the FRS Trust Fund in institutions doing business in or with Northern Ireland.

The bill also directs the SBA to distribute any residual balance in the Fund B Surplus Funds Trust Fund to the trust fund participants based on each participant's proportional share of the November 2007 interest earnings that were withheld from distribution and transferred to the Fund B Surplus Funds Trust Fund.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Board of Administration

The State Board of Administration (SBA) is created in Art. IV, s. 4 (e) of the State Constitution. The Governor, the Chief Financial Officer, and the Attorney General serve as the trustees of the SBA. The SBA derives its powers to oversee state funds from Art. XII, s. 9 of the State Constitution. The SBA provides a variety of investment services to various governmental entities at both the state and local government levels. The SBA has responsibility for oversight of the Florida Retirement System (FRS) Pension Plan investments and the FRS Investment Plan. The FRS is the primary retirement system for employees of the state, universities, state colleges, school boards, counties, and various other local governments.

The table below shows the primary funds the SBA invests and the balances of those funds as of March 3, 2015.¹

All SBA Funds - Estimated Market Value As of March 3, 2015 - Market Close	
Fund Name	Estimated Current Value
Florida Retirement System Pension Plan	\$149,167,486,744
Florida PRIME	\$7,667,800,063
Fund B Surplus Funds Trust Fund	\$43,223,777
Florida Retirement System Investment Plan	\$8,893,520,502
Lawton Chiles Endowment Fund	\$632,207,394
Other SBA Mandates	\$16,352,489,404
Total	\$182,756,727,884

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.²

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 20 percent of assets should be invested in alternative investments.

¹ State Board of Administration "Daily Estimate Report" as of March 3, 2015, provided March 4, 2015 (on file with the Government Operations Subcommittee).

² Section 215.444, F.S.

Restrictions on Investments in Northern Ireland

Section 121.153, F.S., was enacted by the Legislature in 1988 and requires the SBA to determine the existence of affirmative action taken to eliminate the ethnic or religious discrimination practiced by the government of Northern Ireland, or with agencies or instrumentalities thereof.

Section 121.153(1)(b), F.S., lists nine (9) types of affirmative actions to eliminate the ethnic or religious discrimination practiced by the Northern Ireland government, agencies, and instrumentalities thereof.

These affirmative actions include:

- Increasing the representation of individuals from underrepresented religious groups in the workforce, including managerial, supervisory, administrative, clerical, and technical jobs;
- Providing adequate security for the protection of minority employees both at the workplace and while traveling to and from work;
- Banning provocative religious or political emblems from the workplace;
- Publicly advertising all job openings and making special recruitment efforts to attract applicants from underrepresented religious groups;
- Providing that layoff, recall, and termination procedures should not in practice favor particular religious groupings;
- Abolishing job reservations, apprenticeship restrictions, and differential employment criteria, which discriminate on the basis of religion or ethnic origin;
- Developing training programs that will prepare substantial numbers of current minority employees for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade, and improve the skills of minority employees;
- Establishing procedures to assess, identify, and actively recruit minority employees with potential for further advancement; and
- Appointing senior management staff members to oversee affirmative action efforts and setting up timetables to carry out affirmative action principles.

To assure compliance with the statutory restrictions, the SBA subscribes to several research services, which collect and analyze employment and other data on businesses operating within Northern Ireland (either through direct owned businesses, wholly-owned subsidiaries, or partially-owned subsidiaries).³ These research services provide the SBA with summaries of corporate fair employment practices, regulatory developments, and other information relevant to the corporate governance of companies with business operations in Northern Ireland.

In regard to FRS Trust Fund assets deposited in any financial institution, the SBA requires each financial institution to report whether it makes loans or extends credit to Northern Ireland or national corporations of Northern Ireland or agencies or instrumentalities thereof. To comply, the SBA annually solicits input from Bank of America, BNY Mellon, BlackRock, and Wells Fargo. During the 2014 fiscal year, Bank of America, BNY Mellon, BlackRock, and Wells Fargo reported no Northern Ireland lending activity or operations, consistent with the last several years.⁴

Additionally, the SBA's Corporate Governance Principles and Proxy Voting Guidelines incorporate these statutory requirements, and the SBA has historically supported any investor proposals advocating the elimination of ethnic or religious discrimination practices in Northern Ireland. Since 2011, there have been no shareowner proposals submitted covering Northern Ireland.⁵

Local Government Surplus Trust Fund and Fund B Surplus Funds Trust Fund

The Local Government Surplus Trust Fund (now known as "Florida Prime") was created by the Legislature in 1977.⁶ The Local Government Surplus Trust Fund is open to all units of local government

³ SBA analysis of HB 913, dated February 12, 2015 (on file with the Government Operations Subcommittee).

⁴ *Id.*

⁵ *Id.*

⁶ Section 218.405, F.S.

for the purpose of investing surplus funds of the local government. The SBA administers the fund.⁷ The primary investment objectives are safety, liquidity, and competitive returns with minimization of risks.⁸ The fund currently serves over 800 participants across the state, and the fund has assets of \$7.66 billion as of March 3, 2015.

In November 2007, the Local Government Surplus Trust Fund experienced an unanticipated liquidity crisis when participants withdrew an unprecedented \$14 billion in funds in a single month.⁹ The withdrawals were triggered by fears of exposure to so-called "subprime commercial paper." Faced with this liquidity crisis, the SBA's trustees implemented a temporary four-day freeze on withdrawals and deposits and created a separate, second fund, the "Fund B Surplus Funds Trust Fund," to hold these distressed securities. Fund B also was seeded with additional funding coming from the reserve account that existed in the Local Government Surplus Funds Trust Fund and the approximately \$95 million in November 2007 interest payments, which would have been distributed to all local government investment pool participants at month-end.¹⁰

In 2008, the Legislature passed a law to address the repayment of principal to Local Government Surplus Funds Trust Fund participants¹¹ and statutorily created the Fund B Surplus Funds Trust Fund.¹² Fund B's goal was to maximize the present value of original principal balances. As of September 2014, Fund B participants have received 100 percent of their original principal. Since returning the principal balance, additional returns and legal settlements have produced a residual balance within Fund B of approximately \$43 million.¹³

The Participant Local Government Advisory Council met to discuss the fair and appropriate distribution of residual proceeds. The Council determined the most equitable method of distribution would be the transfer of residual proceeds to those who were members in November 2007, on a pro-rata share of the interest withheld in November 2007.¹⁴

Effect of Proposed Changes

The bill repeals s. 121.153, F.S., relating to investments in institutions doing business in or with Northern Ireland. Thus, the bill deletes the current limitation on the authority of the SBA to invest the funds of the FRS Trust Fund in institutions doing business in or with Northern Ireland.

The bill also directs the SBA to distribute any residual balance in the Fund B Surplus Funds Trust Fund, after the original principal balance has been repaid to the trust fund participants. The distribution must be based on each's participant's proportional share of the November 2007 interest earnings that were withheld from distribution and transferred to the Fund B Surplus Funds Trust Fund.

B. SECTION DIRECTORY:

Section 1. repeals s. 121.153, F.S., relating to investments in institutions doing business in or with Northern Ireland.

Section 2. amends s. 218.421, F.S., providing for the distribution of Fund B Surplus Funds Trust Fund assets to certain participants.

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

⁷ Section 218.405(1), F.S.

⁸ Section 218.405(2), F.S.

⁹ *Supra* at FN 3.

¹⁰ *Id.*

¹¹ Section 218.422, F.S.

¹² Section 218.417, F.S.

¹³ *Supra* at FN 3.

¹⁴ *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill directs the SBA to distribute the remaining balance of the Pool B funds to local governments who were participants of the Local Government Surplus Trust Fund in November 2007, and who did not receive an interest distribution during that month. As of February 25, 2015, Fund B had a balance of approximately \$43.2 million.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to the State Board of Administration;
 3 repealing s. 121.153, F.S., relating to investments in
 4 institutions doing business in or with Northern
 5 Ireland; amending s. 218.421, F.S.; providing for the
 6 distribution of Fund B Surplus Funds Trust Fund assets
 7 to certain participants; providing an effective date.
 8

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

10
 11 Section 1. Section 121.153, Florida Statutes, is repealed.

12 Section 2. Paragraph (e) of subsection (2) of section
 13 218.421, Florida Statutes, is amended to read:

14 218.421 Fund B Surplus Funds Trust Fund; purpose;
 15 rulemaking; administration; reporting.-

16 (2)


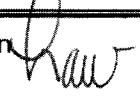
17 (e) After the trust fund self-liquidates through the full
 18 return of Fund B Surplus Funds Trust Fund assets to
 19 participants, whereby each participant's balance is restored to
 20 its original principal balance and all expenses relating to
 21 liquidation of the assets are paid, any residual balance shall
 22 be transferred within the time established by the State Board of
 23 Administration to each participant in the Local Government
 24 Surplus Funds Trust Fund who, at any time during November 2007,
 25 was entitled to but did not receive a November 2007 interest
 26 payment on invested funds. The amount paid to each participant

27 shall be based on the participant's proportional share of the
 28 total November 2007 interest earned by all participants in the
 29 Local Government Surplus Funds Trust Fund that was not disbursed
 30 but instead was transferred to the trust fund to maximize the
 31 payout of principal. If any income attributable to any
 32 investment, held directly or indirectly at any time by the trust
 33 fund, is received by the State Board of Administration after the
 34 residual balance is paid out to all entitled participants
 35 pursuant to this paragraph, such income shall be deposited into
 36 the Local Government Surplus Funds Trust Fund, ~~any remaining~~
 37 ~~reserve may be transferred by the trustees at their sole~~
 38 ~~discretion back to the trust fund from which the assets were~~
 39 ~~originally separated.~~

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1279 Retirement
SPONSOR(S): Government Operations Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

Chapters 175 and 185, F.S., were created to provide uniform retirement system benefits for firefighters who are employed by a municipal or special fire control district, and for municipal police officers. A Firefighters' Pension Trust Fund is funded through an excise tax of 1.85 percent imposed on the gross premiums of property insurance covering property within the boundaries of the municipality. A Police Officers' Pension Trust Fund is funded through an excise tax of 0.85 percent imposed on the gross premiums on casualty insurance policies covering property within the boundaries of the municipality. The Municipal Firefighters' Pension Trust Fund and Police Officers' Pension Trust Fund are administered by a local governing board of trustees that is created in participating cities and special fire control districts, and subject to the regulatory oversight of the Division of Retirement.

The bill amends parallel provisions in chapters 175 and 185, F.S., relating to the membership and responsibilities of the board of trustees.

The bill provides that the board of trustees must consist of five members. Three members must be legal residents of the municipality or special fire control district and may not be members, retirees, beneficiaries, or payees of the pension plan. It provides for a term limit of eight consecutive years. For local law plans that provide benefits for both firefighters and police officers, it expands the board membership to nine members instead of five members. It provides that five of the members must be appointed by the governing body of the municipality or special fire control district, two must be firefighters, and two must be police officers.

The bill provides additional duties for the board of trustees. First, it requires the board of trustees to provide a detailed accounting report of its expenses for each fiscal year. The report must be submitted to the plan sponsor and the Department of Management Services, and must be made available to the members of the plan. Second, the board of trustees must operate under an administrative expense budget for each fiscal year, provide the budget to the plan sponsor, and make it available to plan members. The administrative expense budget must regulate the administrative expenses of the board of trustees. The budget, including any budget amendments, is not effective until approved by a majority vote of the plan sponsor. Finally, the board of trustees must establish qualifications for the plan administrator. The bill provides minimum qualifications that the board of trustees must consider when establishing qualifications for the position.

The bill provides that a plan that has an assets to liabilities ratio, utilizing the most recent actuarial report, of 75 percent or less, must, every three years, conduct an internal audit of the plan's management and accounting practices and investments.

In addition, the bill provides that notwithstanding specific provisions in the chapters, the changes made in the act apply to a local law plan created by special act before May 27, 1939.

The bill may have an indeterminate fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Constitution Requirements

Section 14, Art. X of the State Constitution provides that a governmental unit responsible for a retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide an increase in benefits to members or beneficiaries without concurrent provisions for funding the increase on a sound actuarial basis.

The Florida Protection of Public Employee Retirement Benefits Act

Part VII of chapter 112, F.S., the Florida Protection of Public Employee Retirement Benefits Act (act) was adopted by the Legislature to implement the provisions of s. 14, Art. X of the State Constitution. The act establishes minimum standards for operating and funding public employee retirement systems and plans. It is applicable to all units of state, county, special district, and municipal governments participating in, operating, or administering a retirement system for public employees, which is funded in whole or in part by public funds.¹ Responsibility for administration of the act has been assigned primarily to the Division of Retirement (division), Department of Management Services (DMS).

Municipal Firefighters' Pension Trust Fund and Police Officers' Pension Trust Fund

Chapters 175 and 185, F.S., declare a legitimate state purpose to provide a uniform retirement system for the benefit of firefighters and municipal police officers. All municipal and special district firefighters and all municipal police officers retirement trust fund systems or plans must be managed, administered, operated, and funded to maximize the protection of firefighters' and police officers' pension trust funds.²

Local firefighter pension plans are governed by chapter 175, F.S., which is known as the Marvin B. Clayton Firefighters Pension Trust Fund Act. Chapter 175, F.S., was originally enacted in 1939 to provide an incentive--access to premium tax revenues--to encourage the establishment of firefighter retirement plans by cities. Fourteen years later, the Legislature enacted chapter 185, F.S., the Marvin B. Clayton Police Officers' Pension Trust Fund Act, which provides a similar funding mechanism for municipal police officers. In 1993, special fire control districts became eligible to participate under chapter 175, F.S.

The acts set forth the minimum benefits or minimum standards for pensions for municipal firefighters and police officers. Municipalities may not reduce the benefits provided in the acts; however, the benefits provided in a local law plan may vary from the provisions in the act so long as the minimum standards are met.

Funding for these pension plans primarily comes from four sources:

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

The Firefighters' Pension Trust Fund is funded through an excise tax of 1.85 percent imposed on the gross premiums of property insurance covering property within boundaries of the municipality or special fire control district.³ It is payable by the insurers to the Department of Revenue (DOR), and the net

¹ Section 112.62, F.S.

² See ss. 175.021(1) and 185.01(1), F.S.

³ Section 175.101, F.S.

proceeds are transferred to the appropriate fund at the division. In 2013, premium tax distributions to municipalities and special fire control districts from the Firefighters' Pension Trust Fund amounted to \$74.7 million.⁴

The Police Officers' Pension Trust Fund is funded through an excise tax of 0.85 percent imposed on the gross premiums on casualty insurance policies covering property within the boundaries of the municipality.⁵ Similar to the Firefighters' Pension Trust Fund, the excise tax is payable to the DOR, and the net proceeds are transferred to the appropriate fund at the division. In 2013, premium tax distributions to municipalities from the Police Officers' Pension Trust Fund amounted to \$64.8 million.⁶

To qualify for insurance premium tax dollars, plans must meet requirements found in chapters 175 and 185, F.S. If the division deems that a firefighter or police officer pension plan created pursuant to these chapters is not in compliance with the law, the sponsoring municipality could be denied its insurance premium tax revenues.

Board of Trustees

Responsibility for overseeing and monitoring these plans is assigned to the division; however, the day-to-day operational control rests with the local boards of trustees (board or boards). The boards are created in participating cities and special fire control districts, and subject to the regulatory oversight of the division.⁷ The board of trustees must invest and reinvest the assets of the fund according to s. 175.071, F.S., or s. 185.06, F.S., as applicable, unless specifically authorized to vary from the law. The board is solely responsible for administering the trust fund.⁸

The membership of the board consists of five members: two residents appointed by the governing body of the municipality or special fire control district, two police officer or firefighter members selected by the active firefighter or police officer members of the plan, and one member selected by the other four members and approved by the appropriate governing body. Members are subject to two-year terms, unless extended to four-year terms by municipal ordinance, special act of the Legislature, or resolution adopted by the governing body of the special fire control district.⁹

The board must meet at least quarterly each year.¹⁰ The board has the authority to invest and reinvest pension trust fund assets.¹¹ If the trust fund is not sufficient to provide entitled benefits, any additional contributions necessary to maintain the actuarial soundness of the plan must be paid by the municipality.¹²

Effect of the Bill

The bill amends parallel provisions in chapters 175 and 185, F.S., relating to board membership and responsibilities.

Membership Requirements

The bill revises membership requirements for the board. It provides that the board must consist of five members. Three of the members must be legal residents of the municipality or special fire control district, and may not be a member, retiree, beneficiary, or payee of the pension plan. The bill deletes

⁴ A copy of the 2013 Premium Tax Distribution report is available online at: http://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/municipal_police_and_fire_plans (last visited March 9, 2015).

⁵ Section 185.08, F.S.

⁶ *Supra* at FN 4.

⁷ Sections 175.061 and 185.05, F.S.

⁸ *Id.*

⁹ *Id.*

¹⁰ Sections 175.061(3) and 185.05(3), F.S.

¹¹ Sections 175.071 and 185.06, F.S.

¹² Sections 175.091(1)(d) and 185.07(1)(d), F.S.

the requirement that the fifth member be chosen by a majority of the other four members. It provides for a term limit of eight consecutive years.

For local law plans that provide benefits for both firefighters and police officers, it expands the board membership to nine members instead of five members. Five of the members must be appointed by the governing body of the municipality or special fire control district, two must be firefighters, and two must be police officers.

Board Duties and Responsibilities

The bill requires each board to provide a detailed accounting report of its expenses for each fiscal year. It must include all administrative expenses related to any legal counsel, actuary, plan administrator, consultants, travel, and any other expenses paid to or on behalf of the members of the board or anyone else on behalf of the plan. The report must be submitted to the plan sponsor and DMS, and must be made available to the members of the plan.

The bill requires the board to operate under an administrative expense budget for each fiscal year, and to provide the budget to the plan sponsor and make it available to plan members. If the board amends the budget, it must submit the amendment to the plan sponsor and make it available to the members of the plan. The administrative expense budget must regulate the administrative expenses of the board. The budget, including any budget amendments, is not effective until approved by a majority vote of the plan sponsor.

The board must establish qualifications for the plan administrator. At a minimum, the qualifications must require that the individual have a bachelor's degree from an accredited college or university with a major in finance or be a licensed public accountant, have at least three years of professional experience managing retirement plans in the private or public sector, and be approved by a majority plus one vote of the plan sponsor.

The bill provides that a plan that has an assets to liabilities ratio, utilizing the most recent actuarial report, of 75 percent or less, must, every three years, conduct an internal audit of the plan's management and accounting practices and investments. The board must pay for the audit and the results must be provided to the municipality and DMS.

Application

The bill provides that the changes made in the act apply to a local law plan created by special act before May 27, 1939, notwithstanding ss. 175.351(2) and (3) and 185.35(2) and (3), F.S.¹³ According to the division, there are four plans that were created by special act before May 27, 1939: Coral Gables, Jacksonville, Miami, and Miami Beach.

Miscellaneous

The bill provides a statement of important state interest.

B. SECTION DIRECTORY:

Sections 1 and 3 amend ss. 175.061 and 185.05, F.S., providing for application of the sections; revising membership and requirements for the board of trustees of the firefighters' pension trust fund and the municipal police officers' retirement trust fund.

Sections 2 and 4 amend ss. 175.351 and 185.35, F.S., relating to municipalities and special fire control districts that have their own pension plans and want to participate in the distribution of a tax fund; providing requirements for municipalities with plans with an unfunded liability; providing for application of the sections.

¹³ Sections 175.351(2) and (3) and 185.35(2) and (3), F.S., provide in pertinent part that "[l]ocal law plans created by special act before May 27, 1939, shall be deemed to comply with this chapter."

Section 5 provides a declaration of important state interest.

Section 6 provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill requires that each board must provide a detailed accounting of its expenses for each fiscal year, operate under an administrative budget that regulates the administrative expenses of the board, establish qualifications for the position of plan administrator, and conduct and fund audits if the plan has a specified funding ratio. The additional duties of the board may result in an indeterminate negative fiscal impact to the plan. However, the transparency of producing and sharing annual expenses and operating under a budget may produce an indeterminate positive fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

BILL

ORIGINAL

YEAR

1 A bill to be entitled
2 An act relating to retirement; amending ss. 175.061
3 and 185.05, F.S.; providing for application of the
4 sections; revising membership and requirements for the
5 board of trustees of the firefighters' pension trust
6 fund and the municipal police officers' retirement
7 trust fund; providing duties of the board relating to
8 the reporting of expenses, the operation under an
9 administrative expense budget, and the establishment
10 of requirements for the plan administrator; amending
11 ss. 175.351 and 185.35, F.S., relating to
12 municipalities and special fire control districts that
13 have their own pension plans and want to participate
14 in the distribution of a tax fund; providing
15 requirements for municipalities with plans with an
16 unfunded liability; providing for application of the
17 sections; providing a declaration of important state
18 interest; providing an effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Section 175.061, Florida Statutes, is amended
23 to read:

24 175.061 Board of trustees; members; terms of office;
25 meetings; legal entity; costs; attorney's fees.— For any
26 municipality, special fire control district, chapter plan, local

BILL

ORIGINAL

YEAR

27 law municipality, local law special fire control district, ~~or~~
 28 local law plan under this chapter, or a local law plan created
 29 by special act before May 27, 1939:

30 (1) In each municipality and in each special fire control
 31 district there is hereby created a board of trustees of the
 32 firefighters' pension trust fund, which shall be solely
 33 responsible for administering the trust fund. Effective October
 34 1, 1986, and thereafter:

35 (a) The membership of the board of trustees for a chapter
 36 plan consists of five members, three ~~two~~ of whom, unless
 37 otherwise prohibited by law, must be legal residents of the
 38 municipality or special fire control district, ~~and~~ must be
 39 appointed by the governing body of the municipality or special
 40 fire control district, and must not be a member, retiree,
 41 beneficiary or payee of the pension plan, and two of whom must
 42 be full-time firefighters as defined in s. 175.032 who are
 43 elected by a majority of the active firefighters who are members
 44 of such plan. With respect to any chapter plan or local law plan
 45 that, on January 1, 1997, allowed retired firefighters to vote
 46 in such elections, retirees may continue to vote in such
 47 elections. ~~The fifth member shall be chosen by a majority of the~~
 48 ~~previous four members as provided herein, and such person's name~~
 49 ~~shall be submitted to the governing body of the municipality or~~
 50 ~~special fire control district. Upon receipt of the fifth~~
 51 ~~person's name, the governing body of the municipality or special~~
 52 ~~fire control district shall, as a ministerial duty, appoint such~~

BILL

ORIGINAL

YEAR

53 | ~~person to the board of trustees. The fifth member shall have the~~
54 | ~~same rights as each of the other four members, shall serve as~~
55 | ~~trustee for a period of 2 years, and may succeed himself or~~
56 | ~~herself in office.~~ Each resident member shall serve as trustee
57 | for a period of 2 years, unless sooner replaced by the governing
58 | body at whose pleasure he or she serves, and may succeed himself
59 | or herself as a trustee. Each firefighter member shall serve as
60 | trustee for a period of 2 years, unless he or she sooner leaves
61 | the employment of the municipality or special fire control
62 | district as a firefighter, whereupon a successor shall be chosen
63 | in the same manner as an original appointment. Each firefighter
64 | may succeed himself or herself in office. The terms of office of
65 | the appointed and elected members may be amended by municipal
66 | ordinance, special act of the Legislature, or resolution adopted
67 | by the governing body of the special fire control district to
68 | extend the terms from 2 years to 4 years. The length of the
69 | terms of office shall be the same for all board members, and a
70 | board member may not serve on the board for more than 8
71 | consecutive years.

72 | (b) The membership of boards of trustees for local law
73 | plans shall be as follows:

74 | 1. If a municipality or special fire control district has
75 | a pension plan for firefighters only, the provisions of
76 | paragraph (a) apply.

77 | 2. If a municipality has a pension plan for firefighters
78 | and police officers, the provisions of paragraph (a) apply,

BILL

ORIGINAL

YEAR

79 | except that the board of trustees shall consist of nine members,
 80 | five of whom shall be appointed by the governing body of the
 81 | municipality or special fire control district, two of whom ~~one~~
 82 | ~~member of the board~~ must be firefighters, a firefighter and two
 83 | of whom ~~one member of the board~~ must be ~~a~~ police officers
 84 | ~~officer~~ as defined in s. 185.02, respectively elected by a
 85 | majority of the active firefighters or police officers who are
 86 | members of the plan.

87 | 3. A board of trustees operating a local law plan on July
 88 | 1, 1999, which is combined with a plan for general employees
 89 | shall hold an election of the firefighters, or firefighters and
 90 | police officers, if included, to determine whether a plan is to
 91 | be established for firefighters only, or for firefighters and
 92 | police officers where included. Based on the election results, a
 93 | new board shall be established as provided in subparagraph 1. or
 94 | subparagraph 2., as appropriate. The municipality or fire
 95 | control district shall enact an ordinance or resolution to
 96 | implement the new board by October 1, 1999. The newly
 97 | established board shall take whatever action is necessary to
 98 | determine the amount of assets attributable to firefighters, or
 99 | firefighters and police officers where included. Such assets
 100 | include all employer, employee, and state contributions made by
 101 | or on behalf of firefighters, or firefighters and police
 102 | officers where included, and any investment income derived from
 103 | such contributions. All such moneys shall be transferred into
 104 | the newly established retirement plan, as directed by the board.

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

BILL

ORIGINAL

YEAR

105
106 ~~With respect to a board of trustees operating a local law plan~~
107 ~~on June 30, 1986, this paragraph does not permit the reduction~~
108 ~~of the membership percentage of firefighters, or of firefighters~~
109 ~~and police officers where a joint or mixed fund exists. However,~~
110 ~~for the sole purpose of changing municipal representation, a~~
111 ~~municipality may by ordinance change the municipal~~
112 ~~representation on the board of trustees operating a local law~~
113 ~~plan by ordinance, only if such change does not reduce the~~
114 ~~membership percentage of firefighters, or firefighters and~~
115 ~~police officers, or the membership percentage of the municipal~~
116 ~~representation.~~

117 (c) Whenever the active firefighter membership of a closed
118 chapter plan or closed local law plan as provided in s. 175.371
119 falls below 10, an active firefighter member seat may be held by
120 either a retired member or an active firefighter member of the
121 plan who is elected by the active and retired members of the
122 plan. If there are no active or retired firefighters remaining
123 in the plan or capable of serving, the remaining board members
124 may elect an individual to serve in the active firefighter seat.
125 Upon receipt of such person's name, the legislative body of the
126 municipality or special fire control district shall, as a
127 ministerial duty, appoint such person to the board of trustees.
128 This paragraph applies only to those plans that are closed to
129 new members under s. 175.371(2), and does not apply to any other
130 municipality or fire control district having a chapter or local

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

BILL

ORIGINAL

YEAR

131 | law plan.

132 | (2) The trustees shall by a majority vote elect from their
 133 | number a chair and a secretary. The secretary of the board shall
 134 | keep a complete minute book of the actions, proceedings, or
 135 | hearings of the board. The trustees shall not receive any
 136 | compensation as such, but may receive expenses and per diem as
 137 | provided by Florida law.

138 | (3) The board of trustees shall meet at least quarterly
 139 | each year.

140 | (4) Each board of trustees shall be a legal entity with,
 141 | in addition to other powers and responsibilities contained
 142 | herein, the power to bring and defend lawsuits of every kind,
 143 | nature, and description.

144 | (5) In any judicial proceeding or administrative
 145 | proceeding under chapter 120 brought under or pursuant to the
 146 | provisions of this chapter, the prevailing party shall be
 147 | entitled to recover the costs thereof, together with reasonable
 148 | attorney's fees.

149 | (6) The provisions of this section may not be altered by a
 150 | participating municipality or special fire control district
 151 | operating a chapter plan or local law plan under this chapter.

152 | (7) The board of trustees may, upon written request of the
 153 | retiree of the plan, or by a dependent, if authorized by the
 154 | retiree or the retiree's beneficiary, authorize the plan
 155 | administrator to withhold from the monthly retirement payment
 156 | funds that are necessary to pay for the benefits being received

BILL

ORIGINAL

YEAR

157 through the governmental entity from which the employee retired,
 158 to pay the certified bargaining agent of the governmental
 159 entity, and to make any payments for child support or alimony.
 160 Upon the written request of the retiree of the plan, the board
 161 may also authorize the plan administrator to withhold from the
 162 retirement payment those funds necessary to pay for premiums for
 163 accident, health, and long-term care insurance for the retiree
 164 and the retiree's spouse and dependents. A retirement plan does
 165 not incur liability for participation in this permissive program
 166 if its actions are taken in good faith.

167 (8) The board of trustees shall:

168 (a) Provide a detailed accounting report of its expenses
 169 for each fiscal year to the plan sponsor and the Department of
 170 Management Services and make the report available to every
 171 member of the plan. The report must include, but need not be
 172 limited to, all administrative expenses that, for purposes of
 173 this subsection, are expenses relating to any legal counsel,
 174 actuary, plan administrator, and all other consultants, and all
 175 travel and other expenses paid to or on behalf of the members of
 176 the board of trustees or anyone else on behalf of the plan.

177 (b) Operate under an administrative expense budget for
 178 each fiscal year, provide a copy of the budget to the plan
 179 sponsor, and make available a copy of the budget to plan members
 180 before the beginning of the fiscal year. The administrative
 181 expense budget must regulate the administrative expenses of the
 182 board of trustees. If the board of trustees amends the

BILL

ORIGINAL

YEAR

183 administrative expense budget, the board must provide a copy of
 184 the amended budget to the plan sponsor and make available a copy
 185 of the amended budget to plan members before the amendment takes
 186 effect. The administrative expense budget, including any budget
 187 amendments, is not effective until the budget or any budget
 188 amendment is approved by a majority vote of the plan sponsor.

189 (c) Establish qualifications for the plan administrator.
 190 At a minimum, the qualifications shall require that the
 191 individual have a bachelor's degree from an accredited college
 192 or university with a major in finance or be a licensed certified
 193 public accountant, have at least 3 years of professional
 194 experience managing retirement plans in the private or public
 195 sector, and be approved by a majority plus one vote of the plan
 196 sponsor.

197
 198 Notwithstanding s. 175.351(2) and (3), a local law plan created
 199 by special act before May 27, 1939, must comply with the
 200 provisions of this section.

201 Section 2. Subsection (6) is added to section 175.351,
 202 Florida Statutes, to read:

203 175.351 Municipalities and special fire control districts
 204 having their own pension plans for firefighters.—For any
 205 municipality, special fire control district, local law
 206 municipality, local law special fire control district, or local
 207 law plan under this chapter, in order for municipalities and
 208 special fire control districts with their own pension plans for

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

BILL

ORIGINAL

YEAR

209 firefighters, or for firefighters and police officers if
 210 included, to participate in the distribution of the tax fund
 211 established pursuant to s. 175.101, local law plans must meet
 212 the minimum benefits and minimum standards set forth in this
 213 chapter.

214 (6)(a) A municipality having its own pension plan that has
 215 an assets-to-liabilities ratio, using the most recent plan
 216 actuarial report, of 75 percent or less, shall, every 3 years,
 217 conduct an internal audit of the plan's management and
 218 accounting practices and investments. The audit shall be paid
 219 for by the board of trustees of the pension trust fund. The
 220 results of the audit shall be provided to the municipality and
 221 the Department of Management Services.

222 (b) Notwithstanding subsections (2) and (3), a local law
 223 plan created by special act before May 27, 1939, must comply
 224 with the provisions of this subsection.

225 Section 3. Section 185.05, Florida Statutes, is amended to
 226 read:

227 185.05 Board of trustees; members; terms of office;
 228 meetings; legal entity; costs; attorney's fees.—For any
 229 municipality, chapter plan, local law municipality, ~~or~~ local law
 230 plan under this chapter, or a local law plan created by special
 231 act before May 27, 1939:

232 (1) In each municipality described in s. 185.03 there is
 233 hereby created a board of trustees of the municipal police
 234 officers' retirement trust fund, which shall be solely

BILL

ORIGINAL

YEAR

235 responsible for administering the trust fund. Effective October
 236 1, 1986, and thereafter:

237 (a) The membership of the board of trustees for chapter
 238 plans consists of five members, three ~~two~~ of whom, unless
 239 otherwise prohibited by law, must be legal residents of the
 240 municipality and must be appointed by the legislative body of
 241 the municipality and must not be a member, retiree, beneficiary
 242 or payee of such plan, and two of whom must be police officers
 243 as defined in s. 185.02 who are elected by a majority of the
 244 active police officers who are members of such plan. With
 245 respect to any chapter plan or local law plan that, on January
 246 1, 1997, allowed retired police officers to vote in such
 247 elections, retirees may continue to vote in such elections. ~~The~~
 248 ~~fifth member shall be chosen by a majority of the previous four~~
 249 ~~members, and such person's name shall be submitted to the~~
 250 ~~legislative body of the municipality. Upon receipt of the fifth~~
 251 ~~person's name, the legislative body shall, as a ministerial~~
 252 ~~duty, appoint such person to the board of trustees. The fifth~~
 253 ~~member shall have the same rights as each of the other four~~
 254 ~~members appointed or elected, shall serve as trustee for a~~
 255 ~~period of 2 years, and may succeed himself or herself in office.~~
 256 Each resident member shall serve as trustee for a period of 2
 257 years, unless sooner replaced by the legislative body at whose
 258 pleasure the member serves, and may succeed himself or herself
 259 as a trustee. Each police officer member shall serve as trustee
 260 for a period of 2 years, unless he or she sooner leaves the

BILL

ORIGINAL

YEAR

261 employment of the municipality as a police officer, whereupon a
 262 successor shall be chosen in the same manner as an original
 263 appointment. Each police officer may succeed himself or herself
 264 in office. The terms of office of the appointed and elected
 265 members of the board of trustees may be amended by municipal
 266 ordinance or special act of the Legislature to extend the terms
 267 from 2 years to 4 years. The length of the terms of office shall
 268 be the same for all board members, and a board member may not
 269 serve on the board for more than 8 consecutive years.

270 (b) The membership of boards of trustees for local law
 271 plans is as follows:

272 1. If a municipality has a pension plan for police
 273 officers only, the provisions of paragraph (a) shall apply.

274 2. If a municipality has a pension plan for police
 275 officers and firefighters, the provisions of paragraph (a)
 276 apply, except that the board of trustees shall consist of nine
 277 members, five of whom shall be appointed by the governing body
 278 of the municipality, two of whom ~~one member of the board~~ shall
 279 be police officers, ~~a police officer~~ and two of whom ~~one member~~
 280 shall be firefighters ~~a firefighter~~ as defined in s. 175.032,
 281 respectively, elected by a majority of the active firefighters
 282 and police officers who are members of the plan.

283 3. Any board of trustees operating a local law plan on
 284 July 1, 1999, which is combined with a plan for general
 285 employees shall hold an election of the police officers, or
 286 police officers and firefighters if included, to determine

BILL

ORIGINAL

YEAR

287 whether a plan is to be established for police officers only, or
 288 for police officers and firefighters where included. Based on
 289 the election results, a new board shall be established as
 290 provided in subparagraph 1. or subparagraph 2., as appropriate.
 291 The municipality shall enact an ordinance to implement the new
 292 board by October 1, 1999. The newly established board shall take
 293 whatever action is necessary to determine the amount of assets
 294 which is attributable to police officers, or police officers and
 295 firefighters where included. Such assets shall include all
 296 employer, employee, and state contributions made by or on behalf
 297 of police officers, or police officers and firefighters where
 298 included, and any investment income derived from such
 299 contributions. All such moneys shall be transferred into the
 300 newly established retirement plan, as directed by the board.

301

302 ~~With respect to any board of trustees operating a local law plan~~
 303 ~~on June 30, 1986, this paragraph does not permit the reduction~~
 304 ~~of the membership percentage of police officers or police~~
 305 ~~officers and firefighters. However, for the sole purpose of~~
 306 ~~changing municipal representation, a municipality may by~~
 307 ~~ordinance change the municipal representation on the board of~~
 308 ~~trustees operating a local law plan by ordinance, only if such~~
 309 ~~change does not reduce the membership percentage of police~~
 310 ~~officers, or police officers and firefighters, or the membership~~
 311 ~~percentage of the municipal representation.~~

312 (c) Whenever the active police officer membership of a

BILL

ORIGINAL

YEAR

313 closed chapter plan or closed local law plan as provided in s.
 314 185.38 falls below 10, an active police officer member seat may
 315 be held by either a retired police officer or an active police
 316 officer member of the plan who is elected by the active and
 317 retired members of the plan. If there are no active or retired
 318 police officers remaining in the plan or capable of serving, the
 319 remaining board members may elect an individual to serve in the
 320 active police officer member seat. Upon receipt of such person's
 321 name, the legislative body of the municipality shall, as a
 322 ministerial duty, appoint such person to the board of trustees.
 323 This paragraph applies only to those plans that are closed to
 324 new members under s. 185.38(2), and does not apply to any other
 325 municipality having a chapter or local law plan.

326 (d) If the chapter plan or local law plan with an active
 327 membership of 10 or more is closed to new members, the member
 328 seats may be held by either a retiree, as defined in s. 185.02,
 329 or an active police officer of the plan who has been elected by
 330 the active police officers. A closed plan means a plan that is
 331 closed to new members but continues to operate, pursuant to s.
 332 185.38(2), for participants who elect to remain in the existing
 333 plan. This paragraph applies only to those plans that are closed
 334 to new members pursuant to s. 185.38(2) and does not apply to
 335 any other municipality that has a chapter plan or a local law
 336 plan.

337 (2) The trustees shall by majority vote elect from its
 338 members a chair and a secretary. The secretary of the board

BILL

ORIGINAL

YEAR

339 shall keep a complete minute book of the actions, proceedings,
 340 or hearings of the board. The trustees shall not receive any
 341 compensation as such, but may receive expenses and per diem as
 342 provided by Florida law.

343 (3) The board of trustees shall meet at least quarterly
 344 each year.

345 (4) Each board of trustees shall be a legal entity that
 346 shall have, in addition to other powers and responsibilities
 347 contained herein, the power to bring and defend lawsuits of
 348 every kind, nature, and description.

349 (5) In any judicial proceeding or administrative
 350 proceeding under chapter 120 brought under or pursuant to the
 351 provisions of this chapter, the prevailing party shall be
 352 entitled to recover the costs thereof, together with reasonable
 353 attorney's fees.

354 (6) The board of trustees may, upon written request by the
 355 retiree of the plan, or by a dependent, if authorized by the
 356 retiree or the retiree's beneficiary, authorize the plan
 357 administrator to withhold from the monthly retirement payment
 358 funds necessary to pay for the benefits being received through
 359 the governmental entity from which the employee retired, to pay
 360 the certified bargaining agent of the governmental entity, and
 361 to make any payments for child support or alimony. Upon the
 362 written request of the retiree of the plan, the board of
 363 trustees may also authorize the plan administrator to withhold
 364 from the retirement payment those funds necessary to pay for

BILL

ORIGINAL

YEAR

365 | premiums for accident, health, and long-term care insurance for
 366 | the retiree and the retiree's spouse and dependents. A
 367 | retirement plan does not incur liability for participation in
 368 | this permissive program if its actions are taken in good faith.

369 | (7) The provisions of this section may not be altered by a
 370 | participating municipality operating a chapter or local law plan
 371 | under this chapter.

372 | (8) The board of trustees shall:

373 | (a) Provide a detailed accounting report of its expenses
 374 | for each fiscal year to the plan sponsor and the Department of
 375 | Management Services and make the report available to every
 376 | member of the plan. The report must include, but need not be
 377 | limited to, all administrative expenses that, for purposes of
 378 | this subsection, are expenses relating to any legal counsel,
 379 | actuary, plan administrator, and all other consultants, and all
 380 | travel and other expenses paid to or on behalf of the members of
 381 | the board of trustees or anyone else on behalf of the plan.

382 | (b) Operate under an administrative expense budget for
 383 | each fiscal year, provide a copy of the budget to the plan
 384 | sponsor, and make available a copy of the budget to plan members
 385 | before the beginning of the fiscal year. The administrative
 386 | expense budget must regulate the administrative expenses of the
 387 | board of trustees. If the board of trustees amends the
 388 | administrative expense budget, the board must provide a copy of
 389 | the amended budget to the plan sponsor and make available a copy
 390 | of the amended budget to plan members before the amendment takes

BILL

ORIGINAL

YEAR

391 effect. The administrative expense budget, including any budget
 392 amendments, is not effective until the budget or any budget
 393 amendment is approved by a majority vote of the plan sponsor.

394 (c) Establish qualifications for the plan administrator.
 395 At a minimum, the qualifications shall require that the
 396 individual have a bachelor's degree from an accredited college
 397 or university with a major in finance or be a licensed certified
 398 public accountant, have at least 3 years of professional
 399 experience managing retirement plans in the private or public
 400 sector, and be approved by a majority plus one vote of the plan
 401 sponsor.

402
 403 Notwithstanding s. 185.35(2) and (3), a local law plan created
 404 by special act before May 27, 1939, must comply with the
 405 provisions of this section.

406 Section 4. Subsection (6) is added to section 185.35,
 407 Florida Statutes, to read:

408 185.35 Municipalities having their own pension plans for
 409 police officers.—For any municipality, chapter plan, local law
 410 municipality, or local law plan under this chapter, in order for
 411 municipalities with their own pension plans for police officers,
 412 or for police officers and firefighters if included, to
 413 participate in the distribution of the tax fund established
 414 pursuant to s. 185.08, local law plans must meet the minimum
 415 benefits and minimum standards set forth in this chapter:

416 (6)(a) A municipality having its own pension plan that has

BILL

ORIGINAL

YEAR

417 an assets to liabilities ratio, using the most recent plan
 418 actuarial report, of 75 percent or less, shall, every 3 years,
 419 conduct an internal audit of the plan's management and
 420 accounting practices and investments. The audit shall be paid
 421 for by the board of trustees of the pension trust fund. The
 422 results of the audit shall be provided to the municipality and
 423 the Department of Management Services.

424 (b) Notwithstanding subsections (2) and (3), a local law
 425 plan created by special act before May 27, 1939, must comply
 426 with the provisions of this section.

427 Section 5. The Legislature finds that a proper and
 428 legitimate state purpose is served when employees and retirees
 429 of the state and its political subdivisions, and the dependents,
 430 survivors, and beneficiaries of such employees and retirees, are
 431 extended the basic protections afforded by governmental
 432 retirement systems that provide fair and adequate benefits and
 433 that are managed, administered, and funded in an actuarially
 434 sound manner as required by s. 14, Article X of the State
 435 Constitution and part VII of chapter 112, Florida Statutes.
 436 Therefore, the Legislature determines and declares that this act
 437 fulfills an important state interest.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1283 Inspectors General
SPONSOR(S): Rader
TIED BILLS: **IDEN./SIM. BILLS:** SB 1412

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

SUMMARY ANALYSIS

An inspector general office provides a central point for the coordination and responsibility for activities that promote accountability, integrity, and efficiency in government. Inspectors general under the jurisdiction of the Cabinet or the Governor and Cabinet are appointed by the agency head and may only be removed by the agency head. Inspectors general under the jurisdiction of the Governor are appointed by the Chief Inspector General (CIG) and may only be removed by the CIG. The CIG within the Executive Office of the Governor provides oversight and monitors the activities of the agency inspectors general under the Governor's jurisdiction. Generally, an inspector general report is exempt from public records requirements until the investigation is no longer active.

The bill requires the CIG to publish, on the website of the Executive Office of the Governor, final investigative reports performed by the CIG or received from an agency inspector general. An agency inspector general must publish final investigative reports, including all responses and rebuttals, on the agency's website and must provide a copy to the CIG for publication on the website of the Executive Office of the Governor. Neither the CIG nor an agency inspector general may publish a report online if the investigation is confidential or otherwise exempt from disclosure by law. The reports must be published within 10 days after the report has been finalized or received by the CIG.

The bill defines "unit of local government" to mean a county, municipality, special district, local agency, authority, consolidated city-county government, or any other local governmental body or public body corporate and politic authorized or created by general or special law. It requires a unit of local government to publish on its website the final investigative report by an inspector general prepared for, or on behalf of, the unit of local government within 10 days after finalizing the report, except if the investigation is confidential or otherwise exempt from disclosure.

The bill may have a fiscal impact on state and local government. See FISCAL COMMENTS.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Government Inspectors General and Auditing

Authorized under s. 20.055, F.S., the Office of Inspector General (OIG) is established in each state agency¹ 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 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,² or the CIG for agency's under the jurisdiction of the Governor, and 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
- Complying with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.³

Inspectors general are appointed by the agency head. For agencies under the jurisdiction of the Governor, the inspector general is appointed by the CIG.⁴ The agency head or the CIG must notify the Governor in writing, at least seven days prior to an offer of employment, of the intention to hire the

¹ 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, and the state court system.

² 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, and the Chief Justice of the State Supreme Court.

³ Section 20.055(2), F.S.

⁴ Section 20.055(3)(a), F.S.

inspector general.⁵ Each inspector general must report to and is under the general supervision of the agency head and is not subject to supervision by any other employee of the state agency.⁶ For state agencies under the jurisdiction of the Governor, the inspector general is under the general supervision of the agency head, reports to the CIG, and may hire and remove staff within the OIG in consultation with the CIG but independently of the state agency.⁷

Inspectors general must possess minimum education and experience qualifications, and the investigations they conduct must adhere to specific internal auditing standards.⁸ To ensure agency audits are performed in accordance with applicable auditing standards, the inspector general or the director of auditing within the OIG must possess the following qualifications:⁹

- A bachelor's degree from an accredited college or university with a major in accounting, or with a major in business which includes five courses in accounting, and five years experience as an internal auditor or independent postauditor, electronic data processing auditor, accountant, or any combination thereof. The experience must at a minimum consist of audits of units of government or private business enterprises, operating for profit or not for profit;
- A master's degree in accounting, business administration, or public administration from an accredited college or university and four years experience; or
- A certified public accountant license or certified internal audit certificate issued by the Institute of Internal Auditors or earned by examination, and four years experience.

Final reports are submitted to the agency head and the Auditor General, whose office is directed to give official recognition to their findings and recommendations as part of its post-audit responsibilities.¹⁰

Each inspector general must review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency.¹¹ The inspector general must conduct financial, compliance, electronic data processing, and performance audits of the agency and prepare audit reports of his or her findings. The performance of the audit must be under the direction of the inspector general, except that if the inspector general does not possess the specified qualifications, the director of auditing must perform the auditing functions.¹²

Audits must be conducted in accordance with the current Standards for the Professional Practice of Internal Auditing as published by the Institute of Internal Auditors, Inc., or where appropriate, in accordance with generally accepted governmental auditing standards. All audit reports issued by internal audit staff must include a statement that the audit was conducted pursuant to the appropriate standards.¹³ Audit work papers and reports are considered public records to the extent they do not include information that has been made confidential and exempt from the provisions of s. 119.07(1), F.S., or contain information protected under the Whistle-blower's Act.¹⁴

⁵ *Id.*

⁶ Section 20.055(3)(b), F.S.

⁷ *Id.*

⁸ *See s.* 20.055(4), F.S.

⁹ Section 20.055(4), F.S.

¹⁰ Section 20.055(5)(f) and (g), F.S.

¹¹ Section 20.055(5), F.S.

¹² *Id.*

¹³ Section 20.055(5)(a), F.S.

¹⁴ Section 20.055(5)(b), F.S. Sections 112.3187 – 112.31895, F.S., may be cited as the "Whistle-blower's Act." According to the act, it is the intent of the Legislature to prevent agencies or independent contractors from taking retaliatory action against an employee who reports to an appropriate agency violations of law on the part of a public employer or independent contractor that create a substantial and specific danger to the public's health, safety, or welfare. It is further the intent of the Legislature to prevent agencies or independent contractors from taking retaliatory action against any person who discloses information to an appropriate agency alleging improper use of government office, gross waste of funds, or any other abuse or gross neglect of duty on the part of an agency, public officer, or employee. Section 112.3187(2), F.S.

In carrying out his or her investigative duties and responsibilities, each inspector general must initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government.¹⁵

Annually, each inspector general must submit a report to the agency head on his or her activities. For agencies under the jurisdiction of the Governor, the inspector general must provide the report to the CIG.¹⁶

Local Government Auditing

Current law requires local governments¹⁷ to submit to the Department of Financial Services (DFS) an annual financial report covering their operations for the preceding fiscal year.¹⁸ Each local governmental entity's website must provide a link to DFS' website to view the entity's annual financial report. If the local governmental entity does not have an official website, the county government's website must provide the required link for the local governmental entity.¹⁹

If a local government will not be audited by the Auditor General, then the local government must provide for an annual financial audit to be conducted within nine months after the end of its fiscal year by an independent certified public accountant retained by the entity and paid for from public funds.²⁰ The audit report of an internal auditor prepared for or on behalf of a local government becomes a public record when the audit becomes final. Audit work papers and notes related to the audit are confidential and exempt from public record requirements until the audit report becomes final.²¹

Effect of the Proposed Changes

The bill requires the CIG to publish, on the website of the Executive Office of the Governor, final investigative reports performed by the CIG or received from an agency inspector general. An agency inspector general must publish final investigative reports, including all responses and rebuttals, on the agency's website and must provide a copy to the CIG for publication on the website of the Executive Office of the Governor. Neither the CIG nor an agency inspector general may publish a report online if the investigation is confidential or otherwise exempt²² from disclosure by law. The reports must be published within 10 days after the report has been finalized or received by the CIG.

The bill defines "unit of local government" to mean a county, municipality, special district, local agency, authority, consolidated city-county government, or any other local governmental body or public body corporate and politic authorized or created by general or special law. It requires a unit of local government to publish on its website the final investigative report by an inspector general prepared for, or on behalf of, the unit of local government within 10 days after finalizing the report, except if the investigation is confidential or otherwise exempt from disclosure.²³ It provides that the investigation becomes final when the investigative report is presented to the unit of local government.

B. SECTION DIRECTORY:

Section 1. amends s. 14.32, F.S., requiring the CIG to publish final investigative reports on the Executive Office of the Governor's website within a specified period.

¹⁵ See s. 20.055(6), F.S.

¹⁶ Section 20.055(7), F.S.

¹⁷ Section 218.31(1), F.S., defines "local governmental entity" as a county agency, a municipality, or a special district. For purposes of s. 218.32, F.S., the term also includes a housing authority created under chapter 421, F.S.

¹⁸ Section 218.32(1)(a), F.S.

¹⁹ Section 218.32(1)(g), F.S.

²⁰ Section 218.39(1), F.S.

²¹ Section 119.0713(2), F.S.

²² Section 112.3188, F.S., provides that certain active investigations conducted by the CIG or agency inspectors general are exempt from public record requirements.

²³ Section 119.0713(2)(a), F.S., provides that an investigative report of the inspector general becomes a public record when the investigation becomes final. An investigation becomes final when the report is presented to the unit of local government.

Section 2. amends s. 20.055, F.S., requiring an agency inspector general to publish final investigative reports on the agency's website within a specified period.

Section 3. creates s. 286.0015, F.S., providing a definition; requiring a unit of local government to publish final investigative reports on its website within a specified period; specifying when an investigation becomes final.

Section 4. provides that the bill becomes effective on July 1, 2015.

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 website posting requirements will have an indeterminate fiscal impact on state and local governments, as technical sophistication varies widely among public entities.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18, of the Florida Constitution may apply because this bill requires county and municipal governments to publish investigative reports on their websites, which may result in an indeterminate negative fiscal impact. However, an exemption may apply if the bill results in an insignificant fiscal impact to county or municipal governments. The exceptions to the mandates provision of Art. VII, s. 18 of the State Constitution appear to be inapplicable because the bill does not articulate a threshold finding of serving an important state interest.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues: Lines 59-60

The bill provides that an investigation becomes final when the investigative report is presented to the unit of local government. The publishing of the inspector general report does not appear to be time sensitive to when the investigation becomes final, but rather when the report becomes final. The bill sponsor may wish to remove or amend this sentence.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to inspectors general; amending s. 14.32, F.S.; requiring the Chief Inspector General to publish final investigative reports on the Executive Office of the Governor's website within a specified period; amending s. 20.055, F.S.; requiring an agency inspector general to publish final investigative reports on the agency's website within a specified period; creating s. 286.0015, F.S.; providing a definition; requiring a unit of local government to publish final investigative reports on its website within a specified period; specifying when an investigation becomes final; providing an effective date.

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

Section 1. Paragraph (1) is added to subsection (2) of section 14.32, Florida Statutes, to read:

14.32 Office of Chief Inspector General.—

(2) The Chief Inspector General shall:

(1) Publish, on the website of the Executive Office of the Governor, final investigative reports performed pursuant to this section or received from inspectors general pursuant to s. 20.055. The Chief Inspector General may not publish a report on the website if the investigation is confidential or otherwise

27 exempt from disclosure by law. The Chief Inspector General shall
 28 publish reports under this paragraph within 10 days after
 29 finalizing the report or receiving the report pursuant to s.
 30 20.055.

31 Section 2. Subsections (7) through (9) of section 20.055,
 32 Florida Statutes, are renumbered as subsections (8) through
 33 (10), respectively, and a new subsection (7) is added to that
 34 section to read:

35 20.055 Agency inspectors general.-

36 (7) If an investigation is not confidential or otherwise
 37 exempt from disclosure by law, the inspector general shall
 38 publish final investigative reports, including all responses and
 39 rebuttals authorized by this section, on the agency's website.
 40 Within 10 days after finalizing a report, the inspector general
 41 shall publish the report and provide a copy to the Chief
 42 Inspector General for publication on the website of the
 43 Executive Office of the Governor.

44 Section 3. Section 286.0015, Florida Statutes, is created
 45 to read:

46 286.0015 Investigative reports of local governments;
 47 online publication.-


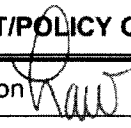
48 (1) As used in this section, the term "unit of local
 49 government" means a county, municipality, special district,
 50 local agency, authority, consolidated city-county government, or
 51 any other local governmental body or public body corporate and
 52 politic authorized or created by general or special law.

53 (2) If the investigation is not confidential or otherwise
54 exempt from disclosure by law, a unit of local government shall
55 publish on its website the final investigative report by an
56 inspector general prepared for, or on behalf of, the unit of
57 local government. The unit of local government shall publish a
58 report under this subsection within 10 days after finalizing the
59 report. An investigation becomes final when the investigative
60 report is presented to the unit of local government.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1309 Publicly Funded Retirement Plans
SPONSOR(S): Drake
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 242

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

SUMMARY ANALYSIS

The Florida Protection of Public Employee Retirement Benefits Act requires the plan administrators for all publicly-funded pension plans to submit actuarial reports at least every three years. In addition to the triennial actuarial reporting requirements, local firefighter and police officer pension plans have actuarial reporting requirements in chapters 175 and 185, F.S. The board of trustees for a local government pension plan is permitted to choose the mortality table used in the actuarial valuation report for determining the actuarially required contributions for the plan. As of September 30, 2014, there are 491 defined benefit plans sponsored by 249 local governments.

The bill requires local government pension plans, when conducting the actuarial valuation of the plans, to use mortality table methodologies consistent with the methodologies used in the most recently published actuarial valuation report of the Florida Retirement System. The bill also revises the mortality tables used in the actuarial disclosures in financial statements submitted to the Department of Management Services.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Constitution Requirements

Section 14, Art. X of the State Constitution provides that a governmental unit responsible for a retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide an increase in benefits to members or beneficiaries without concurrent provisions for funding the increase on a sound actuarial basis.

The Florida Protection of Public Employee Retirement Benefits Act

Part VII of chapter 112, F.S., the Florida Protection of Public Employee Retirement Benefits Act (act) was adopted by the Legislature to implement the provisions of s. 14, Art. X of the State Constitution. The act establishes minimum standards for operating and funding public employee retirement systems and plans. It is applicable to all units of state, county, special district, and municipal governments participating in, operating, or administering a retirement system for public employees, which is funded in whole or in part by public funds.¹ Responsibility for administration of the act has been assigned primarily to the Department of Management Services (department), Division of Retirement (division).

A unit of local government may not agree to a proposed change in retirement benefits unless the administrator of the system, prior to adoption of the change by the governing body and prior to the last public hearing thereon, has issued a statement of the actuarial impact of the proposed change upon the local retirement system and furnished a copy of such statement to the division.² In addition, the statement is required to indicate whether the proposed changes are in compliance with s. 14, Art. X of the State Constitution and with s. 112.64, F.S., which relates to administration of funds and amortization of unfunded liability.

Municipal Firefighters' Pension Trust Fund and Police Officers' Retirement Trust Fund

The Marvin B. Clayton Firefighters' and Police Officers' Pension Trust Fund Acts³ declare a legitimate state purpose to provide a uniform retirement system for the benefit of firefighters and municipal police officers. All municipal and special district firefighters and all municipal police officers retirement trust fund systems or plans must be managed, administered, operated, and funded to maximize the protection of firefighters' and police officers' pension trust funds.⁴

Local firefighter pension plans are governed by chapter 175, F.S., which is known as the Marvin B. Clayton Firefighters' Pension Trust Fund Act. Chapter 175, F.S., was originally enacted in 1939 to provide an incentive--access to premium tax revenues--to encourage the establishment of firefighter retirement plans by cities. Fourteen years later, the Legislature enacted chapter 185, F.S., the Marvin B. Clayton Police Officers' Pension Trust Fund Act, which provides a similar funding mechanism for municipal police officers. In 1993, special fire control districts became eligible to participate under chapter 175, F.S.

The acts set forth the minimum benefits or minimum standards for pensions for municipal firefighters and police officers. The benefits provided in the acts may not be reduced by municipalities; however, the benefits provided in a local plan may vary from the provisions in that act so long as the minimum standards are met.

¹ Section 112.62, F.S.

² See s. 112.63, F.S.

³ See chapters 175 and 185, F.S.

⁴ See ss. 175.021(1) and 185.01(1), F.S.

Funding for these pension plans comes from four sources:

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

The Firefighters' Pension Trust Fund is funded through an excise tax of 1.85 percent imposed on the gross premiums of property insurance covering property within boundaries of the municipality or district.⁵ The Police Officers' Retirement Trust Fund is funded through an excise tax of 0.85 percent imposed on the gross premiums of casualty insurance policies covering property within the boundaries of the municipality.⁶ The excise tax is payable by the insurers to the Department of Revenue (DOR), and the net proceeds are transferred to the appropriate fund at the division.⁷

To qualify for insurance premium tax dollars, plans must meet requirements found in chapters 175 and 185, F.S. Responsibility for overseeing and monitoring these plans is assigned to the division; however, the day-to-day operational control rests with the local boards of trustees. The board of trustees must invest and reinvest the assets of the fund according to s. 175.071, F.S., or s. 185.06, F.S., as applicable, unless specifically authorized to vary from the law.

If the division deems that a firefighter or police officer pension plan, created pursuant to these chapters, is not in compliance, the sponsoring municipality may be denied its insurance premium tax revenues until it comes into compliance.

Reporting Requirements for Publicly-Funded Retirement Plans

Triennial Report

To help ensure that each retirement system or plan maintains funding of retirement systems at an appropriate level, governmental entities are required to submit regularly scheduled actuarial reports to the division for its review and approval.⁸

Section 112.63, F.S., requires the plan administrators for all publicly-funded pension plans to submit an actuarial report at least every three years and requires the actuarial reports to consist of, but not be limited to, the following information:

- Adequacy of employer and employee contribution rates in meeting levels of employee benefits and changes, if any, needed in such rates to achieve or preserve a level of funding deemed adequate to enable payment through the indefinite future of the benefit amounts prescribed by the system;
- A plan to amortize any unfunded liability pursuant to s. 112.64, F.S., and a description of actions taken to reduce the unfunded liability;
- A description and explanation of actuarial assumptions;
- A schedule illustrating the amortization of unfunded liabilities, if any;
- A comparative review illustrating the actual salary increases granted and the rate of investment return realized over the 3-year period preceding the actuarial report with the assumptions used in both the preceding and current actuarial reports; and

⁵ Section 175.101, F.S.

⁶ Section 185.08, F.S.

⁷ In 2013, premium tax distributions to municipalities and special fire districts from the Firefighters' Pension Trust Fund amounted to \$74.7 million, and premium tax distributions to municipalities from the Police Officers' Retirement Trust Fund amounted to \$64.8 million. A copy of the 2013 Premium Tax Distribution report is available online at: http://www.dms.myflorida.com/human_resource_support/retirement/local_retirement_plans/municipal_police_and_fire_plans (last visited March 12, 2015).

⁸ Section 112.63(1), F.S., requires an enrolled actuary to certify the scheduled actuarial reports.

- A statement by the enrolled actuary that the report is complete and accurate and that, in his or her opinion, the techniques and assumptions used are reasonable and meet the requirements and intent of the act.

The actuarial cost methods utilized for establishing the amount of the annual actuarial normal cost to support the promised benefits must only be those methods approved in the Employee Retirement Income Security Act of 1974 and as permitted under regulations prescribed by the Secretary of the Treasury.⁹ In addition, s. 112.64, F.S., provides guidelines for the amortization of unfunded liabilities.

If the division determines that a governmental entity has not submitted a complete, accurate or reasonable actuarial valuation or required reports, the division must notify the plan administrator of the deficiency and request an appropriate adjustment or the required information.¹⁰ If after a reasonable period of time, a satisfactory adjustment has not been made, or the required report has not been provided, the department may notify DOR and the Department of Financial Services of the noncompliance and those agencies must withhold any funds not pledged for satisfaction of bonds until such adjustment is made to the report.¹¹ The affected governmental entity may petition the department for a hearing.¹²

In 2013, the Legislature expanded the reporting requirements for defined benefit retirement systems or plans. In addition to the triennial reporting described above, each defined benefit retirement system or plan, excluding the Florida Retirement System (FRS), must electronically report the following information to the department:¹³

- Annual financial statements that are in compliance with the requirements of the Government Accounting Standard Board's Statement No. 67,¹⁴ Financial Reporting for Pension Plans and Statement No. 68, Accounting and Financial Reporting for Pensions, using RP-2000 Combined Healthy Participant Mortality Tables, by gender, with generational projection by Scale AA;
- Annual financial statements similar to those submitted above, but which use an assumed rate of return on investments and an assumed discount rate that is equal to 200 basis points less than the plan's assumed rate of return;
- Information indicating the number of months or years for which the current market value of assets is adequate to sustain the payment of expected retirement benefits; and
- Using the financial statements above, the recommended contributions to the plan stated as an annual dollar value and a percentage of valuation payroll.

The information must first be submitted to the department within 60 days after receipt of the certified actuarial report submitted after the close of the plan year that ends on or after June 30, 2014.¹⁵ After the initial reporting period, each defined benefit retirement system or plan is required to submit the report in each year required by s. 112.63(2), F.S.¹⁶

In addition each defined benefit retirement system or plan, excluding the FRS, must provide the funded ratio of the system or plan as determined in the most recent actuarial valuation as well as the information in the report required by s. 112.664, F.S., as part of the disclosures required under s. 166.241(3), F.S.,¹⁷ and on any website that contains budget information relating to the plan sponsor

⁹ *Id.*

¹⁰ Section 112.63(4)(a), F.S.

¹¹ Section 112.63(4)(b), F.S.

¹² Section 112.63(4)(c), F.S.

¹³ Section 112.664(1), F.S.

¹⁴ The Government Accounting Standards Board (GASB) is the independent organization that establishes and improves standards of accounting and financial reporting for U.S. state and local governments. More information about GASB can be found online at www.gasb.org.

¹⁵ Section 112.664(1), F.S.

¹⁶ *Id.* Section 112.63(2), F.S., refers to the triennial reporting requirements for all defined benefit retirement systems or plans.

¹⁷ Section 166.241(3), F.S., requires municipalities to upload tentative budgets to the municipal website at least two days prior to any budget hearing.

or actuarial or performance information related to the plan.¹⁸ Each defined benefit system or plan, excluding the FRS, that has a publicly available website also must provide on that website:¹⁹

- The plan's most recent financial statement and actuarial valuation, including a link to the division's fact sheet for the plan;
- For the previous 5 years, beginning with 2013, a side-by-side comparison of the plan's assumed rate of return compared to the actual rate of return, as well as the percentages of cash, equity, bond, and alternative investments in the plan portfolio; and
- Any charts and graphs of the data provided in a standardized, user-friendly, and easily interpretable format as prescribed by department rule.

Annual Report for Chapter 175 and Chapter 185 Plans

Chapters 175 and 185, F.S., require every chapter plan and local law plan to submit an annual report to the division, which must include either an independent audit by a certified public accountant or certified statement of accounting, showing a detailed listing of assets and methods used to value them and a statement of all income and disbursements during the year; statistical information about the members in the plan, including ineligible members, disabled members, and retired members; a statement of the amount contributed to the retirement fund; and information pertaining to whether any benefits are insured with a commercial insurance company.²⁰ This report is in addition to the reporting requirements in s. 112.63, F.S.

Department of Management Services Oversight of Local Plans

The department is required to gather, catalog, and maintain complete, computerized data information on all public employee retirement systems or plans in the state, based upon a review of audits, reports, and other data pertaining to the systems or plans.²¹ The department must receive and comment on the actuarial reviews maintained by units of local government, as well as cooperate with local retirement systems or plans on matters of mutual concern, and provide technical assistance to units of local government in the assessment and revision of retirement systems or plans.²² In addition, the department must provide a fact sheet for each participating local government defined benefit pension plan summarizing the plan's actuarial status. The fact sheet must include a brief explanation of each element in order to maximize the transparency of the local government plans.²³ As of September 30, 2014, the department reports that there are 491 defined benefit plans sponsored by 249 local governments.²⁴

Mortality Tables

The FRS uses different mortality tables for its general employees and special risk classes for non-disability retirement. The 2014 FRS Valuation used the RP 2000 mortality table with Scale BB with varying mixes of white collar and blue collar. Non-disability retirements have a separate mortality basis for Special Risk Class members compared to all other membership classes.

¹⁸ Section 112.664(2), F.S.

¹⁹ *Id.*

²⁰ Sections 175.261 and 185.221, F.S.

²¹ Section 112.665(1), F.S.

²² *Id.*

²³ *Id.*

²⁴ *Florida Local Government Retirement Systems, 2014 Annual Report*, pg. 4 (January 1, 2015). A copy of the report can be found online at:

http://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/local_retirement_section/local_government_annual_reports (last visited March 12, 2015).

The board of trustees for a local government pension plan is permitted to choose the mortality table used in the actuarial valuation report for purposes of determining the actuarially required contributions for the plan. The table below shows the various mortality tables used by local government retirement plans and the frequency of use among the plans.²⁵

Mortality Table	Number of local government plans using the table
1983 Group Annuity Mortality (GAM 83)	18
1994 Group Annuity Mortality (GAM 94)	10
1994 Group Annuity Mortality with Scale AA (GAR 94)	7
Uninsured Population 1994 (UP 94)	3
Retirement Plans 2000 (RP 2000)	440
Internal Revenue Service Prescribed	5
Other	8
Total	491

Effect of the Bill

The bill requires local government pension plans, when conducting the actuarial valuations of their pension plans, to use mortality table methodologies consistent with the methodologies used in the most recently published actuarial valuation report of the FRS. Similarly, the bill revises the mortality tables used in the actuarial disclosures in financial statements submitted to the department.

B. SECTION DIRECTORY:

Section 1. amends s. 112.63, F.S., requiring that actuarial reports for certain retirement plans include mortality tables.

Section 2. amends s. 112.664, F.S., revising information to be included in a defined benefit system or plan's annual report to DMS.

Section 3. provides a declaration of important state interest.

Section 4. provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

²⁵ The chart illustrates the mortality assumptions as of February 16, 2015.

2. Expenditures:

The bill requires all local government pension plans to use a mortality table methodology that is consistent with the most recent actuarial report issued by the FRS. Actuarial standards require, to the extent possible, that assumptions used approximate the actual experience of the plan. As such, if the mortality table used by the FRS does not match the experience of the local plan, the resulting actuarial contributions may result in over or under funding of the plan.

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 county/municipality mandates provision of Art. VII, s. 18, of the Florida Constitution may apply because this bill requires local government pension plans to report specified information utilizing a specific mortality assumption, which may result in an increase or decrease in the normal costs associated with the funding of the plan. However, an exemption may apply as the impact is likely insignificant. An exception also may apply because the Legislature has determined in this bill that it serves an important state interest and similarly situated defined benefit pension plans are required to comply.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to publicly funded retirement plans;
 3 amending s. 112.63, F.S.; requiring that actuarial
 4 reports for certain retirement plans include mortality
 5 tables; amending s. 112.664, F.S.; revising
 6 information to be included in a defined benefit system
 7 or plan's annual report to the Department of
 8 Management Services; providing a declaration of
 9 important state interest; providing an effective date.

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

12
 13 Section 1. Subsection (1) of section 112.63, Florida
 14 Statutes, is amended to read:

15 112.63 Actuarial reports and statements of actuarial
 16 impact; review.—

17 (1) Each retirement system or plan subject to the
 18 provisions of this act shall have regularly scheduled actuarial
 19 reports prepared and certified by an enrolled actuary. The
 20 actuarial report shall consist of, but is ~~shall~~ not ~~be~~ limited
 21 to, the following:

22 (a) Adequacy of employer and employee contribution rates
 23 in meeting levels of employee benefits provided in the system
 24 and changes, if any, needed in such rates to achieve or preserve
 25 a level of funding deemed adequate to enable payment through the
 26 indefinite future of the benefit amounts prescribed by the

27 system, which shall include a valuation of present assets, based
28 on statement value, and prospective assets and liabilities of
29 the system and the extent of unfunded accrued liabilities, if
30 any.

31 (b) A plan to amortize any unfunded liability pursuant to
32 s. 112.64 and a description of actions taken to reduce the
33 unfunded liability.

34 (c) A description and explanation of actuarial
35 assumptions.

36 (d) A schedule illustrating the amortization of unfunded
37 liabilities, if any.

38 (e) A comparative review illustrating the actual salary
39 increases granted and the rate of investment return realized
40 over the 3-year period preceding the actuarial report with the
41 assumptions used in both the preceding and current actuarial
42 reports.

43 (f) Mortality tables that use mortality methodology
44 consistent with the most recently published actuarial valuation
45 report of the Florida Retirement System.

46 (g) ~~(f)~~ A statement by the enrolled actuary that the report
47 is complete and accurate and that in his or her opinion the
48 techniques and assumptions used are reasonable and meet the
49 requirements and intent of this act.

50
51 The actuarial cost methods utilized for establishing the amount
52 of the annual actuarial normal cost to support the promised

53 benefits shall only be those methods approved in the Employee
 54 Retirement Income Security Act of 1974 and as permitted under
 55 regulations prescribed by the Secretary of the Treasury.

56 Section 2. Subsection (1) of section 112.664, Florida
 57 Statutes, is amended to read:

58 112.664 Reporting standards for defined benefit retirement
 59 plans or systems.—

60 (1) In addition to the other reporting requirements of
 61 this part, within 60 days after receipt of the certified
 62 actuarial report submitted after the close of the plan year that
 63 ends on or after June 30, 2014, and thereafter in each year
 64 required under s. 112.63(2), each defined benefit retirement
 65 system or plan, excluding the Florida Retirement System, shall
 66 prepare and electronically report the following information to
 67 the Department of Management Services in a format prescribed by
 68 the department:

69 (a) Annual financial statements that comply ~~are in~~
 70 ~~compliance~~ with the requirements of the Governmental Accounting
 71 Standards Government Accounting and Standard Board's Statement
 72 No. 67, titled Financial Reporting for Pension Plans, and
 73 Statement No. 68, titled Accounting and Financial Reporting for
 74 Pensions, using mortality tables that use mortality methodology
 75 consistent with the most recently published actuarial valuation
 76 report of the Florida Retirement System RP-2000 Combined Healthy
 77 ~~Participant Mortality Tables, by gender, with generational~~
 78 ~~projection by Scale AA.~~

79 (b) Annual financial statements similar to those required
80 under paragraph (a), but which use an assumed rate of return on
81 investments and an assumed discount rate that are equal to 200
82 basis points less than the plan's assumed rate of return.

83 (c) Information indicating the number of months or years
84 for which the current market value of assets are adequate to
85 sustain the payment of expected retirement benefits as
86 determined in the plan's latest valuation and under the
87 financial statements prepared pursuant to paragraphs (a) and
88 (b).

89 (d) Information indicating the recommended contributions
90 to the plan based on the plan's latest valuation, and the
91 contributions necessary to fund the plan based on financial
92 statements prepared pursuant to paragraphs (a) and (b), stated
93 as an annual dollar value and a percentage of valuation payroll.

94 Section 3. The Legislature finds that a proper and
95 legitimate state purpose is served when employees and retirees
96 of the state and its political subdivisions, and the dependents,
97 survivors, and beneficiaries of such employees and retirees, are
98 extended the basic protections afforded by governmental
99 retirement systems that provide fair and adequate benefits and
100 that are managed, administered, and funded in an actuarially
101 sound manner as required by s. 14, Article X of the State
102 Constitution and part VII of chapter 112, Florida Statutes.
103 Therefore, the Legislature determines and declares that this act
104 fulfills an important state interest.

HB 1309

2015

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



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Government Operations
 2 Subcommittee
 3 Representative Drake offered the following:
 4

Amendment (with title amendment)

Remove lines 43-76 and insert:

7 (f) The mortality tables used in either of the two most
 8 recently published actuarial valuation reports of the Florida
 9 Retirement System, including the projection scale for mortality
 10 improvement. Appropriate risk and collar adjustments must be
 11 made based on plan demographics. The tables must be used for
 12 assumptions for preretirement and postretirement mortality.

13 (g) ~~(f)~~ A statement by the enrolled actuary that the report
 14 is complete and accurate and that in his or her opinion the
 15 techniques and assumptions used are reasonable and meet the
 16 requirements and intent of this act.



Amendment No.

18 The actuarial cost methods utilized for establishing the amount
19 of the annual actuarial normal cost to support the promised
20 benefits shall only be those methods approved in the Employee
21 Retirement Income Security Act of 1974 and as permitted under
22 regulations prescribed by the Secretary of the Treasury.

23 Section 2. Subsection (1) of section 112.664, Florida
24 Statutes, is amended to read:

25 112.664 Reporting standards for defined benefit retirement
26 plans or systems.-

27 (1) In addition to the other reporting requirements of
28 this part, within 60 days after receipt of the certified
29 actuarial report submitted after the close of the plan year that
30 ends on or after June 30, 2014, and thereafter in each year
31 required under s. 112.63(2), each defined benefit retirement
32 system or plan, excluding the Florida Retirement System, shall
33 prepare and electronically report the following information to
34 the Department of Management Services in a format prescribed by
35 the department:

36 (a) Annual financial statements that comply are in
37 compliance with the requirements of the Governmental Accounting
38 Standards Government Accounting and Standard Board's Statement
39 No. 67, titled "Financial Reporting for Pension Plans," and
40 Statement No. 68, titled "Accounting and Financial Reporting for
41 Pensions," using mortality tables used in either of the two most
42 recently published actuarial valuation reports of the Florida
43 Retirement System, including the projection scale for mortality



Amendment No.

44 improvement. Appropriate risk and collar adjustments must be
45 made based on plan demographics. The tables must be used for
46 assumptions for preretirement and postretirement mortality RP-
47 2000 Combined Healthy

48

49

50

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

51

Remove line 5 and insert:

52

tables; specifying requirements; amending s. 112.664, F.S.;

53

revising

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4043 Write-in Candidates
SPONSOR(S): Geller
TIED BILLS: IDEN./SIM. **BILLS:** SB 840

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Toliver <i>LT</i>	Williamson <i>Draw</i>
2) Transportation & Economic Development Appropriations Subcommittee			
3) State Affairs Committee			

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 only at the time of election.

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. Two recent Florida District Courts of Appeal have held the statute unconstitutional because it conflicts with the residency requirements of those offices within the Florida Constitution, which requires residency at the time of election and not the time of qualification.

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:

Constitutional Residency Requirements for Candidates

The Florida Constitution sets forth eligibility requirements, which includes residency requirements, for legislators,¹ county commissioners,² judges,³ and the governor, the lieutenant governor, and members of the cabinet.⁴ The Florida Supreme Court has held that the legislature is prohibited from imposing any additional eligibility requirements upon candidates for these offices;⁵ 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.⁶

The Florida Constitution sets forth the following residency requirements:

- A legislator must be an elector and resident of the district from which elected, and must have resided in the state for two years prior to the election.⁷
- A county commissioner must be elected from the district from which he or she resides.⁸
- A justice or judge must reside in the territorial jurisdiction of the court from which elected,⁹
- 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.¹⁰

The constitutional residency requirement for legislators, county commissioners, and justices and judges has been interpreted by Florida courts to mean that residency within the district represented by the office sought is required only at the time of election.¹¹

Statutory Residency Requirements for Write-in Candidates

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.

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."¹² 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.¹³ Mr. Francois did not live in the district represented by the office sought at the time of filing his papers to qualify as

¹ Article III, s. 15(c), FLA. CONST.

² Article VIII, s. 1(e), FLA. CONST.

³ Article V, s. 8, FLA. CONST.

⁴ Article IV, s. 5, FLA. CONST.

⁵ *State v. Grassi*, 532 So.2d 1055(Fla. 1988).

⁶ *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).

⁷ Article III, s. 15(c), FLA. CONST.

⁸ Article VIII, s. 1(e), FLA. CONST.

⁹ Article V, s. 8, FLA. CONST.

¹⁰ Article IV, s. 5(b), FLA. CONST.

¹¹ *Norman*, 46 So.3d at 183 (residency of legislators); *Grassi*, 532 So.2d at 1056 (residency of county commissioners); *Miller v. Mendez*, 804 So.2d 1243, 1246-47 (Fla. 2001) (residency of judges).

¹² *Francois v. Brinkmann*, 147 So.3d 613, 616 (Fla. 4th DCA 2014).

¹³ *Id.*

a write-in candidate.¹⁴ 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.¹⁵

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*.¹⁶ 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.”¹⁷ The *Matthews* court, like the *Francois* court,¹⁸ found that the requirement that residency occur at the time of qualification within s. 99.0615, F.S., was in direct contravention of the Florida Constitution’s requirement of residency at the time of election and, therefore, was unconstitutional.¹⁹

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.

B. SECTION DIRECTORY:

Section 1: Repeals s. 99.0615, F.S., relating to write-in candidate residency requirements.

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:

The bill does not appear to impact state government revenues.

2. Expenditures:

The bill does not appear to impact state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to impact local government revenues.

2. Expenditures:

The bill does not appear to impact local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

¹⁴ *Id.*

¹⁵ *Francois*, 147 So.3d at 616.

¹⁶ *Matthews*, 153 So.3d 295

¹⁷ *Id.*

¹⁸ *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.”)

¹⁹ *Id.* at 298

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The 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

Not applicable.

HB 4043

2015

1 A bill to be entitled
2 An act relating to write-in candidates; repealing s.
3 99.0615, F.S., relating to a requirement that a write-
4 in candidate reside within the district of the office
5 sought at the time of qualification; providing an
6 effective date.

7

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

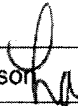
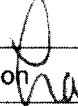
9

10 Section 1. Section 99.0615, Florida Statutes, is repealed.

11 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7041 PCB HWSS 15-02 Public Records/Customer E-mail Addresses/DHSMV
SPONSOR(S): Highway & Waterway Safety Subcommittee, Steube
TIED BILLS: IDEN./SIM. **BILLS:** SB 7040

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Highway & Waterway Safety Subcommittee	13 Y, 0 N	Whittaker	Smith
1) Government Operations Subcommittee		Williamson 	Williamson 
2) Economic Affairs Committee			

SUMMARY ANALYSIS

The Department of Highway Safety and Motor Vehicles (department) is authorized to collect electronic mail addresses and use electronic mail in lieu of the United States Postal Service for the purposes of issuing a certificate of title, providing motor vehicle renewal notices, and providing driver license renewal notices.

The bill creates a public record exemption for electronic mail addresses held by the department for the purpose of providing notices and renewal notifications. The public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a public necessity statement as required by the State Constitution.

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

The bill has an effective date of upon becoming a law.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created 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 Law

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

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.071(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

Public Record Exemptions

The Legislature may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

The Open Government Sunset Review Act² provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:³

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- 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.⁴

Exempt versus Confidential and Exempt

There is a difference between records the Legislature has determined to be exempt and those which have been determined to be confidential and exempt.⁵ If the Legislature has determined the information to be confidential then the information is not subject to inspection by the public.⁶ Also, if the information is deemed to be confidential it may only be released to those persons and entities designated in the statute.⁷ However, the agency is not prohibited from disclosing the records in all circumstances where the records are only exempt.⁸

¹ FLA CONST. art. I, s. 24(c).

² Section 119.15, F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 119.15(3), F.S.

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

⁶ *Id.*

⁷ *Id.*

⁸ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA), *review denied*, 589 So. 2d 289 (Fla. 1991).

Department of Highway Safety and Motor Vehicles and Electronic Mail Addresses

The Department of Highway Safety and Motor Vehicles (department) is the records custodian for motor vehicle records, which contain personal information such as a driver's social security number. The department is authorized to collect electronic mail addresses and use electronic mail, in lieu of the United States Postal Service, for the purposes of issuing a certificate of title,⁹ providing motor vehicle renewal notices,¹⁰ and providing driver license renewal notices.¹¹

Under current law, the electronic mail address is a public record. The department must post a notice on its website alerting users that electronic mail addresses are a public record and advising users not to send electronic mail to the department if they do not want their electronic mail address released pursuant to a public record request.¹²

Effect of Proposed Changes

The bill creates a public record exemption for electronic mail addresses held by the department for certain purposes. Specifically, electronic mail addresses held by the department are exempt from public record requirements if held pursuant to:

- Section 319.40(3), F.S., which authorizes the department to collect electronic mail addresses and use such address as a method of notification.
- Section 320.95(2), F.S., which authorizes the department to collect electronic mail addresses and use such addresses for the purpose of providing renewal notices.
- Section 322.08(8), F.S., which authorizes the department to collect electronic mail addresses and use such address for the purpose of providing renewal notices.

The public record exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also provides a public necessity statement as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1 Amends s. 119.0712, F.S., creating a public record exemption for electronic mail addresses held by the Department of Highway Safety and Motor Vehicles for the purpose of conducting motor vehicle record and driver license transactions; providing for future legislative review and repeal of the exemption.

Section 2 Provides a statement of public necessity.

Section 3 Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

⁹ Section 319.40(3), F.S.

¹⁰ Section 320.95(2), F.S.

¹¹ Section 322.08(8), F.S.

¹² Section 668.6076, F.S.

2. Expenditures:

The bill may have a minimal fiscal impact on the department because staff responsible for complying with public record requests could require training related to creation of the public record exemption. In addition, the department may incur costs associated with redacting the exempt electronic mail addresses prior to releasing a record. These costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote requirement

Article I., s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created 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.

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 records exemption for electronic mail addresses held by the Department of Highway Safety and Motor Vehicles for the purpose of conducting motor vehicle record and driver license transactions.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

The bill provides a public record exemption for electronic mail addresses, also known as e-mail addresses, held by the department. The sections authorizing the department to provide electronic notification refer to the addresses as "electronic mail addresses." As such, inclusion of the phrase "also known as e-mail addresses" is unnecessary.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.0712, F.S.; providing a public records exemption
 4 for e-mail addresses obtained from customers when
 5 conducting driver license or motor vehicle record
 6 transactions; providing for future legislative review
 7 and repeal of the exemption; providing a statement of
 8 public necessity; providing an effective date.

9

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

11

12 Section 1. Subsection (2) of section 119.0712, Florida
 13 Statutes, is amended to read:

14 119.0712 Executive branch agency-specific exemptions from
 15 inspection or copying of public records.—

16 (2) DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES.—

17 (a) For purposes of this subsection, the term "motor
 18 vehicle record" means any record that pertains to a motor
 19 vehicle operator's permit, motor vehicle title, motor vehicle
 20 registration, or identification card issued by the Department of
 21 Highway Safety and Motor Vehicles.

22 (b) Personal information, including highly restricted
 23 personal information as defined in 18 U.S.C. s. 2725, contained
 24 in a motor vehicle record is confidential pursuant to the
 25 federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss.
 26 2721 et seq. Such information may be released only as authorized

27 | by that act; however, information received pursuant to that act
 28 | may not be used for mass commercial solicitation of clients for
 29 | litigation against motor vehicle dealers.

30 | (c)1. Emergency contact information contained in a motor
 31 | vehicle record is confidential and exempt from s. 119.07(1) and
 32 | s. 24(a), Art. I of the State Constitution.

33 | 2. Without the express consent of the person to whom such
 34 | emergency contact information applies, the emergency contact
 35 | information contained in a motor vehicle record may be released
 36 | only to law enforcement agencies for purposes of contacting
 37 | those listed in the event of an emergency.

38 | (d)1. Electronic mail addresses, also known as e-mail
 39 | addresses, held by the Department of Highway Safety and Motor
 40 | Vehicles pursuant to ss. 319.40(3), 320.95(2), and 322.08(8) are
 41 | exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 42 | Constitution.

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

47 | Section 2. The Legislature finds that it is a public
 48 | necessity that electronic mail addresses, also known as e-mail
 49 | addresses, held by the Department of Highway Safety and Motor
 50 | Vehicles for the purpose of conducting motor vehicle record and
 51 | driver license transactions be made exempt from s. 119.07(1),
 52 | Florida Statutes, and s. 24(a), Article I of the State

53 Constitution. The federal Driver's Privacy Protection Act of
54 1994, 18 U.S.C. ss. 2721 et seq., did not include e-mail
55 addresses among the types of personal information protected from
56 disclosure when enacted in 1994. Customer use of e-mail
57 addresses in conducting motor vehicle and driver license record
58 transactions electronically with the department has
59 significantly increased during the past two decades. Under
60 current law, e-mail addresses collected by the department are
61 public records and can be obtained by anyone for any purpose.
62 However, such e-mail addresses are unique to the individual and,
63 when combined with other personal identifying information, can
64 be used for identity theft, customer scams, unwanted
65 solicitations, or other invasive contacts. The public
66 availability of personal e-mail addresses puts the department's
67 customers at increased risk of these activities. Such risk may
68 be significantly limited by permitting the department to keep
69 customer e-mail addresses exempt.

70 Section 3. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 15-06 OGSR Credit History Information and Credit Scores
SPONSOR(S): Government Operations Subcommittee
TIED BILLS: IDEN./SIM. **BILLS:** SB 7012

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

SUMMARY ANALYSIS

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

The Office of Financial Regulation (OFR) licenses and regulates non-depository loan originators (mortgage brokers and mortgage lenders). Applicants for an initial license or license renewal must meet minimum requirements in order to demonstrate character, financial responsibility, and general fitness. As part of the licensure process, an applicant must authorize the release of an independent credit report and credit score to OFR.

Current law provides a public record exemption for credit history information and credit scores held by OFR related to licensure of loan originators. OFR may provide the confidential and exempt credit history information or credit scores to another governmental entity having oversight or regulatory or law enforcement authority.

The bill reenacts the public record exemption, which will repeal on October 2, 2015, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

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

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

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

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

Federal Regulation of Loan Originators

The federal Housing and Economic Recovery Act (act) was enacted in 2008.⁴ Title V of the act is titled the "Secure and Fair Enforcement for Mortgage Licensing Act of 2008" (SAFE Act). The intent of the SAFE Act is to provide greater accountability and regulation of individual loan originators (mortgage brokers and mortgage lenders) and enhance consumer protections by establishing minimum licensure and registration requirements.⁵

The SAFE Act directs the establishment of a nationwide mortgage licensing system and registry (NMLS registry or registry).⁶ The NMLS registry collects and maintains specified information on loan originators to create a common database among federal and state regulators.⁷ Only authorized recipients may access the information in the NMLS registry, and authorized recipients may not share information obtained from the registry or provide third party access to the services or consumer report information.

¹ Section 119.15, F.S.

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

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

⁴ Public Law 110-289, July 30, 2008.

⁵ Public Law 110-289, Title V, s. 1502.

⁶ *Id.* at ss. 1502 and 1503.

⁷ *Id.*

The SAFE Act requires states to comply with its minimum standards and to participate in the NMLS registry.⁸ It also requires loan originators to obtain an annual state license and provide fingerprints for purposes of a criminal background check, and allows the state regulator to access a credit report through the registry.⁹

Florida Regulation of Loan Originators

The Office of Financial Regulation (OFR) regulates non-depository loan originators and other specified financial entities.¹⁰ In 2009, the Legislature enacted legislation to bring the state into compliance with the SAFE Act.¹¹ The legislation required OFR to license loan originators.¹² Applicants for an initial license or license renewal must meet minimum requirements in order to demonstrate character, financial responsibility, and general fitness.

The loan originator licensure and renewal process includes a review of the applicant's credit report and credit information, which OFR accesses through the NMLS registry.¹³ Before OFR can access the information, the applicant must complete the credit authorization process through the NMLS registry.¹⁴ The credit report obtained through the NMLS registry is a TransUnion Credit Report with a Vantage Score.¹⁵ OFR is required to comply with terms and conditions relating to the confidentiality of the registry information.

Public Record Exemption under Review

In 2010, the Legislature created a public record exemption for credit history information and credit scores held by OFR related to licensure of loan originators.¹⁶ OFR may provide the confidential and exempt¹⁷ information to another governmental entity having oversight or regulatory or law enforcement authority.¹⁸

Section 2 of chapter 2010-169, L.O.F., which is the public necessity statement for the public record exemption, provides that:

Credit history information and credit scores are sensitive and personal information. Disclosure of such information and scores could cause harm to the person who is the subject of the information. Such information could be defamatory and could cause unwarranted damage to the name or reputation of the person who is the subject of the information, especially if such information is inaccurate. Furthermore, access to such information could jeopardize the

⁸ The SAFE Act provides that if the state does not enact minimum regulatory standards that comply with the SAFE Act after the enactment, the U.S. Department of Housing and Urban Development will enforce the minimum standards for loan originators in the state as state-licensed loan originators. *Id.* at s. 1508.

⁹ *Id.* at ss. 1504 and 1505.

¹⁰ OFR is organized under the Financial Services Commission. The commission is composed of the Governor and Cabinet. Section 20.121(3), F.S.

¹¹ Chapter 2009-241, L.O.F.

¹² *Id.*

¹³ As part of the licensure process, OFR evaluates the credit report and credit history in the context of the "totality of the circumstances." See ss. 494.00611 and 494.00321, F.S., and chapter 69V-40.0113, F.A.C.

¹⁴ See Frequently Asked Questions at: <http://mortgage.nationwidelicensingsystem.org/profreq/Pages/FAQ.aspx#credit> (last visited March 10, 2015).

¹⁵ *Id.*

¹⁶ Chapter 2010-169, L.O.F.; codified as s. 494.00125(3), 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 494.00125(3)(b), F.S.

financial safety of the individual who is the subject of that information by placing the person at risk of becoming the object of identity theft.

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2015, unless reenacted by the Legislature.¹⁹

During the 2014 interim, subcommittee staff met with OFR staff as part of the Open Government Sunset Review process. OFR staff was asked whether OFR recommended that the Legislature repeal the public record exemption under review, reenact the public record exemption, or reenact it with changes. OFR recommended reenactment of the public record exemption under review.

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record exemption for credit history information and credit scores held by OFR related to licensure of loan originators.

B. SECTION DIRECTORY:

Section 1 amends s. 494.00125, F.S., to save from repeal the public record exemption for credit history information and credit scores held by OFR.

Section 2 provides an effective date of October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 494.00125, F.S.,
 4 relating to an exemption from public records
 5 requirements for credit history information and credit
 6 scores held by the Office of Financial Regulation for
 7 purposes of licensing loan originators, mortgage
 8 brokers, and mortgage lenders; removing the scheduled
 9 repeal of the exemption; providing an effective date.

10

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

12

13 Section 1. Subsection (3) of section 494.00125, Florida
 14 Statutes, is amended to read:

15 494.00125 Public records exemptions.—

16 (3) CREDIT INFORMATION.—

17 (a) Credit history information and credit scores held by
 18 the office and related to licensing under ss. 494.001-494.0077
 19 are confidential and exempt from s. 119.07(1) and s. 24(a), Art.
 20 I of the State Constitution.

21 (b) Credit history information and credit scores made
 22 confidential and exempt pursuant to paragraph (a) may be
 23 provided by the office to another governmental entity having
 24 oversight or regulatory or law enforcement authority.

25 (c) This subsection does not apply to information that is
 26 otherwise publicly available.

PCB GVOPS 15-06

ORIGINAL

2015

27 | ~~(d) This subsection is subject to the Open Government~~
28 | ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~
29 | ~~repealed on October 2, 2015, unless reviewed and saved from~~
30 | ~~repeal through reenactment by the Legislature.~~

31 | Section 2. This act shall take effect October 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 15-07 OGSR Stalking Victims
SPONSOR(S): Government Operations Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:** SB 7034

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

SUMMARY ANALYSIS

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

The Office of the Attorney General administers the Address Confidentiality Program for Victims of Domestic Violence (ACP or program). The purpose of the program is to enable state and local agencies to respond to requests for public records without disclosing the location of a victim of domestic violence, encourage interagency cooperation with the Attorney General in providing address confidentiality for victims of domestic violence, and allow state and local agencies to accept a program participant's use of an address designated by the Attorney General as a substitute mailing address. Current law provides a public record exemption for the ACP. The address, corresponding telephone number, and social security number of a program participant held by the Office of the Attorney General is exempt from public record requirements. In addition, the name, address, and telephone number of program participants contained in voter registration and voting records held by the supervisor of elections and the Department of State are exempt from public record requirements.

Current law also provides a public record exemption for the names, addresses, and telephone numbers of victims of stalking or aggravated stalking in the same manner as participants in the ACP provided the victim files a sworn statement of stalking with the Office of the Attorney General and otherwise complies with the requirements of the program.

The bill reenacts the public record exemption for victims of stalking or aggravated stalking, which will repeal on October 2, 2015, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

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

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

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

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

Address Confidentiality Program for Victims of Domestic Violence⁴

The Office of the Attorney General (office) administers the Address Confidentiality Program for Victims of Domestic Violence (ACP or program). The purpose of the program is to:⁵

- Enable state and local agencies to respond to requests for public records without disclosing the location of a victim of domestic violence;
- Encourage interagency cooperation with the Attorney General in providing address confidentiality for victims of domestic violence; and
- Allow state and local agencies to accept a program participant's use of an address designated by the Attorney General as a substitute mailing address.

An adult person, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of a person adjudicated incapacitated may apply to the Attorney General to have an address designated by the Attorney General to serve as the person's address or the address of the minor or incapacitated person.⁶ Each participant is assigned a substitute address that is not related to the participant's actual location.

¹ Section 119.15, F.S.

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

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

⁴ See ss. 741.401-741.409, F.S.

⁵ Section 741.401, F.S.

⁶ Section 741.403(1), F.S.

An ACP participant who is qualified to vote may request an absentee ballot, and will automatically receive absentee ballots for all elections in the jurisdiction in which the participant resides.⁷ Current law prohibits the supervisor of elections from disclosing the participant's name, address, or telephone number in any list of registered voters available to the public.⁸ Thus, the participant can vote in the elections for which he or she is otherwise qualified, while information that might be used to locate him or her remains protected.

Public Record Exemption for the ACP

Current law provides a public record exemption for the ACP.⁹ The address, corresponding telephone number, and social security number of a program participant held by the office is exempt¹⁰ from public record requirements. For purposes of the public record exemption, the term "address" means a residential street address, school address, or work address, as specified on the individual's application to be a program participant.¹¹

In addition, the name, address, and telephone number of program participants contained in voter registration and voting records held by the supervisor of elections and the Department of State are exempt from public record requirements.¹²

Public Record Exemption under Review

In 2010, the Legislature created a public record exemption for certain information concerning persons who are victims of stalking or aggravated stalking.¹³ Section 97.0585(3), F.S., provides that the names, addresses, and telephone numbers of victims of stalking or aggravated stalking are exempt in the same manner as participants in the ACP provided the victim files a sworn statement of stalking with the office and otherwise complies with the requirements of the ACP.

Section 2 of chapter 2010-115, L.O.F., which is the public necessity statement for the exemption, provides, in part, that:

The public-records exemption for the name is a public necessity because access to such name narrows the location of a stalking victim to a specific, geographic voting precinct. In addition, access to the address and telephone number provides specific location and contact information for the victim. Therefore, access to the name, address, and telephone number defeats the goal of providing safety and security. Allowing victims of stalking or aggravated stalking to use a substitute mailing address designated by the Office of the Attorney General facilitates the goal of providing safety and security.

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2015, unless reenacted by the Legislature.¹⁴

⁷ Section 741.406, F.S.

⁸ *Id.*

⁹ Section 741.465, F.S.

¹⁰ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (August 1, 1985).

¹¹ Section 741.465(1), F.S.

¹² Section 741.465(2), F.S.

¹³ Chapter 2010-115, L.O.F.; codified as s. 97.0585(3), F.S.

¹⁴ Section 97.0585(5), F.S.

During the 2014 interim, subcommittee staff reviewed information provided by the office and the Division of Elections (division) in the Department of State. Subcommittee staff also met with staff from the office and the division. Staff of the office and the division indicated that the public record exemption created in 2010 for victims of stalking or aggravated stalking actually expanded the ACP to include such victims. In addition, staff of the office and division recommended reenactment of the public record exemption for victims of stalking or aggravated stalking.

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record exemption for the names, addresses, and telephone numbers of persons who are victims of stalking or aggravated stalking provided the victim files a sworn statement of stalking with the office and otherwise complies with the ACP. The bill also transfers the public record exemption from the Election Code to s. 741.4651, F.S., in order to co-locate the public record exemption for victims of stalking or aggravated stalking with the public record exemption for the ACP.

B. SECTION DIRECTORY:

Section 1 transfers, renumbers, and amends s. 97.0585, F.S., to save from repeal the public record exemption for certain information regarding persons who are victims of stalking or aggravated stalking.

Section 2 provides an effective date of October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; transferring, renumbering, and
 4 amending s. 97.0585, F.S., relating to an exemption
 5 from public records requirements for certain
 6 information regarding persons who are victims of
 7 stalking or aggravated stalking; removing the
 8 scheduled repeal of the exemption; providing an
 9 effective date.

10

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

12

13 Section 1. Subsection (4) of section 97.0585, Florida
 14 Statutes, is renumbered as subsection (3) of said section, and
 15 subsections (3) and (5) of section 97.0585, Florida Statutes,
 16 are transferred and renumbered as subsections (1) and (2) of
 17 newly created section 741.4651, Florida Statutes, and are
 18 amended to read:

19 741.4651 Public records exemption; victims of stalking or
 20 aggravated stalking.—

21 ~~(3)~~ The names, addresses, and telephone numbers of persons
 22 who are victims of stalking or aggravated stalking are exempt
 23 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution
 24 in the same manner that the names, addresses, and telephone
 25 numbers of participants in the Address Confidentiality Program
 26 for Victims of Domestic Violence which are held by the Attorney

PCB GVOPS 15-07

ORIGINAL

2015

27 General under s. 741.465 are exempt from disclosure, provided
28 that the victim files a sworn statement of stalking with the
29 Office of the Attorney General and otherwise complies with the
30 procedures in ss. 741.401-741.409.

31 ~~(5) Subsection (3) is subject to the Open Government~~
32 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~
33 ~~repealed on October 2, 2015, unless reviewed and saved from~~
34 ~~repeal through reenactment by the Legislature.~~

35 Section 2. This act shall take effect October 1, 2015.