

Government Operations Subcommittee

Tuesday, March 24, 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 24, 2015 08:00 am
End Date and Time: Tuesday, March 24, 2015 12:00 pm
Location: Webster Hall (212 Knott)
Duration: 4.00 hrs

Consideration of the following bill(s):

CS/HB 91 Trade Secrets by Criminal Justice Subcommittee, Pilon
CS/HB 93 Pub. Rec./Trade Secrets by Criminal Justice Subcommittee, Pilon
CS/HB 141 Pub. Rec./Impaired Practitioner Consultants by Health Quality Subcommittee, Renuart, Adkins
CS/HB 185 Public Records/Military Special Operations Unit by Veteran & Military Affairs Subcommittee, Gaetz
CS/HB 223 Public Records and Meetings/Postsecondary Education Executive Search by Higher Education & Workforce Subcommittee, Combee
HB 371 Agency Inspectors General by Raulerson
HB 585 Legal Holidays & Special Observances/Sir Lancelot Jones Day by Raschein
HB 599 Exemption from Legislative Lobbying Requirements by Rogers
HB 615 Electronic Auction Services by Hutson
HB 821 Florida Historic Capitol by Hutson
HB 939 Pub. Rec./Florida Prepaid College Board/Florida ABLE, Inc./Florida ABLE Program by Rodrigues, R.
HB 997 Pub. Rec./Department of Agriculture and Consumer Services by Trumbull
HB 1011 Addresses of Legal Residence by Spano
HB 1063 Government Accountability by Metz
HB 1083 Employment Opportunities for Persons with Disabilities by Rooney
HB 1147 Honor and Remember Flag by Burgess
CS/HB 1167 City of West Palm Beach, Palm Beach County by Local Government Affairs Subcommittee, Kerner
HB 1201 Ocean Highway and Port Authority, Nassau County by Adkins
CS/HB 1209 Pub. Rec./High-pressure Well Stimulation Chemical Disclosure Registry by Agriculture & Natural Resources Subcommittee, Rodrigues, R.
HB 1217 Hillsborough River Technical Advisory Council, Hillsborough County by Raulerson
HB 7065 Pub. Rec./Child Pornography by Criminal Justice Subcommittee, Spano

Consideration of the following proposed committee bill(s):

PCB GVOPS 15-08 -- OGSR Child Abuse Death Review Committees

NOTICE FINALIZED on 03/20/2015 16:20 by Love.John

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 91 Trade Secrets
SPONSOR(S): Criminal Justice Subcommittee; Pilon
TIED BILLS: HB 93 **IDEN./SIM. BILLS:** SB 564

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|---------------------|-----------------------|--|
| 1) Criminal Justice Subcommittee | 12 Y, 0 N, As CS | Keegan | Cunningham |
| 2) Justice Appropriations Subcommittee | 10 Y, 0 N | McAuliffe | Lloyd |
| 3) Government Operations Subcommittee | | Williamson <i>Raw</i> | Williamson <i>Raw</i> |
| 4) Judiciary Committee | | | |

SUMMARY ANALYSIS

Florida law currently imposes criminal penalties for a variety of acts relating to the theft, unauthorized copying, and misappropriation of trade secrets. For purposes of many of these statutes, the term “trade secret” is defined in accordance with s. 812.081, F.S., to include “any scientific, technical, or commercial information” that otherwise qualifies as trade secret.

The bill expands the definition of “trade secret” to include “any scientific, technical, commercial, or *financial* information” that otherwise qualifies as trade secret.

The Criminal Justice Impact Conference (CJIC) met March 11, 2015 and determined this bill will have a positive insignificant impact on state prison beds. This means CJIC estimates that this bill may increase the department’s prison bed population by less than 10 inmates annually. The bill may also have a negative jail bed impact on local governments because it expands the application of a misdemeanor offense.

This bill is effective October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida law currently prohibits a variety of acts relating to trade secrets. For example:

- Section 815.04, F.S., makes it a third degree felony¹ for a person to willfully, knowingly, and without authorization disclose or take data, programs, or supporting documentation that is a trade secret that is residing or existing internal or external to a computer, computer system, computer network, or electronic device.²
- Section 812.081, F.S., makes it a third degree felony for a person to steal, embezzle, or copy without authorization an article representing a trade secret, when done with an intent to:
 - Deprive or withhold from the trade secret's owner the control of a trade secret, or
 - Appropriate a trade secret to his or her own use or to the use of another.
- Section 581.199, F.S., makes it a first degree misdemeanor³ for a designated employee, inspector, or collaborator of the division or the United States Department of Agriculture who, in an official capacity obtains under ch. 581, F.S., any information entitled to protection as a trade secret, to use such information for personal gain or to reveal it to an unauthorized person.

A number of statutes also provide non-criminal protections for trade secrets. The majority of these statutes provide public record exemptions for trade secrets;⁴ however, a small number of these statutes provide other types of protections, such as procedural safeguards and civil remedies.⁵

For purposes of the above-described statutes, the term "trade secret" is defined in accordance with s. 812.081, F.S., as:

"Trade secret" means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. "Trade secret" includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

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

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.⁶

¹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

² The offense is a second degree felony if committed for the purpose of creating or executing any scheme or artifice to defraud or to obtain property.

³ A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

⁴ ss. 119.071(1)(f), 125.0104(9)(d), 288.1226(8), 331.326, 365.174, 381.83, 403.7046(2)-(3), 403.73, 499.012(g), (m), 499.0121(7), 499.051(7), 499.931, 502.222, 570.48(3), 573.123(2), 581.199, 601.10(8)(a), 601.15(7)(d), 601.152(8)(c), 601.76, and 815.045, F.S.

⁵ ss. 721.071 and 812.035, F.S.

⁶ s. 812.081(1)(c), F.S.

Effect of the Bill

The bill expands the definition of "trade secret" in s. 812.081(1)(c), F.S., to include "any scientific, technical, commercial, or *financial* information" that otherwise qualifies as a trade secret. As such, the criminal offenses described above will apply to an expanded list of trade secret information.

B. SECTION DIRECTORY:

Section 1. Amends s. 812.081, F.S., relating to trade secrets; theft, embezzlement; unlawful copying; definitions; penalty.

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

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 Criminal Justice Impact Conference (CJIC) met March 11, 2015 and determined this bill will have a positive insignificant impact on state prison beds. This means CJIC estimates that this bill may increase the department's prison bed population by less than 10 inmates annually. The bill may also have a negative jail bed impact on local governments because it expands the application of a misdemeanor offense.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

As noted above, s. 581.199, F.S., makes it a first degree misdemeanor for certain persons to use trade secret information in specified ways. Because the bill expands the definition of "trade secret," for purposes of this offense, it may have a negative jail bed impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of article VII, section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 4, 2015, the Criminal Justice Subcommittee adopted an amendment and reported the bill as favorable as a committee substitute. The amendment:

- Removed language that repealed a trade secret public records exemption; and
- Removed the reenactment of a trade secret public records exemption.

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

1 A bill to be entitled
2 An act relating to trade secrets; amending s. 812.081,
3 F.S.; including financial information in provisions
4 prohibiting the theft, embezzlement, or unlawful
5 copying of trade secrets; providing criminal
6 penalties; providing an effective date.

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

9
10 Section 1. Section 812.081, Florida Statutes, is amended
11 to read:

12 812.081 Trade secrets; theft, embezzlement; unlawful
13 copying; definitions; penalty.—

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

15 (a) "Article" means any object, device, machine, material,
16 substance, or composition of matter, or any mixture or copy
17 thereof, whether in whole or in part, including any complete or
18 partial writing, record, recording, drawing, sample, specimen,
19 prototype model, photograph, microorganism, blueprint, map, or
20 copy thereof.

21 (b) "Representing" means completely or partially
22 describing, depicting, embodying, containing, constituting,
23 reflecting, or recording.

24 (c) "Trade secret" means the whole or any portion or phase
25 of any formula, pattern, device, combination of devices, or
26 compilation of information which is for use, or is used, in the

27 operation of a business and which provides the business an
 28 advantage, or an opportunity to obtain an advantage, over those
 29 who do not know or use it. The term ~~"Trade secret"~~ includes any
 30 scientific, technical, ~~or~~ commercial, or financial information,
 31 including any design, process, procedure, list of suppliers,
 32 list of customers, business code, or improvement thereof.
 33 Irrespective of novelty, invention, patentability, the state of
 34 the prior art, and the level of skill in the business, art, or
 35 field to which the subject matter pertains, a trade secret is
 36 considered to be:

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

43
 44 when the owner thereof takes measures to prevent it from
 45 becoming available to persons other than those selected by the
 46 owner to have access thereto for limited purposes.

47 (d) "Copy" means any facsimile, replica, photograph, or
 48 other reproduction in whole or in part of an article and any
 49 note, drawing, or sketch made of or from an article or part or
 50 portion thereof.

51 (2) Any person who, with intent to deprive or withhold
 52 from the owner thereof the control of a trade secret, or with an

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2015

53 | intent to appropriate a trade secret to his or her own use or to
54 | the use of another, steals or embezzles an article representing
55 | a trade secret or without authority makes or causes to be made a
56 | copy of an article representing a trade secret commits ~~is guilty~~
57 | ~~of~~ a felony of the third degree, punishable as provided in s.
58 | 775.082 or s. 775.083.

59 | (3) In a prosecution for a violation of ~~the provisions of~~
60 | this section, the fact it is no defense that the person so
61 | charged returned or intended to return the article so stolen,
62 | embezzled, or copied is not a defense.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 93 Pub. Rec./Trade Secrets
SPONSOR(S): Criminal Justice Subcommittee; Pilon
TIED BILLS: CS/HB 91 **IDEN./SIM. BILLS:** SB 566

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

SUMMARY ANALYSIS

Florida law contains a variety of provisions making trade secret information confidential and/or exempt from public records. Many of these statutes define the term "trade secret" in accordance with s. 812.081(1)(c), F.S.

CS/HB 91, which is tied to this bill, expands the definition of the term "trade secret" contained in s. 812.081(1)(c), F.S., to include financial information.

This bill, which is linked to the passage of CS/HB 91 or similar legislation, reenacts ss. 119.071(1)(f), 125.0104(9)(d), 288.1226(8), 331.326, 365.174(3), 381.83, 403.7046(2), 403.7046(3)(b), 403.73, 499.012(8)(g), 499.012(8)(m), 499.0121(7), 499.051(7), 499.931, 502.222, 570.48(3), 573.123(2), 601.10(8)(a), 601.15(7)(d), 601.152(8)(c), 601.76, and 815.04(3), F.S., to incorporate the changes to the definition of "trade secret" made by CS/HB 91. The sections provided public record exemptions for trade secret information. Thus, the bill reenacts and expands those public record exemptions for trade secret information to include financial information.

The bill provides for repeal of the reenacted exemptions on October 2, 2020, unless they are reviewed and saved from repeal through reenactment by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

This bill is tied to CS/HB 91, which provides a new category of trade secret information that is exempt from public records disclosure. Together, the bills may have a minimal impact on state and local government expenditures because they may require agencies to provide personnel training on the expanded exemptions.

The bill will be effective on the same date CS/HB 91 or similar legislation takes effect.

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 reenacts and expands public record exemptions for trade secret information; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, section 24(a) of the Florida Constitution.¹ The general law must state with specificity the public necessity justifying the exemption² and must be no more broad than necessary to accomplish its purpose.³

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act⁴ 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 more broad than necessary to meet one of the following purposes:⁵

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect 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.
- Protect trade or business secrets.

The Act also requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.⁶ Specified questions must be considered by the Legislature during the review process.⁷

Trade Secrets

Florida law contains a variety of provisions making trade secret information confidential and/or exempt from public records requirements. For example:

- Section 119.071(1)(f), F.S., exempts data processing software obtained by an agency under a licensing agreement that prohibits its disclosure where the software is trade secret;
- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency;
- Section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation;
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt;⁸

¹ FLA. CONST. art. I, s. 24(c).

² This portion of a public records exemption is commonly referred to as a "public necessity statement."

³ FLA. CONST. art. I, s. 24(c).

⁴ s. 119.15, F.S.

⁵ s. 119.15(6)(b), F.S.

⁶ s. 119.15(3), F.S.

⁷ Section 119.15(6)(a), F.S. requires the Legislature to consider the following questions as part of the review process: 1) What specific records or meetings are affected by the exemption? 2) What specific parties does the exemption affect? 3) What is the public purpose of the exemption? 4) Can the information contained in the records or meetings be readily obtained by alternative means? If so, how? 5) Is the record or meeting protected by another exemption? 6) Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

⁸ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances.

See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA

- Section 365.174(3), F.S., makes trade secret business information submitted to the E911 Board or the Department of Management Services confidential and exempt;
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt;
- Sections 403.7046(2) and (3) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt;
- Section 499.012(8)(g) and (m), F.S., makes trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application confidential and exempt;
- Section 499.0121(7), F.S., makes trade secret information reported to DBPR in a list of prescription drug wholesalers confidential and exempt;
- Section 499.051(7), F.S., makes trade secret information obtained by DBPR during an investigation of a permit holder confidential and exempt;
- Section 499.931, F.S., makes trade secret information submitted to DBPR for medical gas permitting purposes confidential and exempt;
- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt;
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS' Division of Fruit and Vegetables confidential and exempt;
- Section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons confidential and exempt;
- Section 601.10(8)(a), F.S., makes any information held by the Department of Citrus (DOC) that contains trade secrets confidential and exempt;
- Section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to DOC confidential and exempt;
- Section 601.152(8)(c), F.S., makes trade secret information provided by citrus handlers to DOC confidential and exempt;
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt; and
- Section 815.04(3), makes trade secret information that is held by an agency and exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.

The above-described statutes define the term "trade secret" in accordance with s. 812.081(1)(c), F.S., which defines the term as follows:

"Trade secret" means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. "Trade secret" includes any *scientific, technical, or commercial information*, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and

4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

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

Committee Substitute for House Bill 91

During the 2015 Legislative Session, CS/HB 91, which is tied to this bill, amends s. 812.081(1)(c), F.S., to expand the definition of "trade secret" to include *financial information*.

Effect of the Bill

The bill, which is linked to the passage of CS/HB 91 or similar legislation, reenacts all of the above-described public records exemptions to incorporate the changes to the definition of "trade secret" in s. 812.081(1)(c), F.S., made by CS/HB 91. Thus, the bill reenacts and expands the public record exemptions for trade secret information to include financial information.

The bill provides for repeal of the reenacted exemptions on October 2, 2020, unless they are reviewed and saved from repeal through reenactment by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

B. SECTION DIRECTORY:

Section 1. Reenacts s. 119.071(1)(f), F.S., relating to general exemptions from inspection or copying of public records.

Section 2. Reenacts s. 125.0104(9)(d), F.S., relating to tourist development tax; procedure for levying; authorized uses; referendum; enforcement.

Section 3. Reenacts s. 288.1226(8), F.S., relating to Florida Tourism Industry Marketing Corporation; use of property; board of directors; duties; audit.

Section 4. Reenacts s. 331.326, F.S., relating to information relating to trade secrets confidential.

Section 5. Reenacts s. 365.174(3), F.S., relating to proprietary confidential business information.

Section 6. Reenacts s. 381.83, F.S., relating to trade secrets; confidentiality.

Section 7. Reenacts s. 403.7046(2) and (3)(b), F.S., relating to regulation of recovered materials.

Section 8. Reenacts s. 403.73, F.S., relating to trade secrets; confidentiality.

Section 9. Reenacts s. 499.012(8)(g) and (m), F.S., relating to permit application requirements.

Section 10. Reenacts s. 499.0121(7), F.S., relating to storage and handling of prescription drugs; recordkeeping.

Section 11. Reenacts s. 499.051(7), F.S., relating to inspections and investigations.

Section 12. Reenacts s. 499.931, F.S., relating to trade secret information.

Section 13. Reenacts s. 502.222, F.S., relating to information relating to trade secrets confidential.

Section 14. Reenacts s. 570.48(3), F.S., relating to Division of Fruit and Vegetables; powers and duties; records.

Section 15. Reenacts s. 573.123(2), F.S., relating to maintenance and production of records.

Section 16. Reenacts s. 601.10(8)(a), F.S., relating to powers of the Department of Citrus.

Section 17. Reenacts s. 601.15(7)(d), F.S., relating to advertising campaign; methods of conducting; assessments; emergency reserve fund; citrus research.

Section 18. Reenacts s. 601.152(8)(c), F.S., relating to special marketing orders.

Section 19. Reenacts s. 601.76, F.S., relating to manufacturer to furnish formula and other information.

Section 20. Reenacts s. 815.04(3), F.S., relating to offenses against intellectual property; public records exemption.

Section 21. Provides that the reenacted sections are subject to the Open Government Sunset Review Act, and are scheduled to repeal October 2, 2020.

Section 22. Provides a public necessity statement.

Section 23. Provides an effective date that is the same date as CS/HB 91 or similar legislation, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

This bill is tied to CS/HB 91, which provides a new category of trade secret information that is confidential or exempt from public records requirements. Together, the bills may have a minimal impact on state expenditures because they may require agencies to provide personnel training on the expanded exemptions.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

This bill is tied to CS/HB 91, which provides a new category of trade secret information that is confidential or exempt from public records requirements. Together, the bills may have a minimal impact on local government expenditures because they may require agencies to provide personnel training on the expanded exemptions.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill reenacts and expands current public record exemptions for trade secret information; therefore, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill reenacts and expands current public record exemptions for trade secret information; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands the definition of trade secrets that qualify for specified public records exemptions. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 4, 2015, the Criminal Justice Subcommittee adopted an amendment and reported the bill as favorable as a committee substitute. The amendment reenacted the trade secret public records exemption in s. 499.931, F.S.

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

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A bill to be entitled
 An act relating to public records; reenacting ss.
 119.071(1)(f), 125.0104(9)(d), 288.1226(8), 331.326,
 365.174(3), 381.83, 403.7046(2) and (3)(b), 403.73,
 499.012(8)(g) and (m), 499.0121(7), 499.051(7),
 499.931, 502.222, 570.48(3), 573.123(2), 601.10(8)(a),
 601.15(7)(d), 601.152(8)(c), 601.76, and 815.04(3),
 F.S., relating to exemptions from inspection or
 copying of public records for tourist development
 taxes, the Florida Tourism Industry Marketing
 Corporation, information relating to trade secrets,
 proprietary confidential business information, trade
 secret confidentiality, regulation of recovered
 materials, trade secret confidentiality, permit
 application requirements, recordkeeping concerning the
 storage and handling of prescription drugs,
 inspections and investigations, trade secret
 information, information relating to trade secrets,
 powers and duties of the Division of Fruit and
 Vegetables of the Department of Agriculture and
 Consumer Services, maintenance and production of
 records, powers of the Department of Citrus,
 advertising campaigns, methods of conducting,
 assessments, emergency reserve fund, and citrus
 research, special marketing orders, formulas and other
 information furnished by manufacturers, and offenses

27 | against intellectual property, respectively, to
 28 | incorporate changes made to s. 812.081, F.S., by CS/HB
 29 | 91 in references thereto; providing for future
 30 | legislative review and repeal of the reenactments of
 31 | the exemptions; providing a statement of public
 32 | necessity; providing a contingent effective date.

33 |

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

35 |

36 | Section 1. For the purpose of incorporating the amendment
 37 | made by CS/HB 91 to section 812.081, Florida Statutes, in a
 38 | reference thereto, paragraph (f) of subsection (1) of section
 39 | 119.071, Florida Statutes, is reenacted to read:

40 | 119.071 General exemptions from inspection or copying of
 41 | public records.—

42 | (1) AGENCY ADMINISTRATION.—

43 | (f) Data processing software obtained by an agency under a
 44 | licensing agreement that prohibits its disclosure and which
 45 | software is a trade secret, as defined in s. 812.081, and
 46 | agency-produced data processing software that is sensitive are
 47 | exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 48 | Constitution. The designation of agency-produced software as
 49 | sensitive shall not prohibit an agency head from sharing or
 50 | exchanging such software with another public agency.

51 | Section 2. For the purpose of incorporating the amendment
 52 | made by CS/HB 91 to section 812.081, Florida Statutes, in a

53 reference thereto, paragraph (d) of subsection (9) of section
 54 125.0104, Florida Statutes, is reenacted to read:

55 125.0104 Tourist development tax; procedure for levying;
 56 authorized uses; referendum; enforcement.—

57 (9) COUNTY TOURISM PROMOTION AGENCIES.—In addition to any
 58 other powers and duties provided for agencies created for the
 59 purpose of tourism promotion by a county levying the tourist
 60 development tax, such agencies are authorized and empowered to:

61 (d) Undertake marketing research and advertising research
 62 studies and provide reservations services and convention and
 63 meetings booking services consistent with the authorized uses of
 64 revenue as set forth in subsection (5).

65 1. Information given to a county tourism promotion agency
 66 which, if released, would reveal the identity of persons or
 67 entities who provide data or other information as a response to
 68 a sales promotion effort, an advertisement, or a research
 69 project or whose names, addresses, meeting or convention plan
 70 information or accommodations or other visitation needs become
 71 booking or reservation list data, is exempt from s. 119.07(1)
 72 and from s. 24(a), Art. I of the State Constitution.

73 2. The following information, when held by a county
 74 tourism promotion agency, is exempt from s. 119.07(1) and from
 75 s. 24(a), Art. I of the State Constitution:

- 76 a. A trade secret, as defined in s. 812.081.
- 77 b. Booking business records, as defined in s. 255.047.
- 78 c. Trade secrets and commercial or financial information

79 gathered from a person and privileged or confidential, as
 80 defined and interpreted under 5 U.S.C. s. 552(b)(4), or any
 81 amendments thereto.

82 Section 3. For the purpose of incorporating the amendment
 83 made by CS/HB 91 to section 812.081, Florida Statutes, in a
 84 reference thereto, subsection (8) of section 288.1226, Florida
 85 Statutes, is reenacted to read:

86 288.1226 Florida Tourism Industry Marketing Corporation;
 87 use of property; board of directors; duties; audit.—

88 (8) PUBLIC RECORDS EXEMPTION.—The identity of any person
 89 who responds to a marketing project or advertising research
 90 project conducted by the corporation in the performance of its
 91 duties on behalf of Enterprise Florida, Inc., or trade secrets
 92 as defined by s. 812.081 obtained pursuant to such activities,
 93 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 94 Constitution.

95 Section 4. For the purpose of incorporating the amendment
 96 made by CS/HB 91 to section 812.081, Florida Statutes, in a
 97 reference thereto, section 331.326, Florida Statutes, is
 98 reenacted to read:

99 331.326 Information relating to trade secrets
 100 confidential.—The records of Space Florida regarding matters
 101 encompassed by this act are public records subject to the
 102 provisions of chapter 119. Any information held by Space Florida
 103 which is a trade secret, as defined in s. 812.081, including
 104 trade secrets of Space Florida, any spaceport user, or the space

105 industry business, is confidential and exempt from the
 106 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
 107 Constitution and may not be disclosed. If Space Florida
 108 determines that any information requested by the public will
 109 reveal a trade secret, it shall, in writing, inform the person
 110 making the request of that determination. The determination is a
 111 final order as defined in s. 120.52. Any meeting or portion of a
 112 meeting of Space Florida's board is exempt from the provisions
 113 of s. 286.011 and s. 24(b), Art. I of the State Constitution
 114 when the board is discussing trade secrets. Any public record
 115 generated during the closed portions of the meetings, such as
 116 minutes, tape recordings, and notes, is confidential and exempt
 117 from the provisions of s. 119.07(1) and s. 24(a), Art. I of the
 118 State Constitution.

119 Section 5. For the purpose of incorporating the amendment
 120 made by CS/HB 91 to section 812.081, Florida Statutes, in a
 121 reference thereto, subsection (3) of section 365.174, Florida
 122 Statutes, is reenacted to read:

123 365.174 Proprietary confidential business information.—

124 (3) As used in this section, the term "proprietary
 125 confidential business information" means customer lists,
 126 customer numbers, individual or aggregate customer data by
 127 location, usage and capacity data, network facilities used to
 128 serve subscribers, technology descriptions, technical
 129 information, or trade secrets, including trade secrets as
 130 defined in s. 812.081, and the actual or developmental costs of

131 E911 systems that are developed, produced, or received
 132 internally by a provider or by a provider's employees,
 133 directors, officers, or agents.

134 Section 6. For the purpose of incorporating the amendment
 135 made by CS/HB 91 to section 812.081, Florida Statutes, in a
 136 reference thereto, section 381.83, Florida Statutes, is
 137 reenacted to read:

138 381.83 Trade secrets; confidentiality.—Records, reports,
 139 or information obtained from any person under this chapter,
 140 unless otherwise provided by law, shall be available to the
 141 public, except upon a showing satisfactory to the department by
 142 the person from whom the records, reports, or information is
 143 obtained that such records, reports, or information, or a
 144 particular part thereof, contains trade secrets as defined in s.
 145 812.081(1)(c). Such trade secrets shall be confidential and are
 146 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
 147 of the State Constitution. The person submitting such trade
 148 secret information to the department must request that it be
 149 kept confidential and must inform the department of the basis
 150 for the claim of trade secret. The department shall, subject to
 151 notice and opportunity for hearing, determine whether the
 152 information, or portions thereof, claimed to be a trade secret
 153 is or is not a trade secret. Such trade secrets may be
 154 disclosed, however, to authorized representatives of the
 155 department or, pursuant to request, to other governmental
 156 entities in order for them to properly perform their duties, or

157 when relevant in any proceeding under this chapter. Authorized
 158 representatives and other governmental entities receiving such
 159 trade secret information shall retain its confidentiality. Those
 160 involved in any proceeding under this chapter, including a
 161 hearing officer or judge or justice, shall retain the
 162 confidentiality of any trade secret information revealed at such
 163 proceeding.

164 Section 7. For the purpose of incorporating the amendment
 165 made by CS/HB 91 to section 812.081, Florida Statutes, in a
 166 reference thereto, subsection (2) and paragraph (b) of
 167 subsection (3) of section 403.7046, Florida Statutes, are
 168 reenacted to read:

169 403.7046 Regulation of recovered materials.—

170 (2) Information reported pursuant to the requirements of
 171 this section or any rule adopted pursuant to this section which,
 172 if disclosed, would reveal a trade secret, as defined in s.
 173 812.081(1)(c), is confidential and exempt from the provisions of
 174 s. 119.07(1). For reporting or information purposes, however,
 175 the department may provide this information in such form that
 176 the names of the persons reporting such information and the
 177 specific information reported are not revealed.

178 (3) Except as otherwise provided in this section or
 179 pursuant to a special act in effect on or before January 1,
 180 1993, a local government may not require a commercial
 181 establishment that generates source-separated recovered
 182 materials to sell or otherwise convey its recovered materials to

183 the local government or to a facility designated by the local
184 government, nor may the local government restrict such a
185 generator's right to sell or otherwise convey such recovered
186 materials to any properly certified recovered materials dealer
187 who has satisfied the requirements of this section. A local
188 government may not enact any ordinance that prevents such a
189 dealer from entering into a contract with a commercial
190 establishment to purchase, collect, transport, process, or
191 receive source-separated recovered materials.

192 (b) Before engaging in business within the jurisdiction of
193 the local government, a recovered materials dealer must provide
194 the local government with a copy of the certification provided
195 for in this section. In addition, the local government may
196 establish a registration process whereby a recovered materials
197 dealer must register with the local government before engaging
198 in business within the jurisdiction of the local government.
199 Such registration process is limited to requiring the dealer to
200 register its name, including the owner or operator of the
201 dealer, and, if the dealer is a business entity, its general or
202 limited partners, its corporate officers and directors, its
203 permanent place of business, evidence of its certification under
204 this section, and a certification that the recovered materials
205 will be processed at a recovered materials processing facility
206 satisfying the requirements of this section. The local
207 government may not use the information provided in the
208 registration application to compete unfairly with the recovered

209 materials dealer until 90 days after receipt of the application.
 210 All counties, and municipalities whose population exceeds 35,000
 211 according to the population estimates determined pursuant to s.
 212 186.901, may establish a reporting process which shall be
 213 limited to the regulations, reporting format, and reporting
 214 frequency established by the department pursuant to this
 215 section, which shall, at a minimum, include requiring the dealer
 216 to identify the types and approximate amount of recovered
 217 materials collected, recycled, or reused during the reporting
 218 period; the approximate percentage of recovered materials
 219 reused, stored, or delivered to a recovered materials processing
 220 facility or disposed of in a solid waste disposal facility; and
 221 the locations where any recovered materials were disposed of as
 222 solid waste. Information reported under this subsection which,
 223 if disclosed, would reveal a trade secret, as defined in s.
 224 812.081(1)(c), is confidential and exempt from the provisions of
 225 s. 24(a), Art. I of the State Constitution and s. 119.07(1). The
 226 local government may charge the dealer a registration fee
 227 commensurate with and no greater than the cost incurred by the
 228 local government in operating its registration program.
 229 Registration program costs are limited to those costs associated
 230 with the activities described in this paragraph. Any reporting
 231 or registration process established by a local government with
 232 regard to recovered materials shall be governed by the
 233 provisions of this section and department rules adopted pursuant
 234 thereto.

235 Section 8. For the purpose of incorporating the amendment
 236 made by CS/HB 91 to section 812.081, Florida Statutes, in a
 237 reference thereto, section 403.73, Florida Statutes, is
 238 reenacted to read:

239 403.73 Trade secrets; confidentiality.—Records, reports,
 240 or information obtained from any person under this part, unless
 241 otherwise provided by law, shall be available to the public,
 242 except upon a showing satisfactory to the department by the
 243 person from whom the records, reports, or information is
 244 obtained that such records, reports, or information, or a
 245 particular part thereof, contains trade secrets as defined in s.
 246 812.081(1)(c). Such trade secrets shall be confidential and are
 247 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
 248 of the State Constitution. The person submitting such trade
 249 secret information to the department must request that it be
 250 kept confidential and must inform the department of the basis
 251 for the claim of trade secret. The department shall, subject to
 252 notice and opportunity for hearing, determine whether the
 253 information, or portions thereof, claimed to be a trade secret
 254 is or is not a trade secret. Such trade secrets may be
 255 disclosed, however, to authorized representatives of the
 256 department or, pursuant to request, to other governmental
 257 entities in order for them to properly perform their duties, or
 258 when relevant in any proceeding under this part. Authorized
 259 representatives and other governmental entities receiving such
 260 trade secret information shall retain its confidentiality. Those

261 involved in any proceeding under this part, including an
 262 administrative law judge, a hearing officer, or a judge or
 263 justice, shall retain the confidentiality of any trade secret
 264 information revealed at such proceeding.

265 Section 9. For the purpose of incorporating the amendment
 266 made by CS/HB 91 to section 812.081, Florida Statutes, in a
 267 reference thereto, paragraphs (g) and (m) of subsection (8) of
 268 section 499.012, Florida Statutes, are reenacted to read:

269 499.012 Permit application requirements.-

270 (8) An application for a permit or to renew a permit for a
 271 prescription drug wholesale distributor or an out-of-state
 272 prescription drug wholesale distributor submitted to the
 273 department must include:

274 (g)1. For an application for a new permit, the estimated
 275 annual dollar volume of prescription drug sales of the
 276 applicant, the estimated annual percentage of the applicant's
 277 total company sales that are prescription drugs, the applicant's
 278 estimated annual total dollar volume of purchases of
 279 prescription drugs, and the applicant's estimated annual total
 280 dollar volume of prescription drug purchases directly from
 281 manufacturers.

282 2. For an application to renew a permit, the total dollar
 283 volume of prescription drug sales in the previous year, the
 284 total dollar volume of prescription drug sales made in the
 285 previous 6 months, the percentage of total company sales that
 286 were prescription drugs in the previous year, the total dollar

287 volume of purchases of prescription drugs in the previous year,
 288 and the total dollar volume of prescription drug purchases
 289 directly from manufacturers in the previous year.

290
 291 Such portions of the information required pursuant to this
 292 paragraph which are a trade secret, as defined in s. 812.081,
 293 shall be maintained by the department as trade secret
 294 information is required to be maintained under s. 499.051.

295 (m) For an applicant that is a secondary wholesale
 296 distributor, each of the following:

297 1. A personal background information statement containing
 298 the background information and fingerprints required pursuant to
 299 subsection (9) for each person named in the applicant's response
 300 to paragraphs (k) and (l) and for each affiliated party of the
 301 applicant.

302 2. If any of the five largest shareholders of the
 303 corporation seeking the permit is a corporation, the name,
 304 address, and title of each corporate officer and director of
 305 each such corporation; the name and address of such corporation;
 306 the name of such corporation's resident agent, such
 307 corporation's resident agent's address, and such corporation's
 308 state of its incorporation; and the name and address of each
 309 shareholder of such corporation that owns 5 percent or more of
 310 the stock of such corporation.

311 3. The name and address of all financial institutions in
 312 which the applicant has an account which is used to pay for the

313 operation of the establishment or to pay for drugs purchased for
 314 the establishment, together with the names of all persons that
 315 are authorized signatories on such accounts. The portions of the
 316 information required pursuant to this subparagraph which are a
 317 trade secret, as defined in s. 812.081, shall be maintained by
 318 the department as trade secret information is required to be
 319 maintained under s. 499.051.

320 4. The sources of all funds and the amounts of such funds
 321 used to purchase or finance purchases of prescription drugs or
 322 to finance the premises on which the establishment is to be
 323 located.

324 5. If any of the funds identified in subparagraph 4. were
 325 borrowed, copies of all promissory notes or loans used to obtain
 326 such funds.

327 Section 10. For the purpose of incorporating the amendment
 328 made by CS/HB 91 to section 812.081, Florida Statutes, in a
 329 reference thereto, subsection (7) of section 499.0121, Florida
 330 Statutes, is reenacted to read:

331 499.0121 Storage and handling of prescription drugs;
 332 recordkeeping.—The department shall adopt rules to implement
 333 this section as necessary to protect the public health, safety,
 334 and welfare. Such rules shall include, but not be limited to,
 335 requirements for the storage and handling of prescription drugs
 336 and for the establishment and maintenance of prescription drug
 337 distribution records.

338 (7) PRESCRIPTION DRUG PURCHASE LIST.—Each wholesale

339 distributor, except for a manufacturer, shall annually provide
 340 the department with a written list of all wholesale distributors
 341 and manufacturers from whom the wholesale distributor purchases
 342 prescription drugs. A wholesale distributor, except a
 343 manufacturer, shall notify the department not later than 10 days
 344 after any change to either list. Such portions of the
 345 information required pursuant to this subsection which are a
 346 trade secret, as defined in s. 812.081, shall be maintained by
 347 the department as trade secret information is required to be
 348 maintained under s. 499.051.

349 Section 11. For the purpose of incorporating the amendment
 350 made by CS/HB 91 to section 812.081, Florida Statutes, in a
 351 reference thereto, subsection (7) of section 499.051, Florida
 352 Statutes, is reenacted to read:

353 499.051 Inspections and investigations.—

354 (7) The complaint and all information obtained pursuant to
 355 the investigation by the department are confidential and exempt
 356 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution
 357 until the investigation and the enforcement action are
 358 completed. However, trade secret information contained therein
 359 as defined by s. 812.081(1)(c) shall remain confidential and
 360 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
 361 of the State Constitution, as long as the information is
 362 retained by the department. This subsection does not prohibit
 363 the department from using such information for regulatory or
 364 enforcement proceedings under this chapter or from providing

365 such information to any law enforcement agency or any other
 366 regulatory agency. However, the receiving agency shall keep such
 367 records confidential and exempt as provided in this subsection.
 368 In addition, this subsection is not intended to prevent
 369 compliance with the provisions of s. 499.01212, and the pedigree
 370 papers required in that section shall not be deemed a trade
 371 secret.

372 Section 12. For the purpose of incorporating the amendment
 373 made by CS/HB 91 to section 812.081, Florida Statutes, in a
 374 reference thereto, section 499.931, Florida Statutes, is
 375 reenacted to read:

376 499.931 Trade secret information.—Information required to
 377 be submitted under this part which is a trade secret as defined
 378 in s. 812.081(1)(c) and designated as a trade secret by an
 379 applicant or permitholder must be maintained as required under
 380 s. 499.051.

381 Section 13. For the purpose of incorporating the amendment
 382 made by CS/HB 91 to section 812.081, Florida Statutes, in a
 383 reference thereto, section 502.222, Florida Statutes, is
 384 reenacted to read:

385 502.222 Information relating to trade secrets
 386 confidential.—The records of the department regarding matters
 387 encompassed by this chapter are public records, subject to the
 388 provisions of chapter 119, except that any information which
 389 would reveal a trade secret, as defined in s. 812.081, of a
 390 dairy industry business is confidential and exempt from the

391 provisions of s. 119.07(1). If the department determines that
 392 any information requested by the public will reveal a trade
 393 secret, it shall, in writing, inform the person making the
 394 request of that determination. The determination is a final
 395 order as defined in s. 120.52.

396 Section 14. For the purpose of incorporating the amendment
 397 made by CS/HB 91 to section 812.081, Florida Statutes, in a
 398 reference thereto, subsection (3) of section 570.48, Florida
 399 Statutes, is reenacted to read:

400 570.48 Division of Fruit and Vegetables; powers and
 401 duties; records.—The duties of the Division of Fruit and
 402 Vegetables include, but are not limited to:

403 (3) Maintaining the records of the division. The records
 404 of the division are public records; however, trade secrets as
 405 defined in s. 812.081 are confidential and exempt from the
 406 provisions of s. 119.07(1). This section shall not be construed
 407 to prohibit:

408 (a) A disclosure necessary to enforcement procedures.

409 (b) The department from releasing information to other
 410 governmental agencies. Other governmental agencies that receive
 411 confidential information from the department under this
 412 subsection shall maintain the confidentiality of that
 413 information.

414 (c) The department or other agencies from compiling and
 415 publishing appropriate data regarding procedures, yield,
 416 recovery, quality, and related matters, provided such released

417 | data do not reveal by whom the activity to which the data relate
 418 | was conducted.

419 | Section 15. For the purpose of incorporating the amendment
 420 | made by CS/HB 91 to section 812.081, Florida Statutes, in a
 421 | reference thereto, subsection (2) of section 573.123, Florida
 422 | Statutes, is reenacted to read:

423 | 573.123 Maintenance and production of records.—

424 | (2) Information that, if disclosed, would reveal a trade
 425 | secret, as defined in s. 812.081, of any person subject to a
 426 | marketing order is confidential and exempt from the provisions
 427 | of s. 119.07(1) and shall not be disclosed except to an attorney
 428 | who provides legal advice to the division about enforcing a
 429 | market order or by court order. A person who receives
 430 | confidential information under this subsection shall maintain
 431 | the confidentiality of that information.

432 | Section 16. For the purpose of incorporating the amendment
 433 | made by CS/HB 91 to section 812.081, Florida Statutes, in a
 434 | reference thereto, paragraph (a) of subsection (8) of section
 435 | 601.10, Florida Statutes, is reenacted to read:

436 | 601.10 Powers of the Department of Citrus.—The department
 437 | shall have and shall exercise such general and specific powers
 438 | as are delegated to it by this chapter and other statutes of the
 439 | state, which powers shall include, but are not limited to, the
 440 | following:

441 | (8) (a) To prepare and disseminate information of
 442 | importance to citrus growers, handlers, shippers, processors,

443 and industry-related and interested persons and organizations
 444 relating to department activities and the production, handling,
 445 shipping, processing, and marketing of citrus fruit and
 446 processed citrus products. Any information that constitutes a
 447 trade secret as defined in s. 812.081(1)(c) is confidential and
 448 exempt from s. 119.07(1) and shall not be disclosed. For
 449 referendum and other notice and informational purposes, the
 450 department may prepare and maintain, from the best available
 451 sources, a citrus grower mailing list. Such list shall be a
 452 public record available as other public records, but it shall
 453 not be subject to the purging provisions of s. 283.55.

454 Section 17. For the purpose of incorporating the amendment
 455 made by CS/HB 91 to section 812.081, Florida Statutes, in a
 456 reference thereto, paragraph (d) of subsection (7) of section
 457 601.15, Florida Statutes, is reenacted to read:

458 601.15 Advertising campaign; methods of conducting;
 459 assessments; emergency reserve fund; citrus research.-

460 (7) All assessments levied and collected under this
 461 chapter shall be paid into the State Treasury on or before the
 462 15th day of each month. Such moneys shall be accounted for in a
 463 special fund to be designated as the Florida Citrus Advertising
 464 Trust Fund, and all moneys in such fund are appropriated to the
 465 department for the following purposes:

466 (d) The pro rata portion of moneys allocated to each type
 467 of citrus product in noncommodity programs shall be used by the
 468 department to encourage substantial increases in the

469 effectiveness, frequency, and volume of noncommodity
 470 advertising, merchandising, publicity, and sales promotion of
 471 such citrus products through rebates and incentive payments to
 472 handlers and trade customers for these activities. The
 473 department shall adopt rules providing for the use of such
 474 moneys. The rules shall establish alternate incentive programs,
 475 including at least one incentive program for product sold under
 476 advertised brands, one incentive program for product sold under
 477 private label brands, and one incentive program for product sold
 478 in bulk. For each incentive program, the rules shall establish
 479 eligibility and performance requirements and shall provide
 480 appropriate limitations on amounts payable to a handler or trade
 481 customer for a particular season. Such limitations may relate to
 482 the amount of citrus assessments levied and collected on the
 483 citrus product handled by such handler or trade customer during
 484 a 12-month representative period. The department may require
 485 from participants in noncommodity advertising and promotional
 486 programs commercial information necessary to determine
 487 eligibility for and performance in such programs. Any
 488 information so required that constitutes a "trade secret" as
 489 defined in s. 812.081 is confidential and exempt from s.
 490 119.07(1).

491 Section 18. For the purpose of incorporating the amendment
 492 made by CS/HB 91 to section 812.081, Florida Statutes, in a
 493 reference thereto, paragraph (c) of subsection (8) of section
 494 601.152, Florida Statutes, is reenacted to read:

495 | 601.152 Special marketing orders.-

496 | (8)

497 | (c) Every handler shall, at such times as the department
 498 | may require, file with the department a return, not under oath,
 499 | on forms to be prescribed and furnished by the department,
 500 | certified as true and correct, stating the quantity of the type,
 501 | variety, and form of citrus fruit or citrus product specified in
 502 | the marketing order first handled in the primary channels of
 503 | trade in the state by such handler during the period of time
 504 | specified in the marketing order. Such returns shall contain any
 505 | further information deemed by the department to be reasonably
 506 | necessary to properly administer or enforce this section or any
 507 | marketing order implemented under this section. Information
 508 | that, if disclosed, would reveal a trade secret, as defined in
 509 | s. 812.081, of any person subject to a marketing order is
 510 | confidential and exempt from s. 119.07(1).

511 | Section 19. For the purpose of incorporating the amendment
 512 | made by CS/HB 91 to section 812.081, Florida Statutes, in a
 513 | reference thereto, section 601.76, Florida Statutes, is
 514 | reenacted to read:

515 | 601.76 Manufacturer to furnish formula and other
 516 | information.-Any formula required to be filed with the
 517 | Department of Agriculture shall be deemed a trade secret as
 518 | defined in s. 812.081, is confidential and exempt from s.
 519 | 119.07(1), and shall only be divulged to the Department of
 520 | Agriculture or to its duly authorized representatives or upon

521 orders of a court of competent jurisdiction when necessary in
 522 the enforcement of this law. A person who receives such a
 523 formula from the Department of Agriculture under this section
 524 shall maintain the confidentiality of the formula.

525 Section 20. For the purpose of incorporating the amendment
 526 made by CS/HB 91 to section 812.081, Florida Statutes, in a
 527 reference thereto, subsection (3) of section 815.04, Florida
 528 Statutes, is reenacted to read:

529 815.04 Offenses against intellectual property; public
 530 records exemption.—

531 (3) Data, programs, or supporting documentation that is a
 532 trade secret as defined in s. 812.081, that is held by an agency
 533 as defined in chapter 119, and that resides or exists internal
 534 or external to a computer, computer system, computer network, or
 535 electronic device is confidential and exempt from the provisions
 536 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

537 Section 21. The reenactments by this act of ss.
 538 119.071(1)(f), 125.0104(9)(d), 288.1226(8), 331.326, 365.174(3),
 539 381.83, 403.7046(2) and (3)(b), 403.73, 499.012(8)(g) and (m),
 540 499.0121(7), 499.051(7), 499.931, 502.222, 570.48(3),
 541 573.123(2), 601.10(8)(a), 601.15(7)(d), 601.152(8)(c), 601.76,
 542 and 815.04(3), Florida Statutes, are subject to the Open
 543 Government Sunset Review Act in accordance with s. 119.15,
 544 Florida Statutes, and shall stand repealed on October 2, 2020,
 545 unless reviewed and saved from repeal through reenactment by the
 546 Legislature.

547 Section 22. The Legislature finds that it is a public
548 necessity that financial information comprising a trade secret
549 as defined in s. 812.081(1)(c), Florida Statutes, be made
550 confidential and exempt from s. 119.07(1), Florida Statutes, and
551 s. 24(a), Article I of the State Constitution. The Legislature
552 recognizes that in many instances, businesses are required to
553 provide financial information for regulatory or other purposes
554 to public entities and that disclosure of such information to
555 competitors of those businesses would be detrimental to the
556 businesses. The Legislature's intent is to avoid placing
557 businesses that must provide financial information to
558 governmental entities at a competitive disadvantage by making
559 the information referenced in the amendments to s. 812.081,
560 Florida Statutes, confidential and exempt by incorporating those
561 amendments into the public records exemptions reenacted by this
562 act.


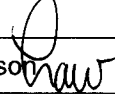
563 Section 23. This act shall take effect on the same date
564 that CS/HB 91 or similar legislation relating to trade secrets
565 takes effect, if such legislation is adopted in the same
566 legislative session or an extension thereof and becomes a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 141 Pub. Rec./Impaired Practitioner Consultants

SPONSOR(S): Health Quality Subcommittee; Renuart

TIED BILLS: IDEN./SIM. BILLS: CS/SB 144

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---------------------------------------|---------------------|--|--|
| 1) Health Quality Subcommittee | 13 Y, 0 N, As CS | Castagna | O'Callaghan |
| 2) Government Operations Subcommittee | | Williamson  | Williamson  |
| 3) Health & Human Services Committee | | | |

SUMMARY ANALYSIS

The Department of Health (DOH) administers a treatment program for impaired health care practitioners, and the Department of Business and Professional Regulation (DBPR) administers a treatment program for pilots. These treatment programs assist DOH and DBPR in determining whether health care practitioners or other professionals, who have experienced a substance abuse or mental or physical health impairment, are safe to practice their profession. Currently, two different impaired practitioner consultant companies provide such services in Florida.

CS/HB 141 creates a public records exemption for certain identification and location information of a current or former impaired practitioner consultant who is retained by an agency, a current or former employee of such consultant whose duties result in a determination of a person's skill and safety to practice a licensed profession, and the spouses and children of both. The exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, unless reviewed and saved from repeal by the Legislature.

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

The bill may have an insignificant negative fiscal impact on state and local governments.

The bill provides that the act will take effect upon becoming a law.

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records or public meetings exemption. The bill creates a public records exemption for identification and location information of certain current or former impaired practitioner consultants, certain employees of such consultants, and the spouses and children of both; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Records Laws

The Florida Constitution provides that the public has the right to access government records. It guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.¹

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records. The Public Records Act² guarantees every person's right to inspect and copy any state or local government public record.³

Only the Legislature may create an exemption from public records requirements.⁴ An exemption must specifically state the public necessity justifying the exemption and must be tailored to accomplish the stated purpose of the law.⁵ A bill enacting an exemption may not contain other substantive provisions⁶ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁷

Open Government Sunset Review Act

The Open Government Sunset Review Act (act) prescribes a legislative review process for newly created or substantially amended public records exemptions.⁸ The act provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁹

The act provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁰ An exemption serves an identifiable purpose if it meets one of the following criteria:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹¹
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, only personal identifying information may be made exempt;¹² or

¹ FLA. CONST., art. I, s. 24(a).

² Chapter 119, F.S.

³ Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, F.S.

⁴ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in statute. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

⁵ FLA. CONST., art. I, s. 24(c).

⁶ The bill, however, may contain multiple exemptions that relate to one subject.

⁷ FLA. CONST., art. I, s. 24(c).

⁸ Section 119.15, F.S. Section 119.15(4)(b), F.S. provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The act does not apply to an exemption that is required by federal law or that applies solely to the legislature or the state court system pursuant to section 119.15(2), F.S.

⁹ Section 119.15(3), F.S.

¹⁰ Section 119.15(6)(b), F.S.

¹¹ Section 119.15(6)(b)1., F.S.

- It protects trade or business secrets.¹³

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.¹⁴

Public Records Exemptions

Current law provides public records exemptions for identification and location information of certain current or former public employees and their spouses and children.¹⁵ Examples of public employees covered by these exemptions include: law enforcement personnel, firefighters, local government personnel who are responsible for revenue collection and enforcement or child support enforcement, justices and judges, and local and statewide prosecuting attorneys.

Although the types of exempt information vary, the following information is exempt from public records requirements for all of the above-listed public employees:

- Home addresses and telephone numbers of the public employees;
- Home addresses, telephone numbers, and places of employment of the spouses and children of such employees; and
- Names and locations of schools and day care facilities attended by the children of such employees.

If exempt information is held by an agency that is not the employer of the public employee, the public employee must submit a written request to that agency to maintain the public records exemption.¹⁶

Department of Health- Division of Medical Quality Assurance

The Department of Health's (DOH) Division of Medical Quality Assurance (MQA) regulates health care practitioners to ensure the health, safety, and welfare of the public. There are 22 boards and eight councils under the MQA, and the MQA licenses seven types of facilities and 200-plus occupations in more than 40 health care professions.¹⁷ MQA is responsible for the licensure of health care practitioners and facilities, the enforcement of laws and rules governing practitioners and facilities, and providing information and data to the public.¹⁸

As part of its enforcement responsibilities, DOH investigates complaints against health care practitioners. It must investigate any complaint that is written, signed by the complainant, and legally sufficient, and may initiate an investigation if it believes a violation of law or rule has occurred. Such an investigation may result in an administrative case against the health care practitioner's license.¹⁹

Department of Business and Professional Regulation

The Department of Business and Professional Regulation (DBPR) licenses and regulates businesses and professionals.²⁰ The Division of Professions within DBPR administers 12 professional boards, five Department-regulated professions, and one council.²¹ The Division of Regulation is the enforcement authority for the professional boards, professions, and council. It monitors professions and related

¹² Section 119.15(6)(b)2., F.S.

¹³ Section 119.15(6)(b)3., F.S.

¹⁴ Section 119.15(6)(b), F.S.

¹⁵ Section 119.071(4)(d), F.S.

¹⁶ Section 119.071(4)(d)3., F.S.

¹⁷ Florida Department of Health, *Florida Health Source*, accessible at <http://www.flhealthsource.gov/> (last visited February 20, 2015).

¹⁸ *Id.*

¹⁹ Section 456.073, F.S.

²⁰ Florida Dep't of Business and Professional Regulation, *Department of Business and Professional Regulation*, available at <http://www.myfloridalicense.com/dbpr/os/os-info.html>

²¹ Florida Dep't of Business and Professional Regulation, Division of Professions, available at <http://www.myfloridalicense.com/dbpr/pro/index.html> (last visited March 9, 2015).

businesses to ensure that the laws, rules, and standards set by the Legislature and professional boards are followed.²²

Treatment Programs for Practitioners and Professionals

Impairment can result from the use or misuse of drugs or alcohol, or both, or due to a mental or physical condition that could affect a person's ability to practice with skill and safety.²³ DOH administers a treatment program for impaired health care practitioners²⁴ pursuant to s. 456.076, F.S., and DBPR administers a treatment program for pilots pursuant to s. 310.102, F.S. These treatment programs ensure that licensed health care practitioners and professionals, applicants for licensure, and students enrolled in pre-licensure education programs, who are impaired and may pose a threat to the public if allowed to obtain or retain a license, are evaluated and referred for treatment.

DOH and DBPR contract with impaired practitioner consultants (IPC) to monitor the treatment of an impaired practitioner and coordinate services. DOH and DBPR contract with the Professionals Resource Network (PRN) and DOH also contracts with the Intervention Project for Nurses (IPN). An IPC must be a licensed physician, a licensed nurse, or an entity with a licensed physician or nurse as its medical director.²⁵ An IPC initiates intervention, recommends evaluation, and refers impaired practitioners to approved treatment providers or treatment programs and monitors the progress of impaired practitioners under the direction of consultants. An IPC does not provide medical services.²⁶

A practitioner's participation in a treatment program is voluntary, but it requires him or her to voluntarily withdraw from practice or limit the scope of his or her practice until the practitioner successfully completes the treatment program. By entering and successfully completing the impaired practitioner treatment program, a practitioner may avoid formal disciplinary action if the impairment is the only violation of the licensing statute under which the practitioner is regulated.²⁷

An IPC does not render decisions relating to licensure of a particular practitioner. However, an IPC is required to make recommendations to the relevant practitioner board's probable cause panel, or DOH when there is no board, regarding a practitioner's ability to practice safely.²⁸

According to DOH, there are approximately 2,449 participants enrolled in the programs: 1,461 are served by IPN and 988 are served by PRN.²⁹ According to DBPR, there are 21 veterinarians served by PRN.³⁰

Effect of Proposed Changes

The bill creates a public records exemption for identification and location information of a current or former IPC who is retained by an agency,³¹ a current or former employee of an IPC whose duties result in a determination of a person's skill and safety to practice a licensed profession, and the spouses and children of both.

²² Florida Dep't of Business and Professional Regulation, Division of Regulation, available at <http://www.myfloridalicense.com/dbpr/reg/index.html> (last visited March 9, 2015).

²³ Section 456.076(4)(a), F.S.

²⁴ The Board of Veterinarians, under the Department of Business and Professional Regulation, administers a treatment program for impaired veterinarians pursuant to s. 456.076, F.S. See s. 474.221, F.S.

²⁵ Section 456.076(2)(a), F.S.

²⁶ Section 456.076(2)(c)1., F.S.

²⁷ *Id.*

²⁸ Section 456.076(2)(c)1., F.S.

²⁹ Email correspondence with DOH staff. (on file with committee).

³⁰ There are currently no pilots in the impaired practitioner program. Email correspondence with DBPR staff. (on file with committee).

³¹ Section 119.011(2), F.S., defines the term "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of chapter 119, F.S., the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

The bill makes the following information exempt from public records requirements:

- The home addresses, telephone numbers, dates of birth, and photographs of current or former IPCs and their employees;
- The names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such IPCs or their employees; and
- The names and locations of schools and day care facilities attended by the children of such IPCs or their employees.

The bill provides that the exemption may be maintained only if the IPC or employee has made reasonable efforts to protect such information from being accessible through other means available to the public. Additionally, the exemption is subject to an existing requirement under s. 119.071(4)(d)3., F.S., which provides that if exempt information is held by an agency that is not the employer of the protected public employee, then the protected public employee must submit to that agency a written request to maintain the public records exemption.

The bill provides for repeal of the exemption on October 2, 2020, unless reviewed and saved from repeal by the Legislature.

The bill provides a public necessity statement, which is required by the Florida Constitution. Specifically, the bill states that the exemption is needed to protect an IPC, the IPC's employees, and the spouses and children of both, from the risk of physical or emotional harm or of being stalked by a practitioner who has a hostile reaction to a recommendation, report, or conclusion of an IPC or the IPC's employee.

The bill takes effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1. Amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2. Provides a public necessity statement.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly-created or expanded public records or public meetings exemption. Because the bill creates a new public records exemption, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly-created or expanded public records or public meetings exemption. The bill creates a new public records exemption and includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created public records or public meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public records exemption for identification and location information of a current or former IPC who is retained by an agency, a current or former employee of an IPC whose duties result in a determination of a person's skill and safety to practice a licensed profession, and the spouses and children of both. The exemption does not appear to be in conflict with the constitutional requirement that the exemption must be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 12, 2015, the Health Quality Subcommittee adopted an amendment to the bill and reported the bill favorably as a committee substitute. The amendment:

- Expands the public records exemption to include current or former impaired practitioner consultants or employees and to exempt photographs and dates of birth of the consultants and employees;
- Limits the employees who are covered by the exemption to those employees whose duties result in a determination of a person's skill and safety to practice a licensed profession; and
- Provides additional statements of necessity.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute.

1 A bill to be entitled
2 An act relating to public records; amending s.
3 119.071, F.S.; creating an exemption from public
4 records requirements for certain identifying and
5 location information of current or former impaired
6 practitioner consultants who are retained by an agency
7 or current or former employees of an impaired
8 practitioner consultant whose duties result in a
9 determination of a person's skill and safety to
10 practice a licensed profession and the spouses and
11 children of such consultants or employees, under
12 specified circumstances; providing for future
13 legislative review and repeal of the exemption under
14 the Open Government Sunset Review Act; providing a
15 statement of public necessity; providing an effective
16 date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Paragraph (d) of subsection (4) of section
21 119.071, Florida Statutes, is amended to read:

22 119.071 General exemptions from inspection or copying of
23 public records.—

24 (4) AGENCY PERSONNEL INFORMATION.—

25 (d)1. For purposes of this paragraph, the term "telephone
26 numbers" includes home telephone numbers, personal cellular

27 | telephone numbers, personal pager telephone numbers, and
 28 | telephone numbers associated with personal communications
 29 | devices.

30 | 2.a.(I) The home addresses, telephone numbers, social
 31 | security numbers, dates of birth, and photographs of active or
 32 | former sworn or civilian law enforcement personnel, including
 33 | correctional and correctional probation officers, personnel of
 34 | the Department of Children and Families whose duties include the
 35 | investigation of abuse, neglect, exploitation, fraud, theft, or
 36 | other criminal activities, personnel of the Department of Health
 37 | whose duties are to support the investigation of child abuse or
 38 | neglect, and personnel of the Department of Revenue or local
 39 | governments whose responsibilities include revenue collection
 40 | and enforcement or child support enforcement; the home
 41 | addresses, telephone numbers, social security numbers,
 42 | photographs, dates of birth, and places of employment of the
 43 | spouses and children of such personnel; and the names and
 44 | locations of schools and day care facilities attended by the
 45 | children of such personnel are exempt from s. 119.07(1).

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

51 | (III) Sub-sub-subparagraph (II) is subject to the Open
 52 | Government Sunset Review Act in accordance with s. 119.15, and

53 shall stand repealed on October 2, 2018, unless reviewed and
 54 saved from repeal through reenactment by the Legislature.

55 b. The home addresses, telephone numbers, dates of birth,
 56 and photographs of firefighters certified in compliance with s.
 57 633.408; the home addresses, telephone numbers, photographs,
 58 dates of birth, and places of employment of the spouses and
 59 children of such firefighters; and the names and locations of
 60 schools and day care facilities attended by the children of such
 61 firefighters are exempt from s. 119.07(1).

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

71 d.(I) The home addresses, telephone numbers, social
 72 security numbers, dates of birth, and photographs of current or
 73 former state attorneys, assistant state attorneys, statewide
 74 prosecutors, or assistant statewide prosecutors; the home
 75 addresses, telephone numbers, social security numbers,
 76 photographs, dates of birth, and places of employment of the
 77 spouses and children of current or former state attorneys,
 78 assistant state attorneys, statewide prosecutors, or assistant

79 | statewide prosecutors; and the names and locations of schools
80 | and day care facilities attended by the children of current or
81 | former state attorneys, assistant state attorneys, statewide
82 | prosecutors, or assistant statewide prosecutors are exempt from
83 | s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

84 | (II) The names of the spouses and children of current or
85 | former state attorneys, assistant state attorneys, statewide
86 | prosecutors, or assistant statewide prosecutors are exempt from
87 | s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

88 | (III) Sub-sub-subparagraph (II) is subject to the Open
89 | Government Sunset Review Act in accordance with s. 119.15, and
90 | shall stand repealed on October 2, 2018, unless reviewed and
91 | saved from repeal through reenactment by the Legislature.

92 | e. The home addresses, dates of birth, and telephone
93 | numbers of general magistrates, special magistrates, judges of
94 | compensation claims, administrative law judges of the Division
95 | of Administrative Hearings, and child support enforcement
96 | hearing officers; the home addresses, telephone numbers, dates
97 | of birth, and places of employment of the spouses and children
98 | of general magistrates, special magistrates, judges of
99 | compensation claims, administrative law judges of the Division
100 | of Administrative Hearings, and child support enforcement
101 | hearing officers; and the names and locations of schools and day
102 | care facilities attended by the children of general magistrates,
103 | special magistrates, judges of compensation claims,
104 | administrative law judges of the Division of Administrative

105 | Hearings, and child support enforcement hearing officers are
 106 | exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 107 | Constitution if the general magistrate, special magistrate,
 108 | judge of compensation claims, administrative law judge of the
 109 | Division of Administrative Hearings, or child support hearing
 110 | officer provides a written statement that the general
 111 | magistrate, special magistrate, judge of compensation claims,
 112 | administrative law judge of the Division of Administrative
 113 | Hearings, or child support hearing officer has made reasonable
 114 | efforts to protect such information from being accessible
 115 | through other means available to the public.

116 | f. The home addresses, telephone numbers, dates of birth,
 117 | and photographs of current or former human resource, labor
 118 | relations, or employee relations directors, assistant directors,
 119 | managers, or assistant managers of any local government agency
 120 | or water management district whose duties include hiring and
 121 | firing employees, labor contract negotiation, administration, or
 122 | other personnel-related duties; the names, home addresses,
 123 | telephone numbers, dates of birth, and places of employment of
 124 | the spouses and children of such personnel; and the names and
 125 | locations of schools and day care facilities attended by the
 126 | children of such personnel are exempt from s. 119.07(1) and s.
 127 | 24(a), Art. I of the State Constitution.

128 | g. The home addresses, telephone numbers, dates of birth,
 129 | and photographs of current or former code enforcement officers;
 130 | the names, home addresses, telephone numbers, dates of birth,

131 | and places of employment of the spouses and children of such
 132 | personnel; and the names and locations of schools and day care
 133 | facilities attended by the children of such personnel are exempt
 134 | from s. 119.07(1) and s. 24(a), Art. I of the State
 135 | Constitution.

136 | h. The home addresses, telephone numbers, places of
 137 | employment, dates of birth, and photographs of current or former
 138 | guardians ad litem, as defined in s. 39.820; the names, home
 139 | addresses, telephone numbers, dates of birth, and places of
 140 | employment of the spouses and children of such persons; and the
 141 | names and locations of schools and day care facilities attended
 142 | by the children of such persons are exempt from s. 119.07(1) and
 143 | s. 24(a), Art. I of the State Constitution, if the guardian ad
 144 | litem provides a written statement that the guardian ad litem
 145 | has made reasonable efforts to protect such information from
 146 | being accessible through other means available to the public.

147 | i. The home addresses, telephone numbers, dates of birth,
 148 | and photographs of current or former juvenile probation
 149 | officers, juvenile probation supervisors, detention
 150 | superintendents, assistant detention superintendents, juvenile
 151 | justice detention officers I and II, juvenile justice detention
 152 | officer supervisors, juvenile justice residential officers,
 153 | juvenile justice residential officer supervisors I and II,
 154 | juvenile justice counselors, juvenile justice counselor
 155 | supervisors, human services counselor administrators, senior
 156 | human services counselor administrators, rehabilitation

157 therapists, and social services counselors of the Department of
 158 Juvenile Justice; the names, home addresses, telephone numbers,
 159 dates of birth, and places of employment of spouses and children
 160 of such personnel; and the names and locations of schools and
 161 day care facilities attended by the children of such personnel
 162 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 163 Constitution.

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

174 (II) The names of the spouses and children of the
 175 specified agency personnel identified in sub-sub-subparagraph
 176 (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the
 177 State Constitution. This sub-sub-subparagraph is subject to the
 178 Open Government Sunset Review Act in accordance with s. 119.15
 179 and shall stand repealed on October 2, 2019, unless reviewed and
 180 saved from repeal through reenactment by the Legislature.

181 k. The home addresses, telephone numbers, and photographs
 182 of current or former investigators or inspectors of the

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

196 1. The home addresses and telephone numbers of county tax
 197 collectors; the names, home addresses, telephone numbers, and
 198 places of employment of the spouses and children of such tax
 199 collectors; and the names and locations of schools and day care
 200 facilities attended by the children of such tax collectors are
 201 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 202 Constitution if the county tax collector has made reasonable
 203 efforts to protect such information from being accessible
 204 through other means available to the public. This sub-
 205 subparagraph is subject to the Open Government Sunset Review Act
 206 in accordance with s. 119.15 and shall stand repealed on October
 207 2, 2017, unless reviewed and saved from repeal through
 208 reenactment by the Legislature.

209 m. The home addresses, telephone numbers, dates of birth,
 210 and photographs of current or former personnel of the Department
 211 of Health whose duties include, or result in, the determination
 212 or adjudication of eligibility for social security disability
 213 benefits, the investigation or prosecution of complaints filed
 214 against health care practitioners, or the inspection of health
 215 care practitioners or health care facilities licensed by the
 216 Department of Health; the names, home addresses, telephone
 217 numbers, dates of birth, and places of employment of the spouses
 218 and children of such personnel; and the names and locations of
 219 schools and day care facilities attended by the children of such
 220 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 221 the State Constitution if the personnel have made reasonable
 222 efforts to protect such information from being accessible
 223 through other means available to the public. This sub-
 224 subparagraph is subject to the Open Government Sunset Review Act
 225 in accordance with s. 119.15 and shall stand repealed on October
 226 2, 2019, unless reviewed and saved from repeal through
 227 reenactment by the Legislature.

228 n. The home addresses, telephone numbers, dates of birth,
 229 and photographs of current or former impaired practitioner
 230 consultants who are retained by an agency or of current or
 231 former employees of an impaired practitioner consultant whose
 232 duties result in a determination of a person's skill and safety
 233 to practice a licensed profession; the names, home addresses,
 234 telephone numbers, dates of birth, and places of employment of

235 | the spouses and children of such consultants or employees; and
 236 | the names and locations of schools and day care facilities
 237 | attended by the children of such consultants or employees are
 238 | exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 239 | Constitution if a consultant or employee has made reasonable
 240 | efforts to protect such information from being accessible
 241 | through other means available to the public. This sub-
 242 | paragraph is subject to the Open Government Sunset Review Act
 243 | in accordance with s. 119.15 and shall stand repealed on October
 244 | 2, 2020, unless reviewed and saved from repeal through
 245 | reenactment by the Legislature.

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

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

257 | 5. Except as otherwise expressly provided in this
 258 | paragraph, this paragraph is subject to the Open Government
 259 | Sunset Review Act in accordance with s. 119.15, and shall stand
 260 | repealed on October 2, 2017, unless reviewed and saved from

261 | repeal through reenactment by the Legislature.

262 | Section 2. The Legislature finds that it is a public
 263 | necessity that the home addresses, telephone numbers, dates of
 264 | birth, and photographs of current or former impaired
 265 | practitioner consultants who are retained by an agency or of
 266 | current or former employees of an impaired practitioner
 267 | consultant whose duties result in a determination of a person's
 268 | skill and safety to practice a licensed profession; that the
 269 | names, home addresses, telephone numbers, dates of birth, and
 270 | places of employment of the spouses and children of such
 271 | consultants or employees; and that the names and locations of
 272 | schools and day care facilities attended by the children of such
 273 | consultants or employees be exempt from public records
 274 | requirements if the consultant or employee has made reasonable
 275 | efforts to protect such information from being accessible
 276 | through other means available to the public. An impaired
 277 | practitioner consultant assists the state and its regulatory
 278 | boards in implementing an impaired practitioner treatment
 279 | program. The consultant provides the necessary resources to
 280 | evaluate and monitor program compliance of licensees, applicants
 281 | for licensure, and students enrolled in prelicensure education
 282 | programs who could be impaired and, as a result, unable to
 283 | practice with reasonable skill and safety to the public. A
 284 | person who is referred to the program but who, in the opinion of
 285 | the consultant, based on treatment and compliance monitoring
 286 | information, fails to successfully complete its requirements or

287 | is an immediate, serious threat to public safety is at risk of
 288 | failing to obtain or losing the license that is necessary to
 289 | engage in his or her chosen profession. The Legislature finds
 290 | that release of identifying and location information could place
 291 | an impaired practitioner consultant or an employee of a
 292 | consultant whose duties result in a determination of a person's
 293 | skill and safety to practice a licensed profession, or the
 294 | spouses and children of such consultants or employees, in danger
 295 | of being physically or emotionally harmed or stalked by a person
 296 | who has a hostile reaction to a recommendation, report, or
 297 | conclusion provided by a consultant or an employee of a
 298 | consultant in the determination of whether the practitioner is
 299 | impaired. The Legislature further finds that the harm that may
 300 | result from the release of such identifying and location
 301 | information outweighs any public benefit that may be derived
 302 | from the disclosure of the information.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 185 Public Records/Military Special Operations Units
SPONSOR(S): Veteran & Military Affairs Subcommittee; Gaetz and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 674

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|---------------------|------------|--|
| 1) Veteran & Military Affairs Subcommittee | 12 Y, 0 N, As CS | Renner | Kiner |
| 2) Government Operations Subcommittee | | Williamson | Williamson |
| 3) Local & Federal Affairs Committee | | | |

SUMMARY ANALYSIS

The bill creates a public records exemption for the identification and location information of a current or former servicemember of a United States military special operations unit and his or her spouse and children. In order for the public records exemption to apply, the current or former servicemember must submit to the custodial agency a written request and a statement that reasonable efforts have been made to protect the information from being accessible through other means available to the public.

The bill defines the term "identification and location" information to mean the:

- Home address, telephone number, and photograph of a current or former servicemember of a United States military special operations unit;
- Home address, telephone number, photograph, and place of employment of the spouse or child of such servicemember; and
- Name and location of the school or day care facility attended by the child of such servicemember.

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

The bill may create a minimal fiscal impact on state and local governments. See FISCAL COMMENTS.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

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 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

Public Records 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 records 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 statute.⁷ However, the agency is not prohibited from disclosing the records in all circumstances where the records are only exempt.⁸

¹ Art I., s. 24(c), Fla. Const.

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).

Current Public Records Exemptions for Identification and Location Information

Current law provides a public records exemption for certain identification and location information of specified current or former agency employees and their spouses and children.⁹ Information such as home addresses, telephone numbers, a spouse's employer, and a child's school or daycare facility is exempt from public records requirements.

Current law also provides a public records exemption for certain identification and location information for the following federal personnel and their spouses and children:¹⁰

- United States attorneys and assistant U.S. attorneys;
- U.S. Courts of Appeal judges;
- U.S. district judges; and
- U.S. magistrates.

In order for the exemption to apply, such attorney, judge, or magistrate must submit to the custodial agency a written request to exempt the information from public records requirements. In addition, the attorney, judge, or magistrate must submit a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public.¹¹

Military Special Operations Units

Military special operations forces are elite military units that are highly trained and specially equipped, and have the ability to infiltrate into hostile territory through land, sea, or air to conduct a variety of operations, many of them classified.¹²

The U.S. Special Operations Command (SOCOM) is headquartered at MacDill Air Force Base in Tampa, FL., and oversees the training, equipping, and indoctrination of all special operations units. SOCOM's components include the U.S. Army Special Operations Command, the Naval Special Warfare Command, the Air Force Special Operations Command, and the Marine Corps Special Operations Command.¹³ SOCOM has roughly 66,000 active duty, National Guard and reserve personnel from the Navy, Army, Marines, and Air Force, as well as Department of Defense (DoD) civilians, assigned to its headquarters and various components and sub-unified commands.¹⁴

Effect of Proposed Changes

The bill creates a public records exemption for the identification and location information of current or former servicemembers of U.S. military special operations units and their spouses and children, and provides that the information is exempt¹⁵ from public records requirements. In order for the exemption to apply, such servicemember must submit to the custodial agency a written request to exempt the information from public records requirements. In addition, the servicemember must submit a written statement that he or she has made reasonable efforts to protect the identification and location information from being accessible through other means available to the public.

⁹ See s. 119.071(4)(d), F.S.

¹⁰ See s. 119.071(5)(i), F.S.

¹¹ Section 119.071(5)(i)2.a. and b., F.S.

¹² Congressional Research Service Report "U.S. Special Operations Forces (SOF): Background and Issues for Congress," pg. 1, May 8, 2014. Available at <https://www.fas.org/sgp/crs/natsec/RS21048.pdf>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ 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).

The bill defines the term "identification and location information" to mean the:

- Home address, telephone number, and photograph of a current or former servicemember of a U.S. military special operations unit;
- Home address, telephone number, photograph, and place of employment of the spouse or child of such servicemember; and
- Name and location of the school or day care facility attended by the child of such servicemember.

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

B. SECTION DIRECTORY:

Section 1. Amends s. 119.071, F.S., creating a public records exemption for identification and location information of current or former servicemembers of a military special operations unit and their spouse and children.

Section 2. Provides a public necessity statement.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

See FISCAL COMMENTS

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:

The bill could create a minimal fiscal impact on state and local agencies with staff responsible for complying with public records requests as staff could require training related to the creation of the public record exemption. In addition, an agency could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article 1, 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 new public record exemption related to certain identification and location information of a current or former servicemember of a military special operations unit and his or her spouse and children.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 11, 2015, the Veteran & Military Affairs Subcommittee adopted a strike all amendment to HB 185 and reported the bill favorably as a committee substitute. The amendment does the following:

- Moves the exemption from s. 119.071(4), F.S., to s. 119.071(5), F.S.;
- Revises the public necessity statement to clarify that the exemption protects sensitive personal information that would jeopardize an individual's safety- a revision that more closely aligns the public necessity statement to one of the public purposes listed in the Open Government Sunset Review Act;
- Requires a person to request the exemption in writing; and
- Requires a person to state in writing that they have made reasonable efforts to protect the information.

This analysis is drafted to the committee substitute as adopted by the Veteran & Military Affairs Subcommittee.

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A bill to be entitled
An act relating to public records; amending s.
119.071, F.S.; providing an exemption from public
records requirements for certain personal identifying
information of current or former servicemembers of a
military special operations unit and the spouses and
children of such servicemembers; providing for future
legislative review and repeal of the exemption;
providing a statement of public necessity; providing
an effective date.

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

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

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

(5) OTHER PERSONAL INFORMATION.—

(k)1. For purposes of this paragraph, the term
"identification and location information" means the:

a. Home address, telephone number, and photograph of a
current or former servicemember of a United States military
special operations unit.

b. Home address, telephone number, photograph, and place
of employment of the spouse or child of such servicemember.

c. Name and location of the school or day care facility

27 attended by the child of such servicemember.

28 2. Identification and location information held by an
 29 agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the
 30 State Constitution if such servicemember submits to an agency
 31 that has custody of the identification and location information:

32 a. A written request to exempt such information from
 33 public disclosure; and

34 b. A written statement that he or she has made reasonable
 35 efforts to protect the identification and location information
 36 from being accessible through other means available to the
 37 public.

38 3. This paragraph is subject to the Open Government Sunset
 39 Review Act in accordance with s. 119.15 and shall stand repealed
 40 on October 2, 2020, unless reviewed and saved from repeal
 41 through reenactment by the Legislature.

42 Section 2. The Legislature finds that it is a public
 43 necessity that the identification and location information held
 44 by an agency of a current or former servicemember of a United
 45 States military special operations unit; the spouse and children
 46 of such servicemember; and the schools and day care facilities
 47 attended by the children of such servicemember be made exempt
 48 from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of
 49 the State Constitution. United States military special
 50 operations units perform among the most critical, most
 51 effective, and most dangerous operations in defense of our
 52 nation's freedom. The unique missions undertaken by special

53 operations units render these servicemembers and their families
54 among the most critical assets worthy of protection in our state
55 and country. The Legislature finds that allowing public access
56 to the name, addresses, and identifying information of a current
57 or former servicemember of a United States military special
58 operations unit and his or her family may jeopardize the safety
59 of the servicemember, his or her spouse, and their children. The
60 Legislature finds that protecting a current or former
61 servicemember of a United States military special operations
62 unit, his or her spouse, and their children outweighs any public
63 benefit that may be derived from the disclosure of the
64 identifying information protected herein.

65 Section 3. This act shall take effect October 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 Gaetz offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (k) is added to subsection (5) of
 8 section 119.071, Florida Statutes, to read:

9 119.071 General exemptions from inspection or copying of
 10 public records.-

11 (5) OTHER PERSONAL INFORMATION.-

12 (k)1. For purposes of this paragraph, the term

13 "identification and location information" means the:

14 a. Home address, telephone number, date of birth, and
 15 photograph of a current or former active duty servicemember of
 16 the United States Armed Forces, Reserve Forces, or National
 17 Guard.



Amendment No.

18 b. Home address, telephone number, date of birth,
19 photograph, and place of employment of the spouse or child of
20 such servicemember.

21 c. Name and location of the school or day care facility
22 attended by the child of such servicemember.

23 2. Identification and location information held by an
24 agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the
25 State Constitution if such servicemember submits to an agency
26 that has custody of the identification and location information:

27 a. A written request to exempt such information from
28 public disclosure; and

29 b. A written statement that he or she has made reasonable
30 efforts to protect the identification and location information
31 from being accessible through other means available to the
32 public.

33 3. This paragraph is subject to the Open Government Sunset
34 Review Act in accordance with s. 119.15 and shall stand repealed
35 on October 2, 2020, unless reviewed and saved from repeal
36 through reenactment by the Legislature.

37 Section 2. The Legislature finds that it is a public
38 necessity that certain identification and location information
39 of current or former active duty servicemembers of the United
40 States Armed Forces, Reserve Forces, or National Guard, and
41 their spouses and children, that is held by an agency be made
42 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
43 Article I of the State Constitution. Servicemembers of the



Amendment No.

44 United States Armed Forces, Reserve Forces, or National Guard
45 perform among the most critical, most effective, and most
46 dangerous operations in defense of our nation's freedom. The
47 missions undertaken by servicemembers of the United States Armed
48 Forces, Reserve Forces, or National Guard render these
49 servicemembers and their families among the most critical assets
50 worthy of protection in our state and country. The Legislature
51 finds that allowing public access to identification and location
52 information of current or former active duty servicemembers of
53 the United States Armed Forces, Reserve Forces, or National
54 Guard, and their spouses and children may jeopardize their
55 safety. Therefore, the Legislature finds that protecting the
56 home address, telephone number, date of birth, and photograph of
57 a current or former active duty servicemember of the United
58 States Armed Forces, Reserve Forces, or National Guard; the home
59 address, telephone number, date of birth, photograph, and place
60 of employment of the spouse or child of such servicemember; and
61 the name and location of the school or day care facility
62 attended by the child of such servicemember, outweighs any
63 public benefit that may be derived from the disclosure of such
64 information.

65 Section 3. This act shall take effect October 1, 2015.

67 -----
68 **T I T L E A M E N D M E N T**

69 Remove everything before the enacting clause and insert:



Amendment No.

70 An act relating to public records; amending s. 119.071, F.S.;

71 providing an exemption from public records requirements for

72 certain identification and location information of current or

73 former active duty servicemembers of the United States Armed

74 Forces, Reserve Forces, or National Guard and the spouses and

75 children of such servicemembers; providing for future

76 legislative review and repeal of the exemption; providing a

77 statement of public necessity; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 223 Public Records and Meetings/Postsecondary Education Executive Search
SPONSOR(S): Combee
TIED BILLS: IDEN./SIM. **BILLS:** CS/CS/SB 182

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|-----------------|------------|--|
| 1) Higher Education & Workforce Subcommittee | 9 Y, 1 N, As CS | Banner | Sherry |
| 2) Government Operations Subcommittee | | Williamson | Williamson |
| 3) Education Committee | | | |

SUMMARY ANALYSIS

The bill creates an exemption from public record and public meeting requirements for information associated with the applicant recruitment process and discussions associated with the applicant search for certain state university and Florida College System (FCS) institution employees. Specifically, the bill provides that any personal identifying information of an applicant for president, provost, or dean of any state university or FCS institution is confidential and exempt from public record requirements. It also creates a public meeting exemption for any meeting held for the purpose of identifying or vetting applicants for president, provost, or dean of any state university or FCS institution.

The bill provides instances when the public meeting exemption does not apply. In addition, it provides that the identifying information of any applicants who comprise a final group of applicants must be released by the state university or FCS institution no later than 30 days before the date of the meeting at which final action or vote is to be taken on the employment of the applicants. All documents containing personal identifying information of any applicants who comprise a final group of applicants become subject to public record requirements when the applicants' names are released.

The bill also requires closed meetings where applicants and potential applicants are discussed, however, requires the meetings be recorded and exempts the recordings from public records requirements.

The bill provides for repeal of the section on October 2, 2020, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Records Law

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

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

Public Meetings Law

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

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

Public Record and Public Meeting Exemptions

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

Furthermore, the Open Government Sunset Review Act⁶ 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:⁷

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;

¹ Section 286.011(1), F.S.

² *Ibid.*

³ Section 286.011(6), F.S.

⁴ Section 286.011(2), F.S.

⁵ Art. I, s. 24(c), Fla. Const.

⁶ Section 119.15, F.S.

⁷ Section 119.15(6)(b), F.S.

- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- 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.⁸

Search Committees

Oftentimes, when looking to fill a vacant president, provost, or dean position, state universities and Florida College System (FCS) institutions⁹ establish a search committee, which may be comprised of members from an institution's board of trustees, faculty or student representatives, members of the community, a member from the Board of Governors or State Board of Education, and other potentially interested persons. The purpose of the committee is to locate qualified applicants who are interested in filling the vacant position at the university or institution, vetting applicants, and selecting a candidate to fill the position.¹⁰

The search committee often retains the services of a consulting firm for the purpose of conducting the search for a president or provost. It is typical for the consultant to make the initial contact with a potential applicant to determine if the person is interested in applying to fill the vacancy at the state university or FCS institution.

Information obtained by a search committee or consultant, including applications and other information gathered by a committee or consultant regarding applicants, must be made available for copying and inspection upon request. In addition, any meetings associated with the search process, including vetting of applicants, are open to the public.¹¹

Effect of Proposed Changes

The bill creates an exemption from public record requirements for information associated with the applicant recruitment process and an exemption from public meeting requirements for discussions associated with the applicant search.

Specifically, the bill provides that any personal identifying information of an applicant for president, provost, or dean of any state university or FCS institution is exempt¹² from public record requirements.

The bill also creates a public meeting exemption for any portion of a meeting:

- Held for the purpose of identifying or vetting potential applicants for president, provost, or dean of any state university or FCS institution.

⁸ Section 119.15(3), F.S.

⁹ The board of trustees for a FCS institution is charged with appointing an institution president and may appoint a search committee for this purpose. Section 1001.64(19), F.S.

¹⁰ The Board of Governors must confirm the selected candidate for president of a state university Section 1001.706(6)(a), F.S.

¹¹ FCS institutions and state universities are considered state agencies, subject to public records and public meetings laws. *See Wood v. Marston*, 442 So. 2d 934, 938 (Fla. 1983) (holding that a University of Florida screening committee was subject to Florida's Sunshine Law); *Rhea v. District Bd. Of Trustees of Santa Fe College*, 2013 WL 950544 at 3, n. 1 (Fla. 1st DCA 2013) (noting that Santa Fe College, as part of the Florida College System, is a state agency having a duty to provide access to public records).

¹² 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).

- That would disclose identifying information of an applicant for president, provost, or dean of a state university or FCS institution.

Any portion of a closed meeting must be reasonably noticed, and no portion of the closed meeting may be held off the record. A recording must be made of the closed portion of the meeting. The bill provides that the recording is exempt from public record requirements.

The public meeting exemptions do not apply to a meeting held for the purpose of establishing qualifications of potential applicants or any compensation framework to be offered to potential applicants. Any meeting or interview held after a final group of applicants has been established and held for the purpose of making a final selection to fill the position of president, provost, or dean is subject to public meeting requirements. In addition, the names of any applicants who comprise a final group of applicants must be released by the state university or FCS institution no later than 30 days before the date of the meeting at which final action or vote is to be taken on the employment of the applicants. All documents containing personal identifying information of any applicants who comprise a final group of applicants become subject to public record requirements when the applicants' names are released.

The bill provides that the section is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2020, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1. Creates s. 1004.097, F.S., to provide public record and public meeting exemptions associated with a search conducted by a state university or FCS institution for the purpose of identifying or vetting applicants for president, provost, or dean.

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

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.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a minimal fiscal impact on state universities and FCS institutions, because staff responsible for complying with public record requests could require training related to creation of the public record exemption. In addition, state universities and FCS institutions could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the universities and institutions. In addition, there may be minimal fiscal costs associated with the requirement to record the closed portion of a meeting.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

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

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for any personal identifying information of an applicant for president, provost, or dean of any state university or FCS institution, in addition to a public meeting exemption for any meetings wherein such information is discussed or such applicants are vetted. The exemptions do not appear to be in conflict with the constitutional requirement that the exemptions be no broader than necessary to accomplish the stated purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2015, the Higher Education and Workforce Subcommittee adopted a strike all amendment to the bill and reported the bill favorably as a committee substitute. The amendment conformed the bill to Senate Bill 182 by:

- providing that records be exempt rather than both confidential and exempt;
- requiring closed meetings to be recorded and those recordings exempt from public records; and
- extending the timeframe that records of finalists and meetings regarding finalists be open to the public from 10 days to 30 days prior to the final vote or action.

This analysis is written to reflect the strike all amendment as adopted.

1 A bill to be entitled
2 An act relating to public records and meetings;
3 creating s. 1004.097, F.S.; providing an exemption
4 from public records requirements for identifying
5 information of an applicant for president, provost, or
6 dean of a state university or Florida College System
7 institution; providing an exemption from public
8 meeting requirements for any portion of a meeting held
9 for the purpose of identifying or vetting or otherwise
10 disclosing identifying information of such applicants;
11 requiring that closed meetings be reasonably noticed
12 and recorded; providing that the recordings of closed
13 portions of a meeting are exempt from public records
14 requirements; specifying that any portion of a meeting
15 held for the purpose of establishing the
16 qualifications of, or any compensation framework to be
17 offered to, potential applicants is subject to public
18 meetings requirements; specifying that the identifying
19 information of final applicants is no longer exempt
20 from public records and public meetings requirements
21 within a specified period before a final action or
22 vote; providing for future legislative review and
23 repeal of the exemptions; providing a statement of
24 public necessity; providing an effective date.

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

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Section 1. Section 1004.097, Florida Statutes, is created to read:

1004.097 Information identifying applicants for president, provost, or dean at state universities or Florida College System institutions; public records exemption; public meetings exemption.-

(1) Any identifying information of an applicant for president, provost, or dean of a state university or Florida College System institution is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2)(a) Any portion of a meeting held for the purpose of identifying or vetting a potential applicant for president, provost, or dean of a state university or Florida College System institution is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(b) Any portion of a meeting that would disclose identifying information of an applicant for president, provost, or dean of a state university or Florida College System institution is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(c) Any portion of a meeting that is closed pursuant to paragraph (a) or paragraph (b) must be reasonably noticed. A complete recording must be made of any closed portion of a meeting, and a closed portion of a meeting may not be held off the record. The recording of the closed portion of a meeting is

53 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 54 Constitution.

55 (d) Any portion of a meeting held for the purpose of
 56 establishing the qualifications of a potential applicant for
 57 president, provost, or dean of a state university or Florida
 58 College System institution or establishing the compensation
 59 framework to be offered to a potential applicant must be open to
 60 the public and is subject to s. 286.011 and s. 24(b), Art. I of
 61 the State Constitution.

62 (3) No later than 30 days before the date of the meeting
 63 at which a final action or vote is to be taken regarding the
 64 employment of an applicant for president, provost, or dean of a
 65 state university or Florida College System institution,
 66 identifying information of the applicant on whom a final action
 67 or vote is to be taken is no longer exempt under subsections (1)
 68 and (2).

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

73 Section 2. The Legislature finds that it is a public
 74 necessity that any identifying information of an applicant for
 75 president, provost, or dean of a state university or Florida
 76 College System institution be made exempt from s. 119.07(1),
 77 Florida Statutes, and s. 24(a), Article I of the State
 78 Constitution. The Legislature also finds that any portion of a

79 meeting that is held for the purpose of identifying or vetting a
 80 potential applicant for president, provost, or dean of a state
 81 university or Florida College System institution or that would
 82 disclose identifying information of such applicant be made
 83 exempt from s. 286.011, Florida Statutes, and s. 24(b), Article
 84 I of the State Constitution. The Legislature also finds that
 85 identifying information of finalists shall no longer be exempt
 86 from public records and public meetings requirements 30 days
 87 before the date of the meeting at which a final action or vote
 88 occurs regarding the hiring of such applicant. The task of
 89 filling the position of president, provost, or dean of a state
 90 university or Florida College System institution is often
 91 conducted by an executive search committee. Many, if not most,
 92 applicants for such a position are currently employed at another
 93 job at the time they apply, and disclosure of their applications
 94 could jeopardize their current employment. These exemptions from
 95 public records and public meetings requirements are needed to
 96 ensure that the executive search committee can avail itself of
 97 the most experienced and desirable pool of qualified applicants
 98 from which to fill the position of president, provost, or dean
 99 of a state university or Florida College System institution. If
 100 potential applicants fear the possibility of losing their
 101 current employment as a consequence of attempting to progress
 102 along their chosen career path or seeking different and more
 103 rewarding employment, the number and quality of applicants
 104 available to fill the position of president, provost, or dean of

105 | a state university or Florida College System institution would
106 | be greatly diminished. Therefore, this exemption fulfills an
107 | important state interest.

108 | Section 3. This act shall take effect October 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 Combee offered the following:
4

Amendment (with title amendment)

Remove lines 30-107 and insert:

7 1004.097 Information identifying applicants for president
8 or provost at state universities or Florida College System
9 institutions; public records exemption; public meetings
10 exemption.-

11 (1) Any identifying information of an applicant for
12 president or provost of a state university or Florida College
13 System institution is exempt from s. 119.07(1) and s. 24(a),
14 Art. I of the State Constitution.

15 (2)(a) Any portion of a meeting held for the purpose of
16 identifying or vetting a potential applicant for president or
17 provost of a state university or Florida College System



Amendment No.

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

20 (b) Any portion of a meeting that would disclose
21 identifying information of an applicant for president or provost
22 of a state university or Florida College System institution is
23 exempt from s. 286.011 and s. 24(b), Art. I of the State
24 Constitution.

25 (c) Any portion of a meeting that is closed pursuant to
26 paragraph (a) or paragraph (b) must be reasonably noticed. A
27 complete recording must be made of any closed portion of a
28 meeting, and a closed portion of a meeting may not be held off
29 the record. The recording of the closed portion of a meeting is
30 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
31 Constitution.

32 (d) Any portion of a meeting held for the purposes of
33 establishing the qualifications of potential applicants or
34 establishing the compensation framework to be offered to
35 potential applicants must be open to the public and is subject
36 to s. 286.011 and s. 24(b), Art. I of the State Constitution.

37 (3) No later than 30 days before the date of the meeting
38 at which a final action or vote is to be taken regarding the
39 employment of an applicant, identifying information of the
40 applicants on whom a final action or vote is to be taken is no
41 longer exempt as provided under subsections (1) and (2).

42 (4) This section is subject to the Open Government Sunset
43 Review Act in accordance with s. 119.15 and shall stand repealed



Amendment No.

44 on October 2, 2020, unless reviewed and saved from repeal
45 through reenactment by the Legislature.

46 Section 2. The Legislature finds that it is a public
47 necessity that any identifying information of an applicant for
48 president or provost of a state university or Florida College
49 System institution be exempt from s. 119.07(1), Florida
50 Statutes, and s. 24(a), Article I of the State Constitution. The
51 Legislature also finds that any portion of any meeting which is
52 held for the purpose of identifying or vetting applicants for
53 president or provost of a state university or Florida College
54 System institution or which would disclose identifying
55 information of an applicant be exempt from s. 286.011, Florida
56 Statutes, and s. 24(b), Article I of the State Constitution.
57 Identifying information of finalists is no longer exempt from
58 public records and public meetings requirements 30 days before
59 the date of the meeting at which a final action or vote occurs
60 regarding the hiring of a president or provost. The task of
61 filling the position of president or provost of a state
62 university or Florida College System institution is often
63 conducted by an executive search committee. Many, if not most,
64 applicants for such a position are currently employed at another
65 job at the time they apply and disclosure of their applications
66 could jeopardize their current positions. These exemptions from
67 public records and public meeting requirements are needed to
68 ensure that the executive search committee can avail itself of
69 the most experienced and desirable pool of qualified applicants



Amendment No.

70 from which to fill the position of president or provost of a
71 state university or Florida College System institution. If
72 potential applicants fear the possibility of losing their
73 current employment as a consequence of attempting to progress
74 along their chosen career path or seeking different and more
75 rewarding employment, failure to have these exemptions in place
76 could have a chilling effect on the number and quality of
77 applicants available to fill the position of president or
78 provost of a state university or Florida College System
79 institution.

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

83

Remove lines 5-6 and insert:

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information of an applicant for president or provost of a state

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university or Florida College System

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 371 Agency Inspectors General
SPONSOR(S): Raulerson
TIED BILLS: IDEN./SIM. BILLS: SB 1304

| 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 Office of Inspector General (OIG) is established in each agency to provide 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.

The bill amends provisions related to inspector generals and the CIG. Specifically, the bill:

- Requires a national search for an inspector general to be initiated within 60 days after a vacancy or anticipated vacancy of a position of inspector general.
- Prohibits a former or current elected official from being appointed as an inspector general within five years after the end of his or her term of office, but provides exceptions.
- Provides for an initial five year term of office and subsequent five year terms at the discretion of the agency head, or for agencies under the jurisdiction of the Governor, the CIG. However, the bill provides that an inspector general may be removed prior to the expiration of the five year term.
- Provides that an OIG may include a division of investigation, division of audit, and other divisions as appropriate.
- Authorizes the CIG to hire or retain legal counsel.
- Adds additional qualifications for the position of inspector general, which include certification, education, and experience requirements.
- Prohibits an inspector general, or an officer or employee of an OIG, from holding elective office, running for elective office, holding office in a political party or committee, participating in a political campaign, or making a campaign contribution or endorsement.
- Clarifies that the inspector general and staff must have access to all records and information necessary to facilitate an investigation, audit, inspection, or performance review.
- Authorizes an inspector general to administer oaths and affirmations, compel witness attendance and testimony under oath, take evidence, and require the production of records.
- Requires other agency, district, or commission personnel to furnish information, cooperation, and assistance to an inspector general.
- Provides that the inspector general must have direct and prompt access to the head of an agency, special district, board, or commission when necessary.
- Requires a statement in each contract or program for every state officer, employee, agency, special district, board, commission, contractor, subcontractor, and licensee to require cooperation with the inspector general.
- Authorizes the CIG to issue and enforce subpoenas.

The bill may have a fiscal impact on state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Inspectors General

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

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.

Governor in writing, at least seven days prior to an offer of employment, of the intention to hire an inspector general.⁵

Each inspector general must report to and be 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 must be under the general supervision of the agency head, report 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 may be removed only by the agency head. For state agencies under the jurisdiction of the Governor, the inspector general only may be removed by the CIG for cause.⁸ The CIG must notify the Governor in writing of his or her intention to remove the inspector general at least 21 days before the removal. For the other agencies, the agency head must notify the Governor in writing of the intention to terminate the inspector general, at least 21 days prior to the removal.⁹ If the inspector general disagrees with the removal, the inspector general may present written objections to the Governor within the 21-day period.¹⁰

Auditing Standards

Inspectors general must possess minimum education and experience qualifications, and the investigations they conduct must adhere to specific internal auditing standards.¹¹ 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:¹²

- 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 of 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 of 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 of experience.

Final reports are submitted to the agency head and the Auditor General, whose office is directed to give official recognition to the findings and recommendations as part of its post-audit responsibilities.¹³

Each inspector general must review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency.¹⁴ 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.¹⁵

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

⁵ *Id.*

⁶ Section 20.055(3)(b), F.S.

⁷ *Id.*

⁸ Section 20.055(3)(c), F.S.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *See s.* 20.055(4), F.S.

¹² Section 20.055(4), F.S.

¹³ Section 20.055(5)(f) and (g), F.S.

¹⁴ Section 20.055(5), F.S.

¹⁵ *Id.*

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.¹⁶

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.¹⁷

The inspector general must have access to any records, data, and other information of the state agency he or she deems necessary to carry out his or her duties. The inspector general is authorized to request such information or assistance as may be necessary from the state agency or from any federal, state, or local governmental entity.¹⁸

At the conclusion of each audit, the inspector general must submit preliminary findings and recommendations to the person responsible for supervision of the program function or operational unit who must respond to any adverse findings within 20 working days after receipt of the preliminary findings. Such response, and the inspector general's rebuttal to the response, must be included in the final audit report.¹⁹

The Auditor General, in connection with the independent post-audit of the same agency, must give appropriate consideration to internal audit reports and the resolution of findings therein. The Legislative Auditing Committee may inquire into the reasons or justifications for failure of the agency head to correct the deficiencies reported in internal audits that are also reported by the Auditor General and must take appropriate action.²⁰

The inspector general must monitor the implementation of the state agency's response to any report on the state agency issued by the Auditor General or by the Office of Program Policy Analysis and Government Accountability (OPPAGA). No later than six months after the Auditor General or OPPAGA publishes a report on the state agency, the inspector general must provide a written response to the agency head on the status of corrective actions taken. The inspector general must file a copy of such response with the Legislative Auditing Committee.²¹

The inspector general must develop long-term and annual audit plans based on the findings of periodic risk assessments. The plan, where appropriate, should include post-audit samplings of payments and accounts. For state agencies under the Governor, the audit plans are submitted to the CIG. The plan is submitted to the agency head for approval, and a copy of the approved plan must be submitted to the Auditor General.²²

In carrying out its investigative duties and responsibilities, each inspector general must initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste,

¹⁶ Section 20.055(5)(a), F.S.

¹⁷ 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.

¹⁸ Section 20.055(5)(c), F.S.

¹⁹ Section 20.055(5)(d), F.S.

²⁰ Section 20.055(5)(g), F.S.

²¹ Section 20.055(5)(h), F.S.

²² Section 20.055(5)(i), F.S.

mismanagement, misconduct, and other abuses in state government. For these purposes, each inspector general must do the following:²³

- Receive complaints and coordinate all activities of the agency as required by the Whistle-blower's Act;
- Receive and consider the complaints that do not meet the criteria for an investigation under the Whistle-blower's Act and conduct, supervise, or coordinate such inquiries, investigations, or reviews as the inspector general deems appropriate;
- Report expeditiously to the Department of Law Enforcement or other law enforcement agencies, as appropriate, when the inspector general has reasonable grounds to believe there has been a violation of criminal law;
- Conduct investigations and other inquiries free of actual or perceived impairment to the independence of the inspector general or the inspector general's office. This must include freedom from any interference with investigations and timely access to records and other sources of information;
- At the conclusion of an audit the subject of which is an entity contracting with the state or an individual substantially affected, submit the findings to the contracting entity or the individual substantially affected, who must be advised that they may submit a written response to the findings. The response and the inspector general's rebuttal to the response, if any, must be included in the final audit report; and
- Submit in a timely fashion final reports on investigations conducted by the inspector general to the agency head.

Annually, each inspector general must submit a report to the agency head on its activities. For agencies under the jurisdiction of the Governor, the inspector general provides the report to the CIG.²⁴

Effect of the Proposed Changes

Agency Inspector Generals

Vacancies in Position

The bill provides that within 60 days after a vacancy or anticipated vacancy in the position of inspector general, the agency head or, for agencies under the jurisdiction of the Governor, the CIG, must initiate a national search for an inspector general and must set the salary of the inspector general. In the event of a vacancy, an interim inspector general may be appointed until a successor inspector general is appointed.

Prohibitions

The bill provides that a former or current elected official may not be appointed inspector general within five years after the end of such individual's period of service. Notwithstanding the restriction, an employee in the office of inspector general who has served four or more years may be considered for the position of inspector general. In addition, the restriction does not prohibit the reappointment of a current inspector general.

The bill prohibits the inspector general from holding, or being a candidate for, an elective office while inspector general, and prohibits a current officer or employee of an OIG from holding, or being a candidate for, an elected office. The inspector general may not hold office in a political party or political committee, may not participate in a political campaign of any candidate for public office, and may not make a campaign contribution or campaign endorsement. In addition, an employee of an OIG may not hold office in a political party or political committee, participate in a political campaign of a candidate for public office, or make a campaign contribution or campaign endorsement, while employed in the OIG.

²³ Section 20.055(6), F.S.

²⁴ Section 20.055(7), F.S.

Terms of Service

Upon appointment as inspector general, the initial term must be five years. Subsequent five-year terms may be renewed at the discretion of the agency head, or for agencies under the jurisdiction of the Governor, the CIG. Notwithstanding the term, an inspector general may be removed from office at the discretion of the agency head, or for agencies under the jurisdiction of the Governor, the CIG.

Requirements

The bill creates additional requirements for an inspector general. Upon appointment the inspector general must possess, or must seek within the first year after appointment, a certification from the Association of Inspectors General as a certified inspector general. The bill provides that a well-qualified inspector general must have two or more other professional certifications, such as certified inspector general investigator, certified inspector general auditor, certified public accountant, certified internal auditor, certified governmental financial manager, or certified fraud examiner, or be a licensed attorney. However, it is unclear whether this is a requirement of an inspector general or a suggestion.

The inspector general must have special training and experience in the administration and managing of programs for prevention, examination, investigation, audit, detection, elimination, and prosecution of fraud, corruption, waste, mismanagement, or misconduct in the operation of government or organizations. The inspector general must be selected without regard to political affiliation and on the basis of integrity, leadership capability, and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, investigation, criminal justice administration, or other closely related field. In addition, the inspector general should have demonstrated knowledge, skills, abilities, and experience in conducting audits, investigations, inspections, and performance reviews.

The bill provides that a qualified candidate must have a four year degree from an accredited institution of higher learner or have at least five years of experience in at least one of the following areas:

- Inspector general;
- Local, state, or federal law enforcement officer;
- Federal or state court judge;
- Licensed attorney with expertise in the areas of audit and investigation of fraud, mismanagement, waste, corruption, and abuse of power;
- Senior-level auditor or comptroller; or
- Supervisory experience in an OIG or investigative public agency similar to an office of inspector general.

For agencies under the jurisdiction of the Governor, the CIG may consider other credentials, certifications, education, and experience, as appropriate.

In addition, the bill provides that a qualified candidate must have:

- Managed and completed complex investigations involving allegations of fraud, waste, abuse, illegal acts, theft, public corruption, deception, and conspiracy;
- Demonstrated the ability to liaise with local, state, and federal law enforcement agencies and the judiciary; or
- An advanced degree in law, accounting, public administration, or other relevant field.

Miscellaneous

The bill provides that an OIG may include, but not be limited to, a division of investigations, a division of audits, or other division as appropriate. The CIG may hire or retain legal counsel.

Audits and Investigations

The bill provides that the inspector general and the staff must have access to all records, information, data, reports, plans, projections, matters, contracts, memoranda, correspondence, audits, reviews, papers, books, documents, computer hard drives, e-mails, instant messages, recommendations, and any other material of the agency, agency head, or of an individual, partnership, corporation, or

organization related to any financial or official function of state government that the inspector general deems necessary to facilitate an investigation, audit, inspection, or performance review. It provides that the inspector general must have access to all employees of the agency. At all times, the inspector general must have access to a building or facility that is owned, operated, or leased by a department, agency, board, or commission, or a property held in trust to the state. Current law only provides that the inspector general must have access to any records, data, and other information of the state agency he or she deems necessary to carry out his or her duties.

The bill provides that for purposes of an investigation, audit, inspection, or performance review, the inspector general and staff designated by the inspector general may administer oaths and affirmations, compel witness attendance and testimony under oath, take evidence, and require the production of any records that the inspector general deems relevant or material. It provides that the inspector general must have access to, among other listed document types, all records, reports, audits, reviews, papers, books, and correspondence, which includes information relative to the purchase of supplies and services or anticipated purchase of such supplies and services.

The inspector general may request information, cooperation, and assistance from an agency, special district, board, or commission. Each person in charge of an agency, special district, board, or commission must furnish the inspector general with information, cooperation, and assistance upon receipt of such request.

The bill provides that the inspector general must have direct and prompt access to the head of any agency, special district, board, or commission when necessary for any purpose pertaining to the performance of his or her duties and responsibilities. The inspector general may require the attendance and testimony under oath of persons and the production of all records, reports, audits, inspections, reviews, papers, books, documents, computer hard drives, e-mails, instant messages, recommendations, correspondence, and other data and material relevant to a matter under audit, investigation, inspection, or performance review.

The bill provides that it is the duty of every state officer, employee, agency, special district, board, commission, contractor, subcontractor, licensee, and applicant for certification of eligibility for a contract or program, to cooperate with the inspector general. Each contract, bid, proposal, and application or solicitation for a contract must contain a statement that the corporation, partnership, or person understands and will abide by this requirement. An employee, appointed officer, or elected official who violates this requirement is subject to loss of employment.

The bill provides that the disclosure to an inspector general of communications between an agency, special district, board, or commission does not constitute a waiver of attorney-client privilege.

Chief Inspector General

The bill authorizes the CIG to issue and enforce subpoenas under certain circumstances. Specifically, the bill authorizes the CIG to issue and serve subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of documents, reports, answers, records, accounts, and other data in any medium. The bill also provides that the CIG may require or permit a person to file a statement in writing, under oath or otherwise, as to all facts and circumstances concerning the matter to be audited, examined, or investigated. In the event of noncompliance with a subpoena, the CIG may petition the circuit court of the county in which the person subpoenaed resides or has his or her principal place of business for an order requiring the subpoenaed person to appear and testify and to produce documents, reports, answers, records, accounts, or other data as specified in the subpoena. Currently, the CIG does not have the authority to issue subpoenas.

B. SECTION DIRECTORY:

Section 1. amends s. 20.055, F.S., providing additional hiring requirements, employment qualifications, and terms of employment for inspectors general and staff; specifying additional records and personnel accessible to inspectors general during an audit or investigation; authorizing inspectors general to

administer oaths; requiring all personnel to comply with requests of inspectors general under penalty of loss of employment; clarifying that attorney-client privilege is not waived when providing certain information to inspectors general.

Section 2. amends s. 14.32, F.S., authorizing the CIG to issue and enforce subpoenas under certain circumstances.

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:

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:

State Expenditure Impact

Requiring a national search for each vacancy in an agency inspector general position may slow down the hiring of inspector generals. Such a search also may have associated costs with advertising and interviewing applicants outside of the geographic locale. Requiring additional training requirements may have a fiscal impact on the agency; specialized training will have associated travel and course registration costs.

The bill allows for the inspector general to create divisions within the OIG. Permitting the creation of new divisions within an agency may have a fiscal impact on the agency. Typically, a division is headed by a director. As such, if the inspector general creates one or more divisions, the OIG may need additional employees to staff the newly created divisions.

The bill provides that each contract, bid, proposal, and application or solicitation for a contract must contain a statement that the corporation, partnership, or person will cooperate with the inspector general in any investigation, audit, inspection, performance review, or hearing. There may be administrative costs associated with amending agency documents.

The bill provides that the CIG may hire or retain legal counsel, which will have a negative fiscal impact on the Office of the CIG.

Local Government Expenditure Impact

The bill provides that an inspector general may request information, cooperation, and assistance from an agency, special district, board, or commission. Each person in charge of the entity must furnish the inspector general with information, cooperation, and assistance upon request. The bill also requires the inspector general to have direct and prompt access to the head of an agency, special district, board, or commission when necessary for any purpose pertaining to the performance of his or her duties and responsibilities. Depending on the nature of the inspection or audit, local governments may be required to cooperate and assist an inspector general. As a result, there may be an indeterminate negative fiscal impact on local governments.

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 certain local governmental entities to cooperate with an inspector general and provide specified assistance. However, an exemption may apply as the fiscal impact will likely be insignificant.

2. Other:

Freedom of Speech and Association

The bill prohibits an inspector general, or an employee of an OIG, from holding office in a political party or political committee, participating in a political campaign of any candidate for public office, or making a campaign contribution or campaign endorsement.

The First Amendment protects the right to associate for expressive or political activity. The government may infringe upon this right, however, only if it has a compelling interest unrelated to the suppression of speech and if the interest cannot be achieved through significantly less restrictive means.²⁵ The U.S. Supreme Court, citing a compelling interest in preventing actual and perceived corruption, has upheld laws limiting the amount of money that a person may contribute to a candidate.²⁶ The Florida Supreme Court has upheld statutory provisions imposing reporting and identification requirements on organizations and individuals who make campaign contributions.²⁷

The U.S. Supreme Court has held that a law may not restrict or prohibit political speech.²⁸ In general, a public employee does not relinquish First Amendment rights by virtue of government employment.²⁹

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues: Lines 142-145

The bill appears to repeat the provision that prohibits a former or current elected official from being appointed inspector general within five years after the end of such individual's period of service. The line first appears on lines 137-139 of the bill. The sponsor may wish to remove the second sentence.

²⁵ *NAACP v. Alabama*, 357 U.S. 449 (1958).

²⁶ *Buckley v. Valeo*, 424 U.S. 1 (1976).

²⁷ *Doe v. Mortham*, 708 So.2d 929 (Fla. 1998).

²⁸ *See Citizens United v. F.E.C.*, 130 S.Ct. 876 (2010).

²⁹ *Pickering v. Board of Educ.*, 391 U.S. 563 (1968).

Drafting Issues: Lines 167-168

The bill provides that the CIG may hire or retain legal counsel. It is unclear if this sentence should be drafted as the inspector general, rather than the CIG, as this section pertains to inspectors general, not the CIG. If it pertains to the CIG, the sponsor may wish to relocate this provision to s. 14.32, F.S., which relates to the CIG.

Drafting Issues: Lines 211-219

The language requires certification within the first year of appointment as an inspector general. It appears this language should be redrafted as a paragraph, and not a subparagraph. As currently drafted, it does not follow the sequence.

Drafting Issues: Lines 225-226

The bill provides that the inspector general must be selected without regard to political affiliation. This provision repeats s. 20.055(3)(a), F.S.

Other Comments: Creation of Divisions

The bill provides that the OIG may include a division of investigations, a division of audit, or other divisions as appropriate. However, divisions are generally considered the principal unit of the department.³⁰ Creating a division within an office may conflict with the organizational structure of the agency.

Other Comments: Certification

The bill requires the inspector general to possess at appointment, or seek within the first year of appointment, certification as an inspector general. The bill only requires the inspector general to “seek” the certification, and does not require the inspector general to actually obtain the certification after a specified period of time.

Other Comments: Agency Inspector General Subpoena Power

On lines 360-367, the bill addresses summons and subpoenas. The bill does not appear to grant authority for an agency inspector general to issue a subpoena. Rather, the bill authorizes the CIG to issue and serve subpoenas.

Other Comments: Qualifications

The bill adds additional education and experience qualifications for the position of inspector general. The new language appears to overlap some of the current requirements as well as conflict with some of the experience requirements.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

³⁰ Section 20.04(3)(a), F.S.
STORAGE NAME: h0371.GVOPS.DOCX
DATE: 3/20/2015

1 A bill to be entitled
2 An act relating to agency inspectors general; amending
3 s. 20.055, F.S.; providing additional hiring
4 requirements, employment qualifications, and terms of
5 employment for inspectors general and staff;
6 specifying additional records and personnel accessible
7 to inspectors general during an audit or
8 investigation; authorizing inspectors general to
9 administer oaths; requiring all personnel to comply
10 with requests of inspectors general under penalty of
11 loss of employment; clarifying that attorney-client
12 privilege is not waived when providing certain
13 information to inspectors general; amending s. 14.32,
14 F.S.; authorizing the Chief Inspector General to issue
15 and enforce subpoenas under certain circumstances;
16 providing an effective date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Section 20.055, Florida Statutes, is amended to
21 read:

22 20.055 Agency inspectors general.—

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

24 (a) "Agency head" means the Governor, a Cabinet officer,
25 or a secretary or executive director as those terms are defined
26 in s. 20.03, the chair of the Public Service Commission, the

27 Director of the Office of Insurance Regulation of the Financial
 28 Services Commission, the Director of the Office of Financial
 29 Regulation of the Financial Services Commission, the board of
 30 directors of the Florida Housing Finance Corporation, and the
 31 Chief Justice of the State Supreme Court.

32 (b) "Entities contracting with the state" means for-profit
 33 and not-for-profit organizations or businesses that have a legal
 34 existence, such as corporations or partnerships, as opposed to
 35 natural persons, which have entered into a relationship with a
 36 state agency to provide for consideration certain goods or
 37 services to the state agency or on behalf of the state agency.
 38 The relationship may be evidenced by payment by warrant or
 39 purchasing card, contract, purchase order, provider agreement,
 40 or other such mutually agreed upon relationship. The term does
 41 not apply to entities that are the subject of audits or
 42 investigations conducted pursuant to ss. 112.3187-112.31895 or
 43 s. 409.913 or which are otherwise confidential and exempt under
 44 s. 119.07.

45 (c) "Individuals substantially affected" means natural
 46 persons who have established a real and sufficiently immediate
 47 injury in fact due to the findings, conclusions, or
 48 recommendations of a final report of a state agency inspector
 49 general, who are the subject of the audit or investigation, and
 50 who do not have or are not currently afforded an existing right
 51 to an independent review process. The term does not apply to
 52 employees of the state, including career service, probationary,

53 other personal service, Selected Exempt Service, and Senior
 54 Management Service employees; former employees of the state if
 55 the final report of the state agency inspector general relates
 56 to matters arising during a former employee's term of state
 57 employment; or persons who are the subject of audits or
 58 investigations conducted pursuant to ss. 112.3187-112.31895 or
 59 s. 409.913 or which are otherwise confidential and exempt under
 60 s. 119.07.

61 (d) "State agency" means each department created pursuant
 62 to this chapter and the Executive Office of the Governor, the
 63 Department of Military Affairs, the Fish and Wildlife
 64 Conservation Commission, the Office of Insurance Regulation of
 65 the Financial Services Commission, the Office of Financial
 66 Regulation of the Financial Services Commission, the Public
 67 Service Commission, the Board of Governors of the State
 68 University System, the Florida Housing Finance Corporation, the
 69 Agency for State Technology, and the state courts system.

70 (2) An ~~The~~ office of inspector general is established in
 71 each state agency to provide a central point for coordination of
 72 and responsibility for activities that promote accountability,
 73 integrity, and efficiency in government. It is the duty and
 74 responsibility of each inspector general, with respect to the
 75 state agency in which the office is established, to:

76 (a) Advise in the development of performance measures,
 77 standards, and procedures for the evaluation of state agency
 78 programs.

79 (b) Assess the reliability and validity of the information
 80 provided by the state agency on performance measures and
 81 standards, and make recommendations for improvement, if
 82 necessary, before submission of such information pursuant to s.
 83 216.1827.

84 (c) Review the actions taken by the state agency to
 85 improve program performance and meet program standards and make
 86 recommendations for improvement, if necessary.

87 (d) Provide direction for, supervise, and coordinate
 88 audits, investigations, and management reviews relating to the
 89 programs and operations of the state agency, except that when
 90 the inspector general does not possess the qualifications
 91 specified in subsection (4), the director of auditing shall
 92 conduct such audits.

93 (e) Conduct, supervise, or coordinate other activities
 94 carried out or financed by that state agency for the purpose of
 95 promoting economy and efficiency in the administration of, or
 96 preventing and detecting fraud and abuse in, its programs and
 97 operations.

98 (f) Keep the agency head or, for state agencies under the
 99 jurisdiction of the Governor, the Chief Inspector General
 100 informed concerning fraud, abuses, and deficiencies relating to
 101 programs and operations administered or financed by the state
 102 agency, recommend corrective action concerning fraud, abuses,
 103 and deficiencies, and report on the progress made in
 104 implementing corrective action.

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

105 (g) Ensure effective coordination and cooperation between
 106 the Auditor General, federal auditors, and other governmental
 107 bodies with a view toward avoiding duplication.

108 (h) Review, as appropriate, rules relating to the programs
 109 and operations of such state agency and make recommendations
 110 concerning their impact.

111 (i) Ensure that an appropriate balance is maintained
 112 between audit, investigative, and other accountability
 113 activities.

114 (j) Comply with the General Principles and Standards for
 115 Offices of Inspector General as published and revised by the
 116 Association of Inspectors General.

117 (3)(a)1. For state agencies under the jurisdiction of the
 118 Cabinet or the Governor and Cabinet, the inspector general shall
 119 be appointed by the agency head. For state agencies under the
 120 jurisdiction of the Governor, the inspector general shall be
 121 appointed by the Chief Inspector General. The agency head or
 122 Chief Inspector General shall notify the Governor in writing of
 123 his or her intention to hire the inspector general at least 7
 124 days before an offer of employment. The inspector general shall
 125 be appointed without regard to political affiliation.

126 2. Within 60 days after a vacancy or anticipated vacancy
 127 in the position of inspector general, the agency head or, for
 128 agencies under the jurisdiction of the Governor, the Chief
 129 Inspector General, shall initiate a national search for an
 130 inspector general and shall set the salary of the inspector

131 general. In the event of a vacancy in the position of inspector
 132 general, the agency head or, for agencies under the jurisdiction
 133 of the Governor, the Chief Inspector General, may appoint other
 134 office of inspector general management personnel as interim
 135 inspector general until such time as a successor inspector
 136 general is appointed.

137 3. A former or current elected official may not be
 138 appointed inspector general within 5 years after the end of such
 139 individual's period of service. Notwithstanding this
 140 restriction, employees of the office of inspector general who
 141 have served in the office for 4 or more years may be considered
 142 eligible for appointment to the position of inspector general. A
 143 former or current elected official may not be appointed
 144 inspector general within 5 years after that individual's period
 145 of service. This restriction does not prohibit the reappointment
 146 of a current inspector general.

147 4. Upon appointment as inspector general, an individual's
 148 initial term shall be 5 years. Subsequent 5-year terms may be
 149 renewed at the discretion of the agency head or, for agencies
 150 under the jurisdiction of the Governor, the Chief Inspector
 151 General. Notwithstanding this term of appointment, an inspector
 152 general may be removed from office at the discretion of the
 153 agency head or, for agencies under the jurisdiction of the
 154 Governor, the Chief Inspector General, as provided in paragraph
 155 (c).

156 (b) The inspector general shall report to and be under the

157 | general supervision of the agency head and is not subject to
 158 | supervision by any other employee of the state agency in which
 159 | the office is established. For state agencies under the
 160 | jurisdiction of the Governor, the inspector general shall be
 161 | under the general supervision of the agency head, shall report
 162 | to the Chief Inspector General, and may hire and remove staff
 163 | within the office of the inspector general in consultation with
 164 | the Chief Inspector General but independently of the agency. An
 165 | office of inspector general may include, but not be limited to,
 166 | a division of investigations, a division of audit, or other
 167 | division as appropriate. The Chief Inspector General may hire or
 168 | retain legal counsel.

169 | (c) For state agencies under the jurisdiction of the
 170 | Cabinet or the Governor and Cabinet, the inspector general may
 171 | be removed from office by the agency head. For state agencies
 172 | under the jurisdiction of the Governor, the inspector general
 173 | may only be removed from office by the Chief Inspector General
 174 | for cause, including concerns regarding performance,
 175 | malfeasance, misfeasance, misconduct, or failure to carry out
 176 | his or her duties under this section. The Chief Inspector
 177 | General shall notify the Governor in writing of his or her
 178 | intention to remove the inspector general at least 21 days
 179 | before the removal. For state agencies under the jurisdiction of
 180 | the Governor and Cabinet, the agency head shall notify the
 181 | Governor and Cabinet in writing of his or her intention to
 182 | remove the inspector general at least 21 days before the

183 removal. If the inspector general disagrees with the removal,
 184 the inspector general may present objections in writing to the
 185 Governor within the 21-day period.

186 (d) The Governor, the Governor and Cabinet, the agency
 187 head, or agency staff may not prevent or prohibit the inspector
 188 general from initiating, carrying out, or completing any audit
 189 or investigation.

190 (4) (a) To ensure that state agency audits are performed in
 191 accordance with applicable auditing standards, the inspector
 192 general or the director of auditing within the inspector
 193 general's office shall possess the following qualifications:

194 1. ~~(a)~~ A bachelor's degree from an accredited college or
 195 university with a major in accounting, or with a major in
 196 business which includes five courses in accounting, and 5 years
 197 of experience as an internal auditor or independent postauditor,
 198 electronic data processing auditor, accountant, or any
 199 combination thereof. The experience shall at a minimum consist
 200 of audits of units of government or private business
 201 enterprises, operating for profit or not for profit; ~~or~~

202 2. ~~(b)~~ A master's degree in accounting, business
 203 administration, or public administration from an accredited
 204 college or university and 4 years of experience as required in
 205 subparagraph 1. ~~paragraph (a);~~ or

206 3. ~~(c)~~ A certified public accountant license issued
 207 pursuant to chapter 473 or a certified internal audit
 208 certificate issued by the Institute of Internal Auditors or

209 | earned by examination, and 4 years of experience as required in
 210 | paragraph (a).

211 | 4. The inspector general shall possess at appointment, or
 212 | seek within the first year after appointment, a certification
 213 | from the Association of Inspectors General as a certified
 214 | inspector general. A well-qualified inspector general shall have
 215 | two or more other professional certifications, such as certified
 216 | inspector general investigator, certified inspector general
 217 | auditor, certified public accountant, certified internal
 218 | auditor, certified governmental financial manager, or certified
 219 | fraud examiner, or be a licensed attorney.

220 | (b) The inspector general shall have special training and
 221 | experience in the administration and managing of programs for
 222 | prevention, examination, investigation, audit, detection,
 223 | elimination, and prosecution of fraud, corruption, waste,
 224 | mismanagement, or misconduct in the operation of government or
 225 | organizations. The inspector general shall be selected without
 226 | regard to political affiliation and on the basis of integrity,
 227 | leadership capability, and demonstrated ability in accounting,
 228 | auditing, financial analysis, law, management analysis, public
 229 | administration, investigation, criminal justice administration,
 230 | or other closely related field. In addition, the inspector
 231 | general should have demonstrated knowledge, skills, abilities,
 232 | and experience in conducting audits, investigations,
 233 | inspections, and performance reviews. A qualified candidate for
 234 | inspector general shall have a 4-year degree from an accredited

235 | institution of higher learning or have at least 5 years of
 236 | experience in at least one of the following areas:
 237 | 1. Inspector general.
 238 | 2. Local, state, or federal law enforcement officer.
 239 | 3. Federal or state court judge.
 240 | 4. Licensed attorney with expertise in the areas of audit
 241 | and investigation of fraud, mismanagement, waste, corruption,
 242 | and abuse of power.
 243 | 5. Senior-level auditor or comptroller.
 244 | 6. Supervisory experience in an office of inspector
 245 | general or an investigative public agency similar to an office
 246 | of inspector general.
 247 |
 248 | For agencies under the jurisdiction of the Governor, the Chief
 249 | Inspector General may consider other credentials,
 250 | certifications, education, and experience, as appropriate.
 251 | (c) In addition to the qualifications in paragraph (b), a
 252 | qualified candidate shall have:
 253 | 1. Managed and completed complex investigations involving
 254 | allegations of fraud, waste, abuse, illegal acts, theft, public
 255 | corruption, deception and conspiracy;
 256 | 2. Demonstrated the ability to liaise with local, state,
 257 | and federal law enforcement agencies and the judiciary; or
 258 | 3. An advanced degree in law, accounting, public
 259 | administration, or other relevant field.
 260 | (d) The inspector general may not hold, or be a candidate

261 for, an elective office while inspector general, and a current
 262 officer or employee of an office of inspector general may not
 263 hold, or be a candidate for, an elective office. The inspector
 264 general may not hold office in a political party or political
 265 committee, may not participate in a political campaign of any
 266 candidate for public office, and may not make a campaign
 267 contribution or campaign endorsement. An employee of an office
 268 of inspector general may not hold office in a political party or
 269 political committee, participate in a political campaign of a
 270 candidate for public office, or make a campaign contribution or
 271 campaign endorsement, while employed in the office of inspector
 272 general.

273 (5) In carrying out the auditing duties and
 274 responsibilities of this act, each inspector general shall
 275 review and evaluate internal controls necessary to ensure the
 276 fiscal accountability of the state agency. The inspector general
 277 shall conduct financial, compliance, electronic data processing,
 278 and performance audits of the agency and prepare audit reports
 279 of his or her findings. The scope and assignment of the audits
 280 shall be determined by the inspector general; however, the
 281 agency head may at any time request the inspector general to
 282 perform an audit of a special program, function, or
 283 organizational unit. The performance of the audit shall be under
 284 the direction of the inspector general, except that if the
 285 inspector general does not possess the qualifications specified
 286 in subsection (4), the director of auditing shall perform the

287 functions listed in this subsection.

288 (a) Such audits shall be conducted in accordance with the
 289 current International Standards for the Professional Practice of
 290 Internal Auditing as published by the Institute of Internal
 291 Auditors, Inc., or, where appropriate, in accordance with
 292 generally accepted governmental auditing standards. All audit
 293 reports issued by internal audit staff shall include a statement
 294 that the audit was conducted pursuant to the appropriate
 295 standards.

296 (b) Audit workpapers and reports shall be public records
 297 to the extent that they do not include information which has
 298 been made confidential and exempt from the provisions of s.
 299 119.07(1) pursuant to law. However, when the inspector general
 300 or a member of the staff receives from an individual a complaint
 301 or information that falls within the definition provided in s.
 302 112.3187(5), the name or identity of the individual may not be
 303 disclosed to anyone else without the written consent of the
 304 individual, unless the inspector general determines that such
 305 disclosure is unavoidable during the course of the audit or
 306 investigation.

307 (c) The inspector general and the staff shall have access
 308 to all records, information, data, reports, plans, projections,
 309 matters, contracts, memoranda, correspondence, audits, reviews,
 310 papers, books, documents, computer hard drives, e-mails, instant
 311 messages, recommendations, and any other material of the agency,
 312 agency head, or of an individual, partnership, corporation, or

313 organization related to any financial or official function of
 314 state government that the inspector general deems necessary to
 315 facilitate an investigation, audit, inspection, or performance
 316 review. The inspector general shall have access to all employees
 317 of the agency. At all times the inspector general shall have
 318 access to a building or facility that is owned, operated, or
 319 leased by a department, agency, board, or commission, or a
 320 property held in trust to the state ~~to any records, data, and~~
 321 ~~other information of the state agency he or she deems necessary~~
 322 ~~to carry out his or her duties.~~ The inspector general may also
 323 request such information or assistance as may be necessary from
 324 the state agency or from any federal, state, or local government
 325 entity.

326 (d)1. For purposes of an investigation, audit, inspection,
 327 or performance review, the inspector general and staff
 328 designated by the inspector general may administer oaths and
 329 affirmations, compel witness attendance and testimony under
 330 oath, take evidence, and require the production of any records
 331 that the inspector general deems relevant or material to an
 332 investigation, audit, inspection, or performance review.

333 2.a. In carrying out the provisions of this paragraph, the
 334 inspector general shall have access to all records; reports;
 335 audits; reviews; papers; books; documents; computer hard drives;
 336 e-mails; instant messages; recommendations; correspondence,
 337 including information relative to the purchase of supplies and
 338 services or anticipated purchase of supplies and services from

339 | any contractor by an agency, board, or commission; and other
340 | data and material that is maintained by or available to the
341 | agency, board, or commission that in any way relates to the
342 | programs and operations with respect to which the inspector
343 | general has duties and responsibilities.

344 | b. The inspector general may request information,
345 | cooperation, and assistance from an agency, special district,
346 | board, or commission. Each person in charge of an agency,
347 | special district, board, or commission shall furnish the
348 | inspector general with such information, cooperation, and
349 | assistance upon receipt of such request.

350 | c. The inspector general shall have direct and prompt
351 | access to the head of any agency, special district, board, or
352 | commission when necessary for any purpose pertaining to the
353 | performance of his or her duties and responsibilities. The
354 | inspector general may require the attendance and testimony under
355 | oath of persons and the production of all records, reports,
356 | audits, inspections, reviews, papers, books, documents, computer
357 | hard drives, e-mails, instant messages, recommendations,
358 | correspondence, and other data and material relevant to a matter
359 | under audit, investigation, inspection, or performance review.
360 | Such summons shall be served in the same manner as a summons for
361 | the production of documents in civil cases issued on behalf of
362 | the state. Failure to appear in response to a subpoena, answer a
363 | question, or produce information requested, or to knowingly give
364 | false testimony during an investigation, audit, inspection, or

365 review shall be considered contempt of court and shall subject a
366 respondent to loss of employment with the agency, special
367 district, board, or commission.

368 d. It shall be the duty of every state officer, employee,
369 agency, special district, board, commission, contractor,
370 subcontractor, licensee, and applicant for certification of
371 eligibility for a contract or program, to cooperate with the
372 inspector general in any investigation, audit, inspection,
373 performance review, or hearing pursuant to this section. Each
374 contract, bid, proposal, and application or solicitation for a
375 contract shall contain a statement that the corporation,
376 partnership, or person understands and will abide by this
377 section. An employee, appointed officer, or elected official who
378 violates this section is subject to loss of employment.

379 e. Disclosure to an inspector general of communications
380 between an agency, special district, board, or commission and an
381 attorney representing the agency, special district, board, or
382 commission does not constitute a waiver of attorney-client
383 privilege.

384 (e)~~(d)~~ At the conclusion of each audit, the inspector
385 general shall submit preliminary findings and recommendations to
386 the person responsible for supervision of the program function
387 or operational unit who shall respond to any adverse findings
388 within 20 working days after receipt of the preliminary
389 findings. Such response and the inspector general's rebuttal to
390 the response shall be included in the final audit report.

391 (f)~~(e)~~ At the conclusion of an audit in which the subject
392 of the audit is a specific entity contracting with the state or
393 an individual substantially affected, if the audit is not
394 confidential or otherwise exempt from disclosure by law, the
395 inspector general shall, consistent with s. 119.07(1), submit
396 the findings to the entity contracting with the state or the
397 individual substantially affected, who shall be advised in
398 writing that they may submit a written response within 20
399 working days after receipt of the findings. The response and the
400 inspector general's rebuttal to the response, if any, must be
401 included in the final audit report.

402 (g)~~(f)~~ The inspector general shall submit the final report
403 to the agency head, the Auditor General, and, for state agencies
404 under the jurisdiction of the Governor, the Chief Inspector
405 General.

406 (h)~~(g)~~ The Auditor General, in connection with the
407 independent postaudit of the same agency pursuant to s. 11.45,
408 shall give appropriate consideration to internal audit reports
409 and the resolution of findings therein. The Legislative Auditing
410 Committee may inquire into the reasons or justifications for
411 failure of the agency head to correct the deficiencies reported
412 in internal audits that are also reported by the Auditor General
413 and shall take appropriate action.

414 (i)~~(h)~~ The inspector general shall monitor the
415 implementation of the state agency's response to any report on
416 the state agency issued by the Auditor General or by the Office

417 of Program Policy Analysis and Government Accountability. No
 418 later than 6 months after the Auditor General or the Office of
 419 Program Policy Analysis and Government Accountability publishes
 420 a report on the state agency, the inspector general shall
 421 provide a written response to the agency head or, for state
 422 agencies under the jurisdiction of the Governor, the Chief
 423 Inspector General on the status of corrective actions taken. The
 424 inspector general shall file a copy of such response with the
 425 Legislative Auditing Committee.

426 (j)~~(i)~~ The inspector general shall develop long-term and
 427 annual audit plans based on the findings of periodic risk
 428 assessments. The plan, where appropriate, should include
 429 postaudit samplings of payments and accounts. The plan shall
 430 show the individual audits to be conducted during each year and
 431 related resources to be devoted to the respective audits. The
 432 Chief Financial Officer, to assist in fulfilling the
 433 responsibilities for examining, auditing, and settling accounts,
 434 claims, and demands pursuant to s. 17.03(1), and examining,
 435 auditing, adjusting, and settling accounts pursuant to s. 17.04,
 436 may use audits performed by the inspectors general and internal
 437 auditors. For state agencies under the jurisdiction of the
 438 Governor, the audit plans shall be submitted to the Chief
 439 Inspector General. The plan shall be submitted to the agency
 440 head for approval. A copy of the approved plan shall be
 441 submitted to the Auditor General.

442 (6) In carrying out the investigative duties and

443 | responsibilities specified in this section, each inspector
 444 | general shall initiate, conduct, supervise, and coordinate
 445 | investigations designed to detect, deter, prevent, and eradicate
 446 | fraud, waste, mismanagement, misconduct, and other abuses in
 447 | state government. For these purposes, each inspector general
 448 | shall:

449 | (a) Receive complaints and coordinate all activities of
 450 | the agency as required by the Whistle-blower's Act pursuant to
 451 | ss. 112.3187-112.31895.

452 | (b) Receive and consider the complaints which do not meet
 453 | the criteria for an investigation under the Whistle-blower's Act
 454 | and conduct, supervise, or coordinate such inquiries,
 455 | investigations, or reviews as the inspector general deems
 456 | appropriate.

457 | (c) Report expeditiously to the Department of Law
 458 | Enforcement or other law enforcement agencies, as appropriate,
 459 | whenever the inspector general has reasonable grounds to believe
 460 | there has been a violation of criminal law.

461 | (d) Conduct investigations and other inquiries free of
 462 | actual or perceived impairment to the independence of the
 463 | inspector general or the inspector general's office. This shall
 464 | include freedom from any interference with investigations and
 465 | timely access to records and other sources of information.

466 | (e) At the conclusion of each investigation in which the
 467 | subject of the investigation is a specific entity contracting
 468 | with the state or an individual substantially affected as

469 defined by this section, and if the investigation is not
 470 confidential or otherwise exempt from disclosure by law, the
 471 inspector general shall, consistent with s. 119.07(1), submit
 472 findings to the subject that is a specific entity contracting
 473 with the state or an individual substantially affected, who
 474 shall be advised in writing that they may submit a written
 475 response within 20 working days after receipt of the findings.
 476 Such response and the inspector general's rebuttal to the
 477 response, if any, shall be included in the final investigative
 478 report.

479 (f) Submit in a timely fashion final reports on
 480 investigations conducted by the inspector general to the agency
 481 head, except for whistle-blower's investigations, which shall be
 482 conducted and reported pursuant to s. 112.3189.

483 (7)(a) Except as provided in paragraph (b), each inspector
 484 general shall, not later than September 30 of each year, prepare
 485 an annual report summarizing the activities of the office during
 486 the immediately preceding state fiscal year.

487 (b) The inspector general of the Florida Housing Finance
 488 Corporation shall, not later than 90 days after the end of each
 489 fiscal year, prepare an annual report summarizing the activities
 490 of the office of inspector general during the immediately
 491 preceding fiscal year.

492 (c) The final reports prepared pursuant to paragraphs (a)
 493 and (b) shall be provided to the heads of the respective
 494 agencies and, for state agencies under the jurisdiction of the

495 Governor, the Chief Inspector General. Such reports shall
 496 include, but need not be limited to:

- 497 1. A description of activities relating to the
 498 development, assessment, and validation of performance measures.
- 499 2. A description of significant abuses and deficiencies
 500 relating to the administration of programs and operations of the
 501 agency disclosed by investigations, audits, reviews, or other
 502 activities during the reporting period.
- 503 3. A description of the recommendations for corrective
 504 action made by the inspector general during the reporting period
 505 with respect to significant problems, abuses, or deficiencies
 506 identified.
- 507 4. The identification of each significant recommendation
 508 described in previous annual reports on which corrective action
 509 has not been completed.
- 510 5. A summary of each audit and investigation completed
 511 during the reporting period.

512 (8) The inspector general in each state agency shall
 513 provide to the agency head, upon receipt, all written complaints
 514 concerning the duties and responsibilities in this section or
 515 any allegation of misconduct related to the office of the
 516 inspector general or its employees, if received from subjects of
 517 audits or investigations who are individuals substantially
 518 affected or entities contracting with the state, as defined in
 519 this section. For state agencies under the jurisdiction of the
 520 Governor, the inspector general shall also provide the complaint

521 | to the Chief Inspector General.

522 | (9) Each agency inspector general shall, to the extent
523 | both necessary and practicable, include on his or her staff
524 | individuals with electronic data processing auditing experience.

525 | Section 2. Subsection (5) is added to section 14.32,
526 | Florida Statutes, to read:

527 | 14.32 Office of Chief Inspector General.—

528 | (5) In exercising authority under this section, the Chief
529 | Inspector General or his or her designee may:

530 | (a) Issue and serve subpoenas and subpoenas duces tecum to
531 | compel the attendance of witnesses and the production of
532 | documents, reports, answers, records, accounts, and other data
533 | in any medium.

534 | (b) Require or permit a person to file a statement in
535 | writing, under oath or otherwise, as to all the facts and
536 | circumstances concerning the matter to be audited, examined, or
537 | investigated.

538 |
539 | In the event of noncompliance with a subpoena issued pursuant to
540 | this subsection, the Chief Inspector General may petition the
541 | circuit court of the county in which the person subpoenaed
542 | resides or has his or her principal place of business for an
543 | order requiring the subpoenaed person to appear and testify and
544 | to produce documents, reports, answers, records, accounts, or
545 | other data as specified in the subpoena.

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



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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 Raulerson offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsections (1) through (5) of section 20.055, Florida Statutes, are amended to read:

20.055 Agency inspectors general.—

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

(a) "Agency head" means the Governor, a Cabinet officer, or a secretary or executive director as those terms are defined in s. 20.03, the chair of the Public Service Commission, the Director of the Office of Insurance Regulation of the Financial Services Commission, the Director of the Office of Financial Regulation of the Financial Services Commission, the board of directors of the Florida Housing Finance Corporation, the



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18 Executive Director of the State Board of Administration, the
19 Executive Director of the Office of Early Learning, and the
20 Chief Justice of the State Supreme Court.

21 (b) "Entities contracting with the state" means for-profit
22 and not-for-profit organizations or businesses that have a legal
23 existence, such as corporations or partnerships, as opposed to
24 natural persons, which have entered into a relationship with a
25 state agency to provide for consideration certain goods or
26 services to the state agency or on behalf of the state agency.
27 The relationship may be evidenced by payment by warrant or
28 purchasing card, contract, purchase order, provider agreement,
29 or other such mutually agreed upon relationship. The term does
30 not apply to entities that are the subject of audits or
31 investigations conducted pursuant to ss. 112.3187-112.31895 or
32 s. 409.913 or which are otherwise confidential and exempt under
33 s. 119.07.

34 (c) "Individuals substantially affected" means natural
35 persons who have established a real and sufficiently immediate
36 injury in fact due to the findings, conclusions, or
37 recommendations of a final report of a state agency inspector
38 general, who are the subject of the audit or investigation, and
39 who do not have or are not currently afforded an existing right
40 to an independent review process. The term does not apply to
41 employees of the state, including career service, probationary,
42 other personal service, Selected Exempt Service, and Senior
43 Management Service employees; former employees of the state if



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44 the final report of the state agency inspector general relates
45 to matters arising during a former employee's term of state
46 employment; or persons who are the subject of audits or
47 investigations conducted pursuant to ss. 112.3187-112.31895 or
48 s. 409.913 or which are otherwise confidential and exempt under
49 s. 119.07.

50 (d) "State agency" means each department created pursuant
51 to this chapter and the Executive Office of the Governor, the
52 Department of Military Affairs, the Fish and Wildlife
53 Conservation Commission, the Office of Insurance Regulation of
54 the Financial Services Commission, the Office of Financial
55 Regulation of the Financial Services Commission, the Public
56 Service Commission, the Board of Governors of the State
57 University System, the Florida Housing Finance Corporation, the
58 Agency for State Technology, the State Board of Administration,
59 the Office of Early Learning, and the state courts system.

60 (2) An ~~The~~ office of inspector general is established in
61 each state agency to provide a central point for coordination of
62 and responsibility for activities that promote accountability,
63 integrity, and efficiency in government. It is the duty and
64 responsibility of each inspector general, with respect to the
65 state agency in which the office is established, to:

66 (a) Advise in the development of performance measures,
67 standards, and procedures for the evaluation of state agency
68 programs.



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69 (b) Assess the reliability and validity of the information
70 provided by the state agency on performance measures and
71 standards, and make recommendations for improvement, if
72 necessary, before submission of such information pursuant to s.
73 216.1827.

74 (c) Review the actions taken by the state agency to
75 improve program performance and meet program standards and make
76 recommendations for improvement, if necessary.

77 (d) Provide direction for, supervise, and coordinate
78 audits, investigations, and management reviews relating to the
79 programs and operations of the state agency, except that when
80 the inspector general does not possess the qualifications
81 specified in subsection (4), the director of auditing shall
82 conduct such audits.

83 (e) Conduct, supervise, or coordinate other activities
84 carried out or financed by that state agency for the purpose of
85 promoting economy and efficiency in the administration of, or
86 preventing and detecting fraud and abuse in, its programs and
87 operations.

88 (f) Keep the agency head or, for state agencies under the
89 jurisdiction of the Governor, the Chief Inspector General
90 informed concerning fraud, abuses, and deficiencies relating to
91 programs and operations administered or financed by the state
92 agency, recommend corrective action concerning fraud, abuses,
93 and deficiencies, and report on the progress made in
94 implementing corrective action.



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95 (g) Ensure effective coordination and cooperation between
96 the Auditor General, federal auditors, and other governmental
97 bodies with a view toward avoiding duplication.

98 (h) Review, as appropriate, rules relating to the programs
99 and operations of such state agency and make recommendations
100 concerning their impact.

101 (i) Ensure that an appropriate balance is maintained
102 between audit, investigative, and other accountability
103 activities.

104 (j) Comply with the General Principles and Standards for
105 Offices of Inspector General as published and revised by the
106 Association of Inspectors General.

107 (3) (a) 1. For state agencies under the jurisdiction of the
108 Cabinet or the Governor and Cabinet, the inspector general shall
109 be appointed by the agency head. For state agencies under the
110 jurisdiction of the Governor, the inspector general shall be
111 appointed by the Chief Inspector General. The agency head or
112 Chief Inspector General shall notify the Governor in writing of
113 his or her intention to hire the inspector general at least 7
114 days before an offer of employment. The inspector general shall
115 be appointed without regard to political affiliation.

116 2. Within 60 days after a vacancy or anticipated vacancy
117 in the position of inspector general, the agency head or, for
118 agencies under the jurisdiction of the Governor, the Chief
119 Inspector General, shall initiate a national search for an
120 inspector general and shall set the salary of the inspector



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121 general. In the event of a vacancy in the position of inspector
122 general, the agency head or, for agencies under the jurisdiction
123 of the Governor, the Chief Inspector General, may appoint other
124 office of inspector general management personnel as interim
125 inspector general until such time as a successor inspector
126 general is appointed.

127 3. A former or current elected official may not be
128 appointed inspector general within 5 years after the end of such
129 individual's period of service. This restriction does not
130 prohibit the reappointment of a current inspector general.

131 4. Upon appointment as inspector general, an individual's
132 initial term shall be 3 years. Subsequent 3-year terms may be
133 renewed at the discretion of the agency head or, for agencies
134 under the jurisdiction of the Governor, the Chief Inspector
135 General. Notwithstanding this term of appointment, an inspector
136 general may be removed from office for cause by the agency head
137 or, for agencies under the jurisdiction of the Governor, the
138 Chief Inspector General, as provided in paragraph (c).

139 (b) The inspector general shall report to and be under the
140 general supervision of the agency head and is not subject to
141 supervision by any other employee of the state agency in which
142 the office is established. For state agencies under the
143 jurisdiction of the Governor, the inspector general shall be
144 under the general supervision of the agency head for
145 administrative purposes, shall report to the Chief Inspector
146 General, and may hire and remove staff within the office of the



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147 inspector general in consultation with the Chief Inspector
148 General but independently of the agency.

149 (c) For state agencies under the jurisdiction of the
150 Cabinet or the Governor and Cabinet, the inspector general may
151 be removed from office by the agency head. For state agencies
152 under the jurisdiction of the Governor, the inspector general
153 may only be removed from office by the Chief Inspector General
154 for cause, including concerns regarding performance,
155 malfeasance, misfeasance, misconduct, or failure to carry out
156 his or her duties under this section. The Chief Inspector
157 General shall notify the Governor in writing of his or her
158 intention to remove the inspector general at least 21 days
159 before the removal. For state agencies under the jurisdiction of
160 the Governor and Cabinet, the agency head shall notify the
161 Governor and Cabinet in writing of his or her intention to
162 remove the inspector general at least 21 days before the
163 removal. If the inspector general disagrees with the removal,
164 the inspector general may present objections in writing to the
165 Governor within the 21-day period.

166 (d) The Governor, the Governor and Cabinet, the agency
167 head, or agency staff may not prevent or prohibit the inspector
168 general from initiating, carrying out, or completing any audit
169 or investigation.

170 (4) (a) To ensure that state agency audits are performed in
171 accordance with applicable auditing standards, the inspector



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172 general or the director of auditing within the inspector
173 general's office shall possess the following qualifications:

174 1.(a) A bachelor's degree from an accredited college or
175 university with a major in accounting, or with a major in
176 business which includes five courses in accounting, and 5 years
177 of experience as an internal auditor or independent postauditor,
178 electronic data processing auditor, accountant, or any
179 combination thereof. The experience shall at a minimum consist
180 of audits of units of government or private business
181 enterprises, operating for profit or not for profit; ~~or~~

182 2.(b) A master's degree in accounting, business
183 administration, or public administration from an accredited
184 college or university and 4 years of experience as required in
185 subparagraph 1. paragraph (a); or

186 3.(c) A certified public accountant license issued
187 pursuant to chapter 473 or a certified internal audit
188 certificate issued by the Institute of Internal Auditors or
189 earned by examination, and 4 years of experience as required in
190 paragraph (a).

191 (b) For agencies under the jurisdiction of the Governor,
192 the inspector general shall be selected on the basis of
193 integrity, leadership capability, and experience in accounting,
194 auditing, financial analysis, law, management analysis, program
195 evaluation, public administration, investigation, criminal
196 justice administration, or other closely related field. The
197 inspector general shall be subject to a level two background



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198 screening. The inspector general shall have a 4-year degree from
199 an accredited institution of higher learning or have at least 5
200 years of experience in at least one of the following areas:

- 201 1. Inspector general.
202 2. Supervisory experience in an office of inspector
203 general or an investigative public agency similar to an office
204 of inspector general.
205 3. Local, state, or federal law enforcement officer.
206 4. Local, state, or federal court judge.
207 5. Senior-level auditor or comptroller.
208 6. Experience in the administration and management of
209 complex audits and investigations.
210 7. Experience managing programs for prevention,
211 examination, detection, elimination of fraud, waste, abuse,
212 mismanagement, malfeasance or misconduct in government or
213 organizations.
214 8. An advanced degree in law, accounting, public
215 administration, or other relevant field may substitute for one
216 year of required experience.

217 (c) The inspector general shall possess at appointment, or
218 obtain within the first year after appointment, a certification
219 from the Association of Inspectors General as a certified
220 inspector general. The inspector general shall have one or more
221 other professional certifications, such as certified inspector
222 general investigator, certified inspector general auditor,
223 certified public accountant, certified internal auditor,



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224 certified governmental financial manager, or certified fraud
225 examiner, certified financial crimes investigator or other
226 related certification, or be a licensed attorney.

227 (d) The inspector general may not hold, or be a candidate
228 for, an elective office while inspector general, and a current
229 officer or employee of an office of inspector general may not
230 hold, or be a candidate for, an elective office. The inspector
231 general may not hold office in a political party or political
232 committee. An employee of an office of inspector general may not
233 hold office in a political party or political committee while
234 employed in the office of inspector general.

235 (5) In carrying out the auditing duties and
236 responsibilities of this act, each inspector general shall
237 review and evaluate internal controls necessary to ensure the
238 fiscal accountability of the state agency. The inspector general
239 shall conduct financial, compliance, electronic data processing,
240 and performance audits of the agency and prepare audit reports
241 of his or her findings. The scope and assignment of the audits
242 shall be determined by the inspector general; however, the
243 agency head may at any time request the inspector general to
244 perform an audit of a special program, function, or
245 organizational unit. The performance of the audit shall be under
246 the direction of the inspector general, except that if the
247 inspector general does not possess the qualifications specified
248 in subsection (4), the director of auditing shall perform the
249 functions listed in this subsection.



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250 (a) Such audits shall be conducted in accordance with the
251 current International Standards for the Professional Practice of
252 Internal Auditing as published by the Institute of Internal
253 Auditors, Inc., or, where appropriate, in accordance with
254 generally accepted governmental auditing standards. All audit
255 reports issued by internal audit staff shall include a statement
256 that the audit was conducted pursuant to the appropriate
257 standards.

258 (b) Audit workpapers and reports shall be public records
259 to the extent that they do not include information which has
260 been made confidential and exempt from the provisions of s.
261 119.07(1) pursuant to law. However, when the inspector general
262 or a member of the staff receives from an individual a complaint
263 or information that falls within the definition provided in s.
264 112.3187(5), the name or identity of the individual may not be
265 disclosed to anyone else without the written consent of the
266 individual, unless the inspector general determines that such
267 disclosure is unavoidable during the course of the audit or
268 investigation.

269 (c)1. The inspector general and the staff shall have
270 access to any records, data, and other information of the state
271 agency he or she deems necessary to carry out his or her duties.
272 At all times the inspector general shall have access to a
273 building or facility that is owned, operated, or leased by a
274 department, agency, board, or commission, or a property held in
275 trust to the state. The inspector general may also request such



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276 information or assistance as may be necessary from the state
277 agency or from any federal, state, or local government entity.

278 2. It shall be the duty of every state officer, employee,
279 agency, special district, board, commission, contractor,
280 subcontractor, licensee, and applicant for certification of
281 eligibility for a contract or program, to cooperate with the
282 inspector general in any investigation, audit, inspection,
283 review, or hearing pursuant to this section. Each contract, bid,
284 proposal, and application or solicitation for a contract shall
285 contain a statement that the corporation, partnership, or person
286 understands and will abide by this subparagraph.

287 (d) At the conclusion of each audit, the inspector general
288 shall submit preliminary findings and recommendations to the
289 person responsible for supervision of the program function or
290 operational unit who shall respond to any adverse findings
291 within 20 working days after receipt of the preliminary
292 findings. Such response and the inspector general's rebuttal to
293 the response shall be included in the final audit report.

294 (e) At the conclusion of an audit in which the subject of
295 the audit is a specific entity contracting with the state or an
296 individual substantially affected, if the audit is not
297 confidential or otherwise exempt from disclosure by law, the
298 inspector general shall, consistent with s. 119.07(1), submit
299 the findings to the entity contracting with the state or the
300 individual substantially affected, who shall be advised in
301 writing that they may submit a written response within 20



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302 working days after receipt of the findings. The response and the
303 inspector general's rebuttal to the response, if any, must be
304 included in the final audit report.

305 (f) The inspector general shall submit the final report to
306 the agency head, the Auditor General, and, for state agencies
307 under the jurisdiction of the Governor, the Chief Inspector
308 General.

309 (g) The Auditor General, in connection with the
310 independent postaudit of the same agency pursuant to s. 11.45,
311 shall give appropriate consideration to internal audit reports
312 and the resolution of findings therein. The Legislative Auditing
313 Committee may inquire into the reasons or justifications for
314 failure of the agency head to correct the deficiencies reported
315 in internal audits that are also reported by the Auditor General
316 and shall take appropriate action.

317 (h) The inspector general shall monitor the implementation
318 of the state agency's response to any report on the state agency
319 issued by the Auditor General or by the Office of Program Policy
320 Analysis and Government Accountability. No later than 6 months
321 after the Auditor General or the Office of Program Policy
322 Analysis and Government Accountability publishes a report on the
323 state agency, the inspector general shall provide a written
324 response to the agency head or, for state agencies under the
325 jurisdiction of the Governor, the Chief Inspector General on the
326 status of corrective actions taken. The inspector general shall



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327 file a copy of such response with the Legislative Auditing
328 Committee.

329 (i) The inspector general shall develop long-term and
330 annual audit plans based on the findings of periodic risk
331 assessments. The plan, where appropriate, should include
332 postaudit samplings of payments and accounts. The plan shall
333 show the individual audits to be conducted during each year and
334 related resources to be devoted to the respective audits. The
335 Chief Financial Officer, to assist in fulfilling the
336 responsibilities for examining, auditing, and settling accounts,
337 claims, and demands pursuant to s. 17.03(1), and examining,
338 auditing, adjusting, and settling accounts pursuant to s. 17.04,
339 may use audits performed by the inspectors general and internal
340 auditors. For state agencies under the jurisdiction of the
341 Governor, the audit plans shall be submitted to the Chief
342 Inspector General. The plan shall be submitted to the agency
343 head for approval. A copy of the approved plan shall be
344 submitted to the Auditor General.

345 Section 2. Subsection (5) is added to section 14.32,
346 Florida Statutes, to read:

347 14.32 Office of Chief Inspector General.-

348 (5) In exercising authority under this section, the Chief
349 Inspector General or his or her designee may:

350 (a) May hire or retain legal counsel.

351 (b) Issue and serve subpoenas and subpoenas duces tecum to
352 compel the attendance of witnesses and the production of



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353 documents, reports, answers, records, accounts, and other data
354 in any medium.

355 (c) Require or permit a person to file a statement in
356 writing, under oath or otherwise, as to all the facts and
357 circumstances concerning the matter to be audited, examined, or
358 investigated.

359
360 In the event of noncompliance with a subpoena issued pursuant to
361 this subsection, the Chief Inspector General may petition the
362 circuit court of the county in which the person subpoenaed
363 resides or has his or her principal place of business for an
364 order requiring the subpoenaed person to appear and testify and
365 to produce documents, reports, answers, records, accounts, or
366 other data as specified in the subpoena.

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

368
369 -----
370 **T I T L E A M E N D M E N T**

371 Remove everything before the enacting clause and insert:
372 An act relating to agency inspectors general; amending s.
373 20.055, F.S.; providing additional hiring requirements,
374 employment qualifications, and terms of employment for
375 inspectors general and staff; specifying additional records and
376 personnel accessible to inspectors general during an audit or
377 investigation; amending s. 14.32, F.S.; authorizing the Chief
378 Inspector General to retain legal counsel and issue and enforce



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379 subpoenas under certain circumstances; providing an effective
380 date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 585 Legal Holidays & Special Observances/Sir Lancelot Jones Day
SPONSOR(S): Raschein
TIED BILLS: IDEN./SIM. BILLS: SB 946

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---------------------------------------|--------|-------------------|---------------------------------------|
| 1) Government Operations Subcommittee | | Toliver <i>LT</i> | Williamson <i>Raw</i> |
| 2) Local & Federal Affairs Committee | | | |
| 3) State Affairs Committee | | | |

SUMMARY ANALYSIS

Current law provides designations for legal holidays and special observances. Recognition of a legal holiday or special observance may apply statewide or may be limited to a particular county.

The bill designates the second Monday in October of each year as "Sir Lancelot Jones Day." It authorizes the Governor to issue annually a proclamation designating that day as "Sir Lancelot Jones Day." The bill encourages public officials, schools, private organizations, and all residents of the state to honor the legacy of Sir Lancelot Garfield Jones and his contributions to the state.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Legal Holidays and Observances

Chapter 683, F.S., provides designations for legal holidays and special observances. Recognition of a legal holiday or special observance may apply statewide or may be limited to a particular county. In addition, such recognition may require an action to be performed or may simply call for commemoration or observance of the date, day, or month.¹ Section 683.01, F.S., provides 21 legal holidays that are also public holidays.²

Section 110.117, F.S., designates paid holidays that are observed by all state branches and agencies. The state recognizes nine such holidays.

Sir Lancelot Garfield Jones

Sir Lancelot Garfield Jones was born in 1898, and resided in Porgy Key, near the southern end of Biscayne Bay. He was a farmer, fisherman, and conservationist. Mr. Jones sold his family's 277 acres of property to the National Park Service to contribute to what is known as Biscayne National Park.³

Effect of the Bill

The bill designates the second Monday in October of each year as "Sir Lancelot Jones Day." It authorizes the Governor to issue annually a proclamation designating that day as "Sir Lancelot Jones Day." The bill encourages public officials, schools, private organizations, and all citizens of the state to honor the legacy of Sir Lancelot Garfield Jones and his contributions to the state.

B. SECTION DIRECTORY:

Section 1: Creates s. 683.095, F.S., designating the second Monday in October as Sir Lancelot Jones Day.

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:

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

¹ For example, the Governor must proclaim April 14 of each year as "Pan American Day," and public schools must honor the republics of Latin America. Section 683.05, F.S. The Governor may annually issue a proclamation designating April 2 as "Florida State Day" and designating the week of March 27 to April 2 as "Pascua Florida Week." Section 683.06, F.S. "Gasparilla Day" is designated as a legal holiday in Hillsborough County, and all city, county, and state offices, and banking institutions may remain closed on that day. Section 683.08, F.S.

² Section 683.02, F.S., provides that whenever, in contracts to be performed in the state, reference is made to "legal holidays," the term is understood to include the holidays designated in s. 683.01, F.S., and such others as may be designated by law.

³ See <http://www.nps.gov/bisc/learn/news/jones-family-historic-district-listed-on-national-register-of-historic-places.htm> (last visited March 20, 2015).

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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 legal holidays and special
 3 observances; creating s. 683.095, F.S.; designating
 4 the second Monday in October of each year as "Sir
 5 Lancelot Jones Day"; authorizing the Governor to issue
 6 proclamations commemorating the occasion; encouraging
 7 public officials, schools, private organizations, and
 8 citizens to commemorate the occasion; providing an
 9 effective date.

10
 11 WHEREAS, born in 1898 on a 22-foot boat in Biscayne Bay,
 12 entrepreneur and farmer Sir Lancelot Garfield Jones prospered by
 13 supplying the nation with Key limes and was an expert fishing
 14 guide sought by five presidents and numerous senators,
 15 influential industrialists, and other cultural icons eager to
 16 experience the beauty of the bay's wildlife, and

17 WHEREAS, Sir Lancelot Garfield Jones lived most of his 99
 18 years on the tiny island known as Porgy Key, near the southern
 19 end of Biscayne Bay, which was first settled by his pioneer
 20 father and Bahamian mother in 1897 in an area long associated
 21 with African-American maritime history and which is now on the
 22 National Register of Historical Places, and

23 WHEREAS, often referred to as the "Sage of Caesar Creek,"
 24 Sir Lancelot Garfield Jones became an educator of schoolchildren
 25 and a conservationist whose resolute values toward the
 26 preservation of Biscayne Bay greatly contributed to the

27 establishment of Biscayne National Park, which was created to
 28 preserve and protect area wildlife for the education,
 29 inspiration, recreation, and enjoyment of present and future
 30 generations, and

31 WHEREAS, Biscayne National Park is home to a rare
 32 combination of terrestrial, marine, and amphibious life in a
 33 tropical and subtropical setting of great natural beauty, which
 34 annually draws an average of 500,000 visitors, contributes more
 35 than \$34 million to the state's economy, and supports 422 jobs,
 36 and

37 WHEREAS, the invaluable efforts of Sir Lancelot Garfield
 38 Jones to preserve the land he loved and to ensure that future
 39 generations would delight in its beauty and abundance have
 40 resulted in significant economic, ecological, and cultural
 41 contributions to the state, its heritage, and its future, NOW,
 42 THEREFORE,

43
 44 Be It Enacted by the Legislature of the State of Florida:

45
 46 Section 1. Section 683.095, Florida Statutes, is created
 47 to read:

48 683.095 Sir Lancelot Jones Day.-

49 (1) The second Monday in October of each year is
 50 designated as "Sir Lancelot Jones Day" to commemorate the
 51 contributions of Sir Lancelot Garfield Jones in the preservation
 52 of Biscayne Bay and the establishment of Biscayne National Park.

53 (2) The Governor may issue annually a proclamation
54 designating the second Monday in October as "Sir Lancelot Jones
55 Day." Public officials, schools, private organizations, and all
56 citizens are encouraged to honor the legacy of Sir Lancelot
57 Garfield Jones and his contributions to the state by
58 commemorating Sir Lancelot Jones Day on the second Monday in
59 October of each year.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---------------------------------------|--------|-------------------|--|
| 1) Government Operations Subcommittee | | Toliver <i>LT</i> | Williamson <i>Law</i> |
| 2) State Affairs Committee | | | |
| 3) Rules, Calendar & Ethics Committee | | | |

SUMMARY ANALYSIS

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

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

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

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

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

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

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

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

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

² Section 11.045(1)(i), F.S.

³ Section 11.045(1)(c), F.S.

⁴ Section 11.045(7), F.S.

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

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

⁷ *Id.*

Effect of the Bill

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

B. SECTION DIRECTORY:

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

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

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

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

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

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

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

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

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

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 615 Electronic Auction Services
SPONSOR(S): Hutson
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 574

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

SUMMARY ANALYSIS

Chapter 287, F.S., regulates state agency procurement of personal property and services. The Department of Management Services (DMS) is responsible for overseeing state purchasing activity, including professional and construction services, as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology. Although not specifically authorized, DMS has conducted a reverse auction while utilizing its online procurement program, MyFloridaMarketPlace. In reverse auctions, vendors do not see the prices of competing vendors, because of sealed bid, proposal, or reply requirements, but vendors do see their ranking.

The bill recognizes "reverse auctions" as a means to procure commodities and contractual services. It defines the term "electronic auction services" and revises the term "eligible user" to include those persons or entities that use an electronic auction service. The bill requires DMS, in consultation with the Chief Financial Officer and the Agency for State Technology (AST), to maintain a program for electronic auction services. The bill authorizes DMS, in consultation with AST, to contract for equipment and services to implement reverse auctions. It requires DMS adopt rules to administer electronic auction services.

The bill authorizes the Department of Education and district school boards to conduct electronic auction services and other efficient procurement tools. In addition, the bill authorizes the Board of Governors to adopt regulations governing a university's participation in electronic auction services or other electronic procurement tools.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Procurement of Commodities and Services

Agency Procurements

Chapter 287, F.S., regulates state agency¹ procurement of personal property and services. The Department of Management Services (DMS) is responsible for overseeing state purchasing activity, including professional and construction services, as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.² DMS establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.³

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

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

For contracts for commodities or services in excess of \$35,000, agencies must utilize a competitive solicitation process.⁵ However, specified contractual services and commodities are not subject to competitive solicitation requirements.⁶

Department of Education, District School Boards, and Board of Governors Purchasing Procurements Section 1001.42, F.S., provides powers and duties of the district school boards. Among its duties, the school board must secure purchasing regulations and amendments from DMS. Prior to any purchase, the district school board must have reported to it by its staff, and give consideration to, the lowest price available to it under such regulations, provided a regulation applicable to the item or items being purchased has been adopted by the Department of Education.⁷ District school boards may use prices established by the Division of Purchasing within DMS through its state purchasing agreement price schedule.⁸

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

² See ss. 287.032 and 287.042, F.S.

³ *Id.*

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

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

⁶ See s. 287.057(3)(e), F.S.

⁷ Section 1001.42(12)(j), F.S.

⁸ Chapter 6A-1.012(5), F.A.C.

Each district school board must adopt rules to be followed when making purchases.⁹ In some counties, the county purchasing agent has authority to make purchases for the benefit of other governmental agencies within the county. In such a case, the district school board may purchase from the current county contracts.¹⁰

The State Board of Education may, by rule, provide for alternative procedures for school districts for bidding or purchasing in cases in which the character of the item requested renders competitive bidding impractical.¹¹ The Board of Governors may, by regulation, provide for alternative procedures for state universities for bidding or purchasing in cases in which the character of the item requested renders competitive bidding impractical. In addition, the Board of Governors must adopt regulations requiring universities to use purchasing agreements or state term contracts pursuant to s. 287.056, F.S., or enter into consortia and cooperative agreements to maximize the purchasing power for goods and services.¹²

Online Procurement of Commodities and Contractual Services

Pursuant to s. 287.057(22), F.S., DMS is required to maintain a program for online procurement of commodities and contractual services in consultation with the Chief Financial Officer and the Agency for State Technology (AST). DMS has authority to contract for equipment and services to develop and implement online procurement in consultation with AST and in compliance with the standards of AST.¹³ DMS is required to adopt rules for the administration of the program for online procurement.¹⁴ DMS may impose and collect fees for use of the online procurement system.¹⁵

DMS's online procurement program is MyFloridaMarketPlace (MFMP). MFMP is used by the Division of State Purchasing for formal solicitations, and by state agencies¹⁶ for informal quotes and electronic invoicing.¹⁷ MFMP has been in operation for more than 10 years.¹⁸

Reverse Auctions

Reverse auctions are not a specified procurement method for commodities or contractual services in chapter 287, F.S. However, MFMP has conducted reverse auctions within the confines of the existing competitive procurement solicitations (invitations to bid, requests for proposals, and invitations to negotiate). The MFMP application has inherent reverse auction functionality. In reverse auctions, vendors do not see the prices of competing vendors, because of sealed bid, proposal, or reply requirements, but vendors do see their ranking.¹⁹ DMS previously used this functionality to conduct two reverse auctions for:²⁰

1. Computers, laptops, and monitors; and
2. Office supplies and toner cartridges.

The reverse auction functionality is available for use by the Division of State Purchasing. Other state agencies would require system changes to the MFMP application to gain functionality of reverse

⁹ Section 1010.04(2), F.S.

¹⁰ Section 1010.04(3), F.S.

¹¹ Section 1010.04(4), F.S.

¹² Section 1001.706(3)(i), F.S.

¹³ Section 287.057(22)(a), F.S.; *see also* s. 282.0051(4), F.S. (AST has responsibility to perform project oversight on all state agency information technology project costs of \$10 million or more that are funded in the General Appropriations Act or other law.)

¹⁴ Section 287.057(22)(b), F.S. *See* Rules 60A-1.030-1.033, F.A.C.

¹⁵ Section 287.057(22)(c), F.S.

¹⁶ Section 570.07(42), F.S., provides the Department of Agriculture and Consumer Services with the authority to utilize its own online system for procurement of commodities and contractual services.

¹⁷ DMS Bill Analysis for HB 615 (February 8, 2015)(on file with the Government Operations Subcommittee).

¹⁸ *See* http://www.dms.myflorida.com/business_operations/state_purchasing (last visited March 20, 2015).

¹⁹ DMS Bill Analysis for HB 615 (February 8, 2015).

²⁰ *Id.*

auction services. However, according to DMS, a pilot program could be accomplished for minimal cost.²¹

Additionally, the vendor community has used MFMP to respond to formal solicitations conducted by the Division of State Purchasing and informal quotes by state agencies. Through the MFMP Utilization Initiative, DMS has made a significant investment in communicating and training vendors in how to use the MFMP application.²² Using the reverse auction functionality of MFMP would require minimal additional vendor training efforts; however, transitioning to a new third party system would require vendors to become familiar with a wholly new system.²³

Effect of Proposed Changes

Definitions for Chapter 287, F.S.

The bill defines the term “electronic auction services” to mean a procurement conducted on a centralized website using third party software, jointly managed by an approved vendor and an agency or governmental entity, and using the procurement process set forth in s. 287.057, F.S., or other authorized means of obtaining competitive prices in an auction environment.

It amends the definition of “eligible user” to include a person or entity authorized to use electronic auction services.

Department of Management Services

The bill amends s. 287.057(22), F.S., to require DMS, in consultation with AST, to maintain a program for electronic auction services. It authorizes DMS to contract for the equipment and services necessary to develop and implement electronic auction services.

The bill extends the DMS rulemaking authority for online procurement to include electronic auction services. It requires DMS to establish the procedures for providing access to online procurement and pricing events via electronic auction services. The bill also requires DMS to impose and collect all fees for the use of online procurement systems and electronic auction services.

Department of Education, District School Boards, and Board of Governors

The bill amends the provision that requires the Department of Education to assist district school boards with bids and purchases. It requires the Department of Education to use electronic auction services, as defined in s. 287.012, F.S., or other efficient procurement tools. It authorizes district school boards to use electronic auction services or other efficient procurement tools.

The bill authorizes the Board of Governors to provide for alternative procurement procedures such as electronic auction services, as defined in s. 287.012, F.S., or other electronic procurement tools.

B. SECTION DIRECTORY:

Section 1 amends s. 287.012, F.S., defining the term “electronic auction services.”

Section 2 amends s. 287.057, F.S., authorizing DMS to implement procedures and adopt rules regarding electronic auction services; authorizing DMS to collect fees for use of such services.

Sections 3 and 4 amend ss. 1006.27 and 1010.04, F.S., authorizing the Department of Education, district school boards, and the Board of Governors of the State University System to implement the use of electronic auction services and other procurement methods.

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

²¹ DMS Analysis for SB 574 (February 26, 2015)(on file with the Government Operations Subcommittee).

²² *Id.*

²³ *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill authorizes DMS to impose and collect fees for the use of electronic auction services.

2. Expenditures:

The bill requires DMS to maintain an electronic auction service using third party software. As such, there may be an associated cost for the program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill directs DMS to adopt rules relating to electronic auction services.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: DMS

The bill requires DMS to maintain a program for electronic auction services. According to DMS, it already has such a program, which is the MFMP.²⁴

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

²⁴ See DMS Bill Analysis for HB 615 (February 8, 2015)(on file with the Government Operations Subcommittee).
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A bill to be entitled
 An act relating to electronic auction services;
 amending s. 287.012, F.S.; defining the term
 "electronic auction services"; amending s. 287.057,
 F.S.; authorizing the Department of Management
 Services to implement procedures and adopt rules
 regarding electronic auction services; authorizing the
 department to collect fees for use of such services;
 amending ss. 1006.27 and 1010.04, F.S.; authorizing
 the Department of Education, district school boards,
 and the Board of Governors of the State University
 System, respectively, to implement the use of
 electronic auction services and other procurement
 methods; providing an effective date.

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

Section 1. Subsections (10) through (29) of section
 287.012, Florida Statutes, are renumbered as subsections (11)
 through (30), respectively, present subsection (11) is amended,
 and a new subsection (10) is added to that section, to read:

287.012 Definitions.—As used in this part, the term:
(10) "Electronic auction services" means a procurement
conducted on a centralized website using third party software,
jointly managed by an approved vendor and an agency or
governmental entity, and using the procurement process set forth

27 | in s. 287.057 or other authorized means of obtaining competitive
 28 | prices in an auction environment.

29 | ~~(12)~~~~(11)~~ "Eligible user" means any person or entity
 30 | authorized by the department pursuant to rule to purchase from
 31 | state term contracts or to use the online procurement system and
 32 | electronic auction services.

33 | Section 2. Subsection (22) of section 287.057, Florida
 34 | Statutes, is amended to read:

35 | 287.057 Procurement of commodities or contractual
 36 | services.—

37 | (22) The department, in consultation with the Chief
 38 | Financial Officer and the Agency for State Technology, shall
 39 | maintain a program for online procurement of commodities and
 40 | contractual services, including electronic auction services. To
 41 | enable the state to promote open competition and leverage its
 42 | buying power, agencies shall participate in the online
 43 | procurement program and electronic auction services, and
 44 | eligible users may participate in the program. Only vendors
 45 | prequalified as meeting mandatory requirements and
 46 | qualifications criteria may participate in online procurement.

47 | (a) The department, in consultation with the Agency for
 48 | State Technology and in compliance with the standards of the
 49 | agency, may contract for equipment and services necessary to
 50 | develop and implement online procurement and electronic auction
 51 | services.

52 | (b) The department shall adopt rules to administer the

53 program for online procurement and electronic auction services.

54 The rules must include, but not be limited to:

55 1. Determining the requirements and qualification criteria
56 for prequalifying vendors.

57 2. Establishing the procedures for conducting online
58 procurement and pricing events via electronic auction services.

59 3. Establishing the criteria for eligible commodities and
60 contractual services.

61 4. Establishing the procedures for providing access to
62 online procurement and pricing events via electronic auction
63 services.

64 5. Determining the criteria warranting any exceptions to
65 participation in the online procurement program and pricing
66 events via electronic auction services.

67 (c) The department may impose and shall collect all fees
68 for the use of the online procurement systems and electronic
69 auction services.

70 1. The fees may be imposed on an individual transaction
71 basis or as a fixed percentage of the cost savings generated. At
72 a minimum, the fees must be set in an amount sufficient to cover
73 the projected costs of the services, including administrative
74 and project service costs in accordance with the policies of the
75 department.

76 2. If the department contracts with a provider for online
77 procurement, the department, pursuant to appropriation, shall
78 compensate the provider from the fees after the department has

79 satisfied all ongoing costs. The provider shall report
 80 transaction data to the department each month so that the
 81 department may determine the amount due and payable to the
 82 department from each vendor.

83 3. All fees that are due and payable to the state on a
 84 transactional basis or as a fixed percentage of the cost savings
 85 generated are subject to s. 215.31 and must be remitted within
 86 40 days after receipt of payment for which the fees are due. For
 87 fees that are not remitted within 40 days, the vendor shall pay
 88 interest at the rate established under s. 55.03(1) on the unpaid
 89 balance from the expiration of the 40-day period until the fees
 90 are remitted.

91 4. All fees and surcharges collected under this paragraph
 92 shall be deposited in the Operating Trust Fund as provided by
 93 law.

94 Section 3. Subsection (1) of section 1006.27, Florida
 95 Statutes, is amended to read:

96 1006.27 Pooling of school buses and related purchases by
 97 district school boards; transportation services contracts.—

98 (1) The department shall assist district school boards in
 99 securing school buses, contractual needs, equipment, and
 100 supplies at as reasonable prices as possible by providing a plan
 101 under which district school boards may voluntarily pool their
 102 bids for such purchases. The department shall prepare bid forms
 103 and specifications, obtain quotations of prices and make such
 104 information available to district school boards in order to

105 facilitate this service and use electronic auction services, as
 106 defined in s. 287.012, or other efficient procurement tools.
 107 District school boards may also use electronic auction services
 108 or other efficient procurement tools for such purchases.

109 District school boards from time to time, as prescribed by State
 110 Board of Education rule, shall furnish the department with
 111 information concerning the prices paid for such items and the
 112 department shall furnish to district school boards periodic
 113 information concerning the lowest prices at which school buses,
 114 equipment, and related supplies are available based upon
 115 comparable specifications.

116 Section 4. Paragraph (b) of subsection (4) of section
 117 1010.04, Florida Statutes, is amended to read:

118 1010.04 Purchasing.—

119 (4)

120 (b) The Board of Governors may, by regulation, provide for
 121 alternative procedures, such as electronic auction services, as
 122 defined in s. 287.012, or other electronic procurement tools,
 123 for state universities for bidding or purchasing in cases in
 124 which the character of the item requested renders competitive
 125 bidding impractical.

126 Section 5. 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 Hutson offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:
7 Section 1. Paragraph (i) of subsection (12) of section
8 1001.42, Florida Statutes, is amended to read:

9 1001.42 Powers and duties of district school board.—The
10 district school board, acting as a board, shall exercise all
11 powers and perform all duties listed below:

12 (12) FINANCE.—Take steps to assure students adequate
13 educational facilities through the financial procedure
14 authorized in chapters 1010 and 1011 and as prescribed below:

15 (i) *Contracts for materials, supplies, and services.*—
16 Contract for materials, supplies, and services needed for the
17 district school system. No contract for supplying these needs



Amendment No.

18 shall be made with any member of the district school board, with
19 the district school superintendent, or with any business
20 organization in which any district school board member or the
21 district school superintendent has any financial interest
22 whatsoever. The district school board may adopt purchasing rules
23 to assist with the efficient and effective procurement of goods
24 and services, including online procurement, electronic auction
25 services, and multistate cooperatives. "Electronic auction
26 services" means a procurement conducted on a centralized website
27 using third-party software, jointly managed by an approved
28 vendor and an agency or governmental entity, and using the
29 procurement process set forth in s. 287.057 or other authorized
30 means of obtaining competitive prices in an auction environment.

31 Section 2. Subsection (1) of section 1006.27, Florida
32 Statutes, is amended to read:

33 1006.27 Pooling of school buses and related purchases by
34 district school boards; transportation services contracts.-

35 (1) The department shall assist district school boards in
36 securing school buses, contractual needs, equipment, and
37 supplies at as reasonable prices as possible by providing a plan
38 under which district school boards may voluntarily pool their
39 bids for such purchases. The department shall prepare bid forms
40 and specifications, obtain quotations of prices and make such
41 information available to district school boards in order to
42 facilitate this service and use electronic auction services, as
43 defined in s. 1001.42(12)(i), or other efficient procurement



Amendment No.

44 tools and multistate purchasing consortiums. District school
45 boards may also use electronic auction services or other
46 efficient procurement tools for such purchases. District school
47 boards from time to time, as prescribed by State Board of
48 Education rule, shall furnish the department with information
49 concerning the prices paid for such items and the department
50 shall furnish to district school boards periodic information
51 concerning the lowest prices at which school buses, equipment,
52 and related supplies are available based upon comparable
53 specifications.

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

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

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Remove everything before the enacting clause and insert:
An act relating to electronic auction services; amending s.
1001.42, F.S.; revising the powers and duties of the district
school board to authorize the adoption of rules regarding
procurement practices; defining the term "electronic auction
services"; amending s. 1006.27, F.S.; authorizing a district
school board's use of electronic auction services in conjunction
with bid pooling for school buses and related purchases;
providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---------------------------------------|--------|-------------------|--|
| 1) Government Operations Subcommittee | | Toliver <i>LT</i> | Williamson <i>WAW</i> |
| 2) Appropriations Committee | | | |
| 3) State Affairs Committee | | | |

SUMMARY ANALYSIS

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

Current statutes do not reflect changes in the function and status of the center, foundation, and curator.

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

The bill creates the Florida Historic Capitol Museum Council (council) within the legislative branch. The council is composed of 12 members, selected based upon their dedication to preserving the Historic Capitol and advancing the mission of the Museum. The bill provides for the composition of the council, including designating the Museum Director as an advisory member. Council members serve without compensation, but are entitled to receive reimbursement for per diem and travel expenses from the funds of the Museum's DSO. The bill requires the council to prepare and recommend a strategic plan to guide its mission, and a copy of the strategic plan must be provided to the President of the Senate and the Speaker of the House of Representatives no later than December 31, 2017.

The bill renames the Florida Historic Capitol Curator as the Florida Historic Museum Director.

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

The bill increases the number of discretionary positions the board of the DSO can create within itself from two positions to 12. Additionally, the bill requires the board to be reimbursed for per diem and travel expenses from DSO funds.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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

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

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

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

¹ Florida Historic Capitol, <http://www.flhistoriccaptol.gov/about.cfm#background> (last visited 3/20/2015).

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

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

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

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

⁶ Section 272.135(2), F.S.

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

⁸ Chapter 2008-199, s. 13, L.O.F.

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

¹⁰ Section 272.129(4)(a), F.S.

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

¹² Section 272.129(2)(e), F.S.

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

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

¹⁵ Section 272.136(1), F.S.

¹⁶ Section 272.136(1)(c), F.S.

¹⁷ Section 272.136(1)(c), F.S.

¹⁸ Section 272.136(1)(d), F.S.

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

Current statutes do not reflect changes in the function and status of the center, foundation, and curator.²¹

Effect of the Bill

The bill renames the Legislative Research Center and Museum as the Florida Historic Capitol Museum (Museum) to reflect the merger that occurred in 2006.

The bill creates a new council, the Florida Historic Capitol Museum Council (council), within the legislative branch. The council is composed of 12 members, selected based upon their dedication to preserving the Historic Capitol and advancing the mission of the Museum. The council consists of the following members:

- The Secretary of the Senate.
- The Clerk of the House of Representatives.
- The Sergeant at Arms of the Senate and the House.
- The President of the Senate and the Speaker of the House of Representatives each appoint three members. One must be a current member of the presiding officer's respective chamber and one must be a former legislator or officer of the Legislature.
- The board must appoint two members from its membership.

The Museum director serves in an advisory capacity to the council.

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

- Attend a majority of the meetings each calendar quarter;
- Serve as an advocate and ambassador for the Museum, and as a liaison to the Governor, the President of the Senate, and the Speaker of the House of Representatives;
- Cultivate relationships with legislative staff to advance the Museum's mission;
- Lend expertise and use personal and professional contacts for the advancement of the Museum; and
- Become a member of the Museum.

In addition, the council must designate a chair.

The council must prepare and recommend a strategic plan to guide its mission. A copy of the strategic plan must be provided to the President of the Senate and the Speaker of the House of Representatives no later than December 31, 2017. The council must periodically review the strategic plan and, if it wishes to update the plan, those updates must be submitted every two years to the President and the Speaker. Additionally, the council must:

- Ensure that the Museum retains an emphasis on preserving legislative history by cultivating relationships with current and former legislators, collecting historic materials, and encouraging public participation;
- Ensure that the Museum operates as a public trust in accordance with the standards set forth in the Code of Ethics for Museums adopted by the American Alliance of Museums;

¹⁹ Section 320.0807(6), F.S.

²⁰ Section 320.0807(6)(c), F.S.

²¹ 2015 Bill Analysis of SB 396 by the Florida Historic Capitol Museum (on file with the Government Operations Subcommittee).

- Meet annually with the board to evaluate how the DSO's outreach and development plan complements the council's strategic plan; and
- Assist Museum staff in planning legislative reunions.

The bill renames the Florida Historic Capitol Curator as the Florida Historic Museum Director.

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

The bill increases the number of discretionary positions the board of the DSO can create within itself from two positions to 12. Additionally, the bill requires the board to be reimbursed for per diem and travel expenses from DSO funds.

B. SECTION DIRECTORY:

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

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

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

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

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to the Florida Historic Capitol;
 3 amending s. 272.129, F.S.; renaming the Legislative
 4 Research Center and Museum at the Historic Capitol as
 5 the Florida Historic Capitol Museum; removing
 6 provisions authorizing establishment of a citizen
 7 support organization to support the Legislative
 8 Research Center and Museum; creating s. 272.131, F.S.;
 9 creating the Florida Historic Capitol Museum Council;
 10 providing for the appointment and qualifications of
 11 council members; prescribing duties and
 12 responsibilities for the council and individual
 13 council members; amending s. 272.135, F.S.; renaming
 14 the position of Capitol Curator as the Florida
 15 Historic Capitol Museum Director; conforming
 16 provisions; amending s. 272.136, F.S.; revising the
 17 composition of the board of directors governing the
 18 Florida Historic Capitol Museum's direct-support
 19 organization; providing that per diem and travel
 20 expenses must be paid from direct-support organization
 21 funds; conforming provisions; amending s. 320.0807,
 22 F.S.; redirecting a portion of the proceeds from the
 23 fee for special license plates for former federal or
 24 state legislators to the Florida Historic Capitol
 25 Museum's direct-support organization; providing an
 26 effective date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

104 ~~(f) All funds obtained through rental fees, grants, gifts,~~

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

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

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

126 (1) The council is composed of 12 members. Council members
 127 shall be selected based on their dedication to preserving the
 128 Florida Historic Capitol and advancing the mission of the
 129 Florida Historic Capitol Museum. Council members must
 130 demonstrate an interest in documenting the institutional

131 | knowledge and historic traditions of state governance with an
 132 | emphasis on legislative history, the advancement of civics
 133 | education, and the encouragement of residents of this state to
 134 | engage with state government. The Florida Historic Capitol
 135 | Museum Director shall serve in an advisory capacity to the
 136 | council. The council shall consist of the following members:

137 | (a) The Secretary of the Senate.

138 | (b) The Clerk of the House of Representatives.

139 | (c) The Sergeants at Arms of both houses of the
 140 | Legislature.

141 | (d) The President of the Senate and the Speaker of the
 142 | House of Representatives each shall appoint three members. Of
 143 | the three appointments, one must be a current member of the
 144 | presiding officer's respective chamber and one must be a former
 145 | legislator or an officer of the Legislature.

146 | (e) The board of directors of the Florida Historic Capitol
 147 | Museum's direct-support organization shall appoint two members
 148 | from its membership.

149 | (2) A council member shall:

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

155 | (b) Attend a majority of council meetings each calendar
 156 | quarter.

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

158 | (d) Serve as a liaison to the Governor, the President of
 159 | the Senate, and the Speaker of the House of Representatives.

160 | (e) Cultivate relationships with legislative staff to
 161 | advance the mission and activities of the museum.

162 | (f) Lend expertise and use his or her personal and
 163 | professional contacts for the advancement of the museum.

164 | (g) Participate in key museum events.

165 | (h) Become a member of the museum.

166 | (3) The council shall:

167 | (a) Designate a chair.

168 | (b) Work with museum staff to prepare and recommend a
 169 | strategic plan to guide the council's mission. The council shall
 170 | submit a copy of the strategic plan to the President of the
 171 | Senate and the Speaker of the House of Representatives by
 172 | December 31, 2017, and any updates to the strategic plan must be
 173 | submitted every 2 years thereafter.

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

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

180 | (e) Ensure that the museum operates as a public trust in
 181 | accordance with the Ethics, Standards, and Best Practices and
 182 | the Code of Ethics for Museums adopted by the American Alliance

183 | of Museums.

184 | (f) Meet annually with the board of directors of the
 185 | Florida Historic Capitol Museum's direct-support organization to
 186 | jointly evaluate how the direct-support organization's outreach
 187 | and development plan complements and supports the museum and the
 188 | council's strategic plan.

189 | (g) Assist museum staff in planning any legislative
 190 | reunions.

191 | Section 3. Section 272.135, Florida Statutes, is amended
 192 | to read:

193 | 272.135 Florida Historic Capitol Museum Director ~~Curator~~.—

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

200 | (2) The director ~~Capitol Curator~~ shall:

201 | (a) Promote and encourage throughout the state knowledge
 202 | and appreciation of the Florida Historic Capitol.

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

207 | (c) Develop, direct, supervise, and maintain the interior
 208 | design and furnishings of all space within the Florida Historic

209 Capitol in a manner consistent with the restoration of the
 210 Florida Historic Capitol in its 1902 form.

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

215 (a) Raising money.†

216 (b) Submitting requests for and receiving grants.†

217 (c) Receiving, holding, investing, and administering in
 218 the name of the Florida Historic Capitol Museum ~~and the~~
 219 ~~Legislative Research Center and Museum~~ securities, funds,
 220 objects of value, or other real and personal property.†

221 (d) Receiving gifts and donations for the direct or
 222 indirect benefit of the Florida Historic Capitol.† ~~and~~

223 (e) Making expenditures to or for the direct or indirect
 224 benefit of the Florida Historic Capitol.

225 Section 4. Section 272.136, Florida Statutes, is amended
 226 to read:

227 272.136 Direct-support organization.—The ~~Legislative~~
 228 ~~Research Center and Museum at the~~ Florida Historic Capitol
 229 Museum Council and the Florida Historic Capitol Museum Director
 230 ~~Capitol Curator~~ may establish a direct-support organization to
 231 provide assistance and promotional support through fundraising
 232 for the Florida Historic Capitol Museum ~~and the Legislative~~
 233 ~~Research Center and Museum~~, including, but not limited to, its
 234 ~~their~~ educational programs and initiatives.

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

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

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

251 (c) The board may add up to 12 ~~two~~ additional members.

252 (d) ~~The~~ Board members shall serve without compensation,
 253 but ~~except that they~~ are entitled to receive reimbursement for
 254 per diem and travel expenses in accordance with s. 112.061. Such
 255 expenses must be paid out of funds of the direct-support
 256 organization.

257 (e) The board may use the fixed property and facilities of
 258 the Florida Historic Capitol, subject to the provisions of this
 259 subsection. Such use must be directly in keeping with the
 260 approved purposes of the direct-support organization and may not

261 | be made at times or places that would unreasonably interfere
 262 | with the normal operations of the Florida Historic Capitol.

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

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

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

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

277 | (6) If the direct-support organization is no longer
 278 | authorized by this section, fails to comply with the
 279 | requirements of this section, fails to maintain its tax-exempt
 280 | status pursuant to s. 501(c)(3) of the Internal Revenue Code, or
 281 | ceases to exist, all funds obtained through grants, gifts, and
 282 | donations in the direct-support organization account shall
 283 | revert to the state and be deposited into an account designated
 284 | by the Legislature for the support of the Florida Historic
 285 | Capitol, provided that donations made for specific purposes in
 286 | an original donor agreement shall be applied only to those

287 | purposes.

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

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

299 | Section 5. Paragraph (c) of subsection (6) of section
 300 | 320.0807, Florida Statutes, is amended to read:

301 | 320.0807 Special license plates for Governor and federal
 302 | and state legislators.—

303 | (6)

304 | (c) Four hundred fifty dollars of the one-time fee
 305 | collected under paragraph (a) shall be distributed to the
 306 | account of the direct-support organization established pursuant
 307 | to s. 272.136 ~~citizen support organization established pursuant~~
 308 | ~~to s. 272.129~~ and used for the benefit of the Florida Historic
 309 | Capitol Museum ~~Legislative Research Center and Museum at the~~
 310 | ~~Historic Capitol~~, and the remaining \$50 shall be deposited into
 311 | the Highway Safety Operating Trust Fund.

312 | Section 6. 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 Hutson offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:
 7 Section 1. Section 272.129, Florida Statutes, is amended to
 8 read:

9 272.129 Florida Historic Capitol; space allocation;
 10 maintenance, repair, and security.—

11 (1) The Legislature shall ensure that all space in the
 12 Florida Historic Capitol is restored in a manner consistent with
 13 the 1902 form and made available for allocation. Notwithstanding
 14 the provisions of ss. 255.249 and 272.04 that relate to space
 15 allocation in state-owned buildings, the President of the Senate
 16 and the Speaker of the House of Representatives shall have



Amendment No.

17 responsibility and authority for the allocation of all space in
18 the restored Florida Historic Capitol, provided:

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

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

25 (2) The Florida Historic Capitol shall be maintained in
26 accordance with good historic preservation practices as
27 specified in the National Park Service Preservation Briefs and
28 the Secretary of the Interior's Standards for Rehabilitation and
29 Guidelines for Rehabilitating Historic Buildings.

30 (3) Custodial and preventive maintenance and repair of the
31 entire Florida Historic Capitol and the grounds located adjacent
32 thereto shall be the responsibility of the Department of
33 Management Services, subject to the special requirements of the
34 building as determined by the director of the Florida Historic
35 Capitol Museum Curator.

36 ~~(4) (a) The Legislative Research Center and Museum at the~~
37 ~~Historic Capitol, hereinafter referred to as "center," may~~
38 ~~support the establishment of a citizen support organization to~~
39 ~~provide assistance, funding, and promotional support for the~~
40 ~~center. For the purposes of this subsection, "citizen support~~
41 ~~organization" means an organization that is:~~



Amendment No.

42 ~~1. A Florida corporation not for profit incorporated under~~
43 ~~the provisions of chapter 617 and approved by the Department of~~
44 ~~State.~~

45 ~~2. Organized and operated to conduct programs and~~
46 ~~activities; raise funds; request and receive grants, gifts, and~~
47 ~~bequests of money; acquire, receive, hold, invest, and~~
48 ~~administer in its own name securities, funds, objects of value,~~
49 ~~or other real and personal property; and make expenditures to or~~
50 ~~for the direct or indirect benefit of the center.~~

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

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

56 ~~(b)1. The Legislative Research Center and Museum at the~~
57 ~~Historic Capitol may permit, without charge, appropriate use of~~
58 ~~fixed property and facilities of the center by the citizen~~
59 ~~support organization, subject to the provisions of this~~
60 ~~subsection. Such use must be directly in keeping with the~~
61 ~~approved purposes of the citizen support organization and may~~
62 ~~not be made at times or places that would unreasonably interfere~~
63 ~~with normal operations of the center.~~

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



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

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

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

76 ~~(e) The citizen support organization for the Legislative~~
77 ~~Research Center and Museum at the Historic Capitol is authorized~~
78 ~~to collect rental fees, apply for and receive grants, and~~
79 ~~receive gifts and donations for the direct or indirect benefit~~
80 ~~of the center.~~

81 ~~(f) All funds obtained through rental fees, grants, gifts,~~
82 ~~and donations to the citizen support organization shall be~~
83 ~~deposited into the account of the citizen support organization~~
84 ~~and used for the direct or indirect benefit of the Legislative~~
85 ~~Research Center and Museum at the Historic Capitol unless the~~
86 ~~citizen support organization is no longer authorized as required~~
87 ~~by this subsection, fails to comply with the requirements of~~
88 ~~this subsection, fails to maintain its tax-exempt status~~
89 ~~pursuant to s. 501(c)(3) of the Internal Revenue Code, or ceases~~
90 ~~to exist. If the citizen support organization is no longer~~
91 ~~authorized as required by this subsection, fails to comply with~~
92 ~~the requirements of this subsection, fails to maintain its tax-~~

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93 ~~exempt status pursuant to s. 501(c)(3) of the Internal Revenue~~
94 ~~Code, or ceases to exist, all funds obtained through rental~~
95 ~~fees, grants, gifts, and donations in the citizen support~~
96 ~~organization account shall revert to the state and be deposited~~
97 ~~into an account designated by the Legislature.~~

98 Section 2. Section 272.131, Florida Statutes, is created
99 to read:

100 272.131 Florida Historic Capitol Museum Council.—The
101 Florida Historic Capitol Museum Council is created within the
102 legislative branch of state government.

103 (1) The council is composed of 13 members. Council members
104 shall be selected based on their dedication to preserving the
105 Florida Historic Capitol and advancing the mission of the
106 Florida Historic Capitol Museum. Council members must
107 demonstrate an interest in documenting the institutional
108 knowledge and historic traditions of state governance with an
109 emphasis on legislative history, the advancement of civics
110 education, and the encouragement of residents of this state to
111 engage with state government. To be fully qualified to serve on
112 the council, appointed prospective members should be experts in,
113 or hold credentials in, the fields most directly related to the
114 mission of the Florida Historic Capitol Museum, including, but
115 not limited to, history, education, historic preservation, legal
116 history, or political science, or be leaders in their respective
117 communities or statewide, with demonstrated success in building



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118 community support for cultural institutions. The council
119 consists of the following members:

120 (a) The Secretary of the Senate.

121 (b) The Clerk of the House of Representatives.

122 (c) The Sergeants at Arms of both houses of the
123 Legislature.

124 (d) The President of the Senate and the Speaker of the
125 House of Representatives each shall appoint three members, two
126 of whom must be former legislators or officers of the
127 Legislature and one who is a representative of the general
128 public.

129 (e) The board of directors of the Florida Historic Capitol
130 Museum's direct-support organization shall appoint three members
131 from its membership.

132 (2) A council member shall:

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

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

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

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

141 (e) Participate in key museum events.

142 (f) Become a member of the museum.

143 (3) The council shall:

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- 144 (a) Designate a chair.
- 145 (b) Provide guidance and support to assist the Museum
146 Director and staff in developing a strategic plan to guide the
147 activities of the museum.
- 148 (c) Periodically review the museum's strategic plan.
- 149 (d) Ensure that the museum retains an emphasis on
150 preserving legislative history and traditions by cultivating
151 relationships with current and former legislators, collecting
152 historic materials, and encouraging public participation in the
153 museum's programs.
- 154 (e) Ensure that the museum operates as a public trust in
155 accordance with the Ethics, Standards, and Best Practices and
156 the Code of Ethics for Museums adopted by the American Alliance
157 of Museums.
- 158 (f) Meet annually with the board of directors of the
159 Florida Historic Capitol Museum's direct-support organization to
160 jointly review the museum's strategic plan before its
161 presentation to the President of the Senate and the Speaker of
162 the House of Representatives and evaluate the direct-support
163 organization's long-term development goals and near-term
164 strategies.
- 165 (g) Assist museum staff in planning the Biennial Joint
166 Legislative Reunion.

167 Section 3. Section 272.135, Florida Statutes, is amended
168 to read:

169 272.135 Florida Historic Capitol Museum Director ~~Curator~~.-



Amendment No.

170 (1) The position of the Florida Historic Capitol Museum
171 Director Capitol Curator is created within the Legislature,
172 which shall establish the qualifications for the position. The
173 director curator shall be appointed by and serve at the pleasure
174 of the President of the Senate and the Speaker of the House of
175 Representatives.

176 (2) The director Capitol Curator shall:

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

179 (b) Collect, research, exhibit, interpret, preserve, and
180 protect the history, artifacts, objects, furnishings, and other
181 materials related to the Florida Historic Capitol, except for
182 archaeological research and resources.

183 (c) Develop, direct, supervise, and maintain the interior
184 design and furnishings of all space within the Florida Historic
185 Capitol in a manner consistent with the restoration of the
186 Florida Historic Capitol in its 1902 form.

187 (d) The Museum Director shall propose a strategic plan to
188 the President of the Senate and the Speaker of the House of
189 Representatives by May 1 of each year in which a general
190 election is held and shall propose an annual operating plan.

191 (3) In conjunction with ~~the Legislative Research Center~~
192 ~~and Museum at the~~ Florida Historic Capitol Museum Council, the
193 director Capitol Curator may assist the Florida Historic Capitol
194 Museum in the performance of its mission by:

195 (a) Raising money.†



Amendment No.

- 196 (b) Submitting requests for and receiving grants.~~†~~
- 197 (c) Receiving, holding, investing, and administering in
198 the name of the Florida Historic Capitol Museum ~~and the~~
199 ~~Legislative Research Center and Museum~~ securities, funds,
200 objects of value, or other real and personal property.~~†~~
- 201 (d) Receiving gifts and donations for the direct or
202 indirect benefit of the Florida Historic Capitol.~~†~~ ~~and~~
- 203 (e) Making expenditures to or for the direct or indirect
204 benefit of the Florida Historic Capitol.
- 205 Section 4. Section 272.136, Florida Statutes, is amended
206 to read:
- 207 272.136 Direct-support organization.—The ~~Legislative~~
208 ~~Research Center and Museum~~ at the Florida Historic Capitol
209 Museum Council and the Florida Historic Capitol Museum Director
210 ~~Capitol Curator~~ may establish a direct-support organization to
211 provide assistance and promotional support through fundraising
212 for the Florida Historic Capitol Museum ~~and the Legislative~~
213 ~~Research Center and Museum~~, including, but not limited to, its
214 ~~their~~ educational programs and initiatives.
- 215 (1) The direct-support organization shall be governed by a
216 board of directors. Board members must demonstrate ~~who have~~
217 ~~demonstrated~~ a capacity for supporting the mission of the
218 Florida Historic Capitol.
- 219 (a) Initial appointments to the board shall be made by the
220 President of the Senate and the Speaker of the House of
221 Representatives at the recommendation of the council ~~center~~ and



Amendment No.

222 the director ~~curator~~. Appointments to the board shall thereafter
223 be made by the board.

224 (b) The initial board shall consist of nine members who
225 shall be appointed to 3-year terms, except that the terms of
226 such ~~the initial~~ appointees shall be designated ~~accomplished~~ so
227 that three members are appointed for 1 year, three members are
228 appointed for 2 years, and three members are appointed for 3
229 years, in order to achieve staggered terms, as determined by the
230 presiding officers.

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

233 (d) ~~The~~ Board members shall serve without compensation,
234 but except that they are entitled to receive reimbursement for
235 per diem and travel expenses in accordance with s. 112.061. Such
236 expenses must be paid out of funds of the direct-support
237 organization.

238 (e) The board may use the fixed property and facilities of
239 the Florida Historic Capitol, subject to the provisions of this
240 subsection. Such use must be directly in keeping with the
241 approved purposes of the direct-support organization and may not
242 be made at times or places that would unreasonably interfere
243 with the normal operations of the Florida Historic Capitol.

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



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247 (3) The director and council ~~curator and center~~ may
248 prescribe any condition with which the direct-support
249 organization must comply.

250 (4) The director ~~curator and the center~~ may not authorize
251 ~~permit~~ the use of any fixed property or facilities by the
252 direct-support organization if the organization does not provide
253 equal membership and employment opportunities to all persons
254 regardless of race, color, religion, gender, age, or national
255 origin.

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

258 (6) If the direct-support organization is no longer
259 authorized by this section, fails to comply with the
260 requirements of this section, fails to maintain its tax-exempt
261 status pursuant to s. 501(c)(3) of the Internal Revenue Code, or
262 ceases to exist, all funds obtained through grants, gifts, and
263 donations in the direct-support organization account shall
264 revert to the state and be deposited into an account designated
265 by the Legislature for the support of the Florida Historic
266 Capitol, provided that donations made for specific purposes in
267 an original donor agreement shall be applied only to those
268 purposes.

269 (7)(a) The identity of a donor or prospective donor to the
270 direct-support organization who desires to remain anonymous, and
271 all information identifying such donor or prospective donor, is
272 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I



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273 of the State Constitution. Such anonymity shall be maintained in
274 any auditor's report created pursuant to the annual financial
275 audit required under subsection (5).

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

280 Section 5. Paragraph (c) of subsection (6) of section
281 320.0807, Florida Statutes, is amended to read:

282 320.0807 Special license plates for Governor and federal
283 and state legislators.-

284 (6)

285 (c) Four hundred fifty dollars of the one-time fee
286 collected under paragraph (a) shall be distributed to the
287 account of the direct-support organization established pursuant
288 to s. 272.136 ~~citizen support organization established pursuant~~
289 ~~to s. 272.129~~ and used for the benefit of the Florida Historic
290 Capitol Museum Legislative Research Center and Museum at the
291 ~~Historic Capitol~~, and the remaining \$50 shall be deposited into
292 the Highway Safety Operating Trust Fund.

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

294
295 -----

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

296
297 Remove everything before the enacting clause and insert:



Amendment No.

298 An act relating to the Florida Historic Capitol; amending s.
299 272.129, F.S.; removing references to the Legislative Research
300 Center and Museum at the Historic Capitol; removing provisions
301 authorizing establishment of a citizen support organization to
302 support the Legislative Research Center and Museum; creating s.
303 272.131, F.S.; creating the Florida Historic Capitol Museum
304 Council; providing for the appointment and qualifications of
305 council members; prescribing duties and responsibilities for the
306 council and individual council members; amending s. 272.135,
307 F.S.; renaming the position of Capitol Curator as the Florida
308 Historic Capitol Museum Director; conforming provisions;
309 amending s. 272.136, F.S.; revising the composition of the board
310 of directors governing the Florida Historic Capitol Museum's
311 direct-support organization; providing that per diem and travel
312 expenses must be paid from direct-support organization funds;
313 conforming provisions; amending s. 320.0807, F.S.; redirecting a
314 portion of the proceeds from the fee for special license plates
315 for former federal or state legislators to the Florida Historic
316 Capitol Museum's direct-support organization; providing an
317 effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 939 Pub. Rec./Florida Prepaid College Board/Florida ABLE, Inc./Florida ABLE Program
SPONSOR(S): Rodrigues and others
TIED BILLS: HB 935 **IDEN./SIM. BILLS:** CS/SB 646

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|-----------|------------|--|
| 1) Children, Families & Seniors Subcommittee | 12 Y, 0 N | Tuszynski | Brazzell |
| 2) Government Operations Subcommittee | | Williamson | Williamson |
| 3) Health & Human Services Committee | | | |

SUMMARY ANALYSIS

The federal ABLE Act of 2014 (ABLE Act) authorized states to establish ABLE programs or contract with other states to administer such programs if certain conditions are met. ABLE programs would provide a tax-advantaged approach for certain individuals with disabilities to build financial resources for disability related expenses without losing state or federal benefit eligibility, similar to 529 college savings plans.

HB 935 establishes the Florida ABLE Program. HB 939, which is tied to the passage of HB 935, creates a public records exemption for personal financial and health information of a consumer, or any information that would identify a consumer, which is held by the Florida Prepaid College Board, Florida ABLE, Inc., Florida ABLE.

The bill authorizes the release of such information in certain instances. It also provides that the 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 provides a public necessity statement as required by the State Constitution.

The bill appears to have no fiscal impact on the state or local government.

The bill provides that HB 939 becomes effective on the same date that HB 935 or similar legislation takes effect.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution.

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

Open Government Sunset Review Act¹

The Open Government Sunset Review Act (act) prescribes a legislative review process for newly created or substantially amended public records exemption.² The act provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.³

The act provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.⁴ An exemption serves an identifiable purpose if it meets one of the following criteria:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;⁵
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;⁶ or
- It protects trade or business secrets.⁷

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.⁸

Federal ABL Act

The federal Achieving a Better Life Experience Act of 2014 (ABLE Act) became law on December 19, 2014.⁹ The purposes of the federal ABLE Act are to encourage and assist individuals and families in saving to support individuals with disabilities in maintaining health, independence, and quality of life, and provide secure funding for disability-related expenses that will supplement, but not supplant, other

¹ See s. 119.15, F.S.

² Section 119.15, F.S. Section 119.15(4)(b), F.S. provides that an exemption is considered to be substantially amended if it expanded to include more information or to include meetings. The act does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

³ Section 119.15(3), F.S.

⁴ Section 119.15(6)(b), F.S.

⁵ Section 119.15(6)(b)1., F.S.

⁶ Section 119.15(6)(b)2., F.S.

⁷ Section 119.15(6)(b)3., F.S.

⁸ Section 119.15(6)(b), F.S.

⁹ H.R. 5771, Division B, Title I. Public Law 113-295.

sources.¹⁰ The ABLE Act permits a state to implement a qualified ABLE program and establish ABLE accounts for individuals with disabilities that meet certain criteria.

Florida ABLE Program

HB 939 is tied to and helps implement HB 935, which requires the Florida Prepaid College Board to create the Florida ABLE, Inc., as a direct support organization that is organized as a not-for-profit corporation. Florida ABLE, Inc., would establish and administer the Florida ABLE Program. HB 935 provides that the Florida ABLE, Inc., would operate under a contract with the Florida Prepaid College Board. The Florida College Savings Program is a tax-advantaged account that allows the tax-free accumulation and distribution of cash assets for qualified educational expenses under s. 529 of the Internal Revenue Code. These plans are very similar to the tax advantaged disability savings plans envisioned by the federal ABLE Act under s. 529A of the Internal Revenue Code.

Under the Florida ABLE Program, eligible individuals¹¹ with disabilities, family members and others would be able to contribute funds to an ABLE account without affecting the individual's eligibility for state and federal benefits, such as Supplemental Security Income and Medicaid. The bill provides that those funds could be used for qualified disability expenses relating to the individual's blindness or disability. These expenses would include education, housing, transportation, employment support, health, prevention, wellness, financial, and legal expenses, and other expenses authorized through federal regulations. Funds placed in the ABLE program would supplement rather than supplant benefits provided through state and federal programs, earnings, and other sources.

Effect of Proposed Changes

The bill creates a public records exemption for personal financial and health information of a consumer held by the Florida Prepaid College Board, Florida ABLE, Inc., Florida ABLE program, or an agent or service provider of one of these entities relating to an ABLE account or a participation agreement, or any information that could identify a consumer. The information is made confidential and exempt¹² from s. 119.07(1), F.S., and s. 24(a), Art. I, of the State Constitution.

For purposes of the bill, the term "consumer" means a party to a participation agreement of the Florida ABLE program. The bill defines the term "personal financial and health information" to mean:

- A consumer's personal health condition, disease, injury, or medical diagnosis or treatment;
- The existence, nature, source, or amount of a consumer's personal income or expenses;
- Records of or relating to a consumer's personal financial transactions of any kind; or
- The existence, identification, nature, or value of a consumer's assets, liabilities, or net worth.

The bill authorizes Florida Prepaid College Board or Florida ABLE, Inc., to disclose information made confidential and exempt to another state or federal government entity if disclosure is necessary for the receiving entity to perform its duties or responsibilities or to verify the eligibility of an eligible individual or authorize the use of an ABLE account.

¹⁰ *Id.*

¹¹ An individual is an eligible individual for establishing an ABLE account for a taxable year if during such taxable year:

- The individual is entitled to benefits based on blindness or disability under title II or XVI of the Social Security Act, and such blindness or disability occurred before the date on which the individual attained age 26; or
- A disability certification with respect to such individual is filed with the Secretary of the Department of Treasury for such taxable year. See H.R. 5771, Division B, Title I. Public Law 113-295.

¹² 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).

The bill provides that the public records 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 provides a statement of public necessity for the public records exemption. The Legislature finds that it is a public necessity to protect a consumer's:

- Personal financial information due to the possibility of jeopardizing the individual's financial security through identity theft, fraud, or other illegal activity; and
- Health information due to the possibility of detrimental effects on the consumer's personal and business relationships and finances.

The bill will take effect on the same date as HB 935 or similar legislation if such legislation is adopted in the same legislative session, or an extension of the same session, and becomes law. The effective date of HB 935 is October 1, 2015.

B. SECTION DIRECTORY:

- Section 1:** Creates s.1009.987, F.S., relating to public record exemption for health information.
Section 2: Provides a public necessity statement.
Section 3: Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.
2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
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:

This bill creates a public-records exemption. It complies with the requirements of s. 24(c), Art. I of the Florida Constitution that the Legislature address public-records exemptions in legislation separate from substantive law changes.

Because the bill creates an exemption, it contains a statement of public necessity and is subject to a two-thirds vote of each house of the Legislature for passage as required by s. 24(c), Art. I of the Florida Constitution.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill creates a public record exemption the personal financial and health information of a consumer or any other information that would identify a consumer. However, the public necessity statement only addresses the need to protect from public disclosure the consumer's personal financial and health information. Article I, s. 24(c) of the State Constitution requires the legislation to address the necessity of the public record exemption. As such, it is recommended that either the public record exemption be amended to remove the exemption for "information that would identify a consumer," or the public necessity statement be amended to justify the necessity for protecting such information.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 1009.987, F.S.; providing an exemption from public
 4 records requirements for certain personal financial
 5 and health information held by the Florida Prepaid
 6 College Board, Florida ABLE, Inc., the Florida ABLE
 7 program, or an agent or service provider thereof;
 8 authorizing the release of such information under
 9 specified circumstances; providing for future
 10 legislative review and repeal of the exemption;
 11 providing a statement of public necessity; providing a
 12 contingent effective date.

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

15
 16 Section 1. Section 1009.987, Florida Statutes, is created
 17 to read:

- 18 1009.987 Public records exemption.—
 19 (1) As used in this section, the term:
 20 (a) "Consumer" means a party to a participation agreement.
 21 (b) "Personal financial and health information" means:
 22 1. A consumer's personal health condition, disease,
 23 injury, or medical diagnosis or treatment;
 24 2. The existence, nature, source, or amount of a
 25 consumer's personal income or expenses;
 26 3. Records of or relating to a consumer's personal

27 | financial transactions of any kind; or

28 | 4. The existence, identification, nature, or value of a
 29 | consumer's assets, liabilities, or net worth.

30 | (2) The personal financial and health information of a
 31 | consumer held by the board, Florida ABLE, Inc., the Florida ABLE
 32 | program, or an agent or service provider thereof, relating to an
 33 | ABLE account or a participation agreement or any information
 34 | that would identify a consumer is confidential and exempt from
 35 | s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

36 | (3) The board or Florida ABLE, Inc., may authorize the
 37 | disclosure of information made confidential and exempt under
 38 | subsection (2) to another state or federal government entity if
 39 | disclosure is necessary for the receiving entity to perform its
 40 | duties or responsibilities or to verify the eligibility of an
 41 | eligible individual or authorize the use of an ABLE account.

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

46 | Section 2. The Legislature finds that it is a public
 47 | necessity to protect a consumer's personal financial and health
 48 | information. Disclosure of sensitive financial information held
 49 | for a consumer under the Florida ABLE program would create the
 50 | opportunity for theft, identity theft, fraud, and other illegal
 51 | activity, thereby jeopardizing the financial security of the
 52 | consumer and placing him or her at risk for substantial

53 financial harm. Further, each person has a reasonable
54 expectation of and a right to privacy in all matters concerning
55 personal financial interests. The Legislature further finds that
56 it is a public necessity to protect a consumer's personal health
57 information because such information is traditionally a private
58 and confidential matter between the patient and health care
59 provider. The private and confidential nature of personal health
60 matters pervades both the public and private health care
61 sectors, and public disclosure of such personal health
62 information held for a consumer under the Florida ABLE program
63 could negatively affect a person's business and personal
64 relationships and cause detrimental financial consequences.

65 Section 3. This act shall take effect on the same date
66 that HB 935 or similar legislation takes effect, if such
67 legislation is adopted in the same legislative session or an
68 extension thereof and becomes a law.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Government Operations
2 Subcommittee
3 Representative Rodrigues, R. offered the following:

Amendment

Remove lines 46-64 and insert:

7 Section 2. The Legislature finds that it is a public
8 necessity that the personal financial and health information of
9 a consumer held by the Florida Prepaid College Board, Florida
10 ABLE, Inc., the Florida ABLE program, or an agent or service
11 provider thereof, relating to an ABLE account or a participation
12 agreement, or any information that would identify a consumer, be
13 made confidential and exempt from s. 119.07(1), Florida
14 Statutes, and s. 24(a), Art. I of the State Constitution. The
15 Florida ABLE Program allows eligible individuals with
16 disabilities, family members, and others to contribute funds to
17 an ABLE account without affecting the individual's eligibility



Amendment No.

18 for state and federal benefits. It allows the individual to use
19 those funds for qualified disability expenses, such as
20 education, housing, transportation, or other expenses authorized
21 through federal regulations. The public record exemption for
22 information that would identify a consumer ensures that
23 information of a sensitive personal nature concerning a party to
24 a participation agreement is protected. Without such protection,
25 an individual may be less likely to take advantage of the
26 program thus, hindering the effective and efficient
27 administration of the Florida ABLE Program. It may also make the
28 individual vulnerable to abuse and exploitation. Disclosure of
29 sensitive financial information regarding a consumer under the
30 Florida ABLE program could create the opportunity for theft,
31 identity theft, fraud, and other illegal activity, thereby
32 jeopardizing the financial security of the consumer and placing
33 him or her at risk for substantial financial harm. Further, each
34 individual has a reasonable expectation of and a right to
35 privacy in all matters concerning personal financial interests.
36 The Legislature further finds that it is a public necessity to
37 protect a consumer's personal health information because such
38 information is traditionally a private and confidential matter
39 between the patient and health care provider. The private and
40 confidential nature of personal health matters pervades both the
41 public and private health care sectors, and public disclosure of
42 such personal health information relating to a consumer under
43 the Florida ABLE program could negatively affect an individual's

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Amendment No.

44 business and personal relationships and cause detrimental
45 financial consequences.

46

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 997 Pub. Rec./Department of Agriculture and Consumer Services
SPONSOR(S): Trumbull
TIED BILLS: HB 995 **IDEN./SIM. BILLS:** SB 1446

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|-----------|------------|--|
| 1) Business & Professions Subcommittee | 13 Y, 0 N | Butler | Luczynski |
| 2) Government Operations Subcommittee | | Williamson | Williamson |
| 3) Regulatory Affairs Committee | | | |

SUMMARY ANALYSIS

The Department of Agriculture and Consumer Services (Department) collaborates with state and federal investigative agencies when pursuing remedies for administrative and civil investigations, most specifically as it relates to the Department's regulation of charitable organizations. Many charitable organizations operate both inside and outside of Florida.

Florida's public records laws do not allow the Department to keep information used in administrative and civil investigations non-public after it has been provided from another state or federal agency, such as the Federal Trade Commission (FTC) or Internal Revenue Service (IRS). Due to the Department's inability to agree to maintain the confidentiality of investigative data, they are unable to participate in data sharing with several state and federal agencies.

In 2014, Chapter 2014-122, Laws of Florida, increased oversight of charitable organizations and sponsors, professional fundraising consultants, and professional solicitors and charged the Department with the enforcement and regulation of these entities.

This bill, which is contingent upon the passage of House Bill 995, creates a public record exemption for:

- Criminal or civil intelligence or investigative information from another state or federal regulatory, administrative, or criminal justice agency which is already deemed confidential or exempt; and,
- Information received or developed in a joint or multi-agency investigation from another state or federal regulatory, administrative, or criminal justice agency; information may be obtained in accordance with the conditions imposed by the joint multi-agency agreement.

The exemption would not apply to information obtained or developed by the Department which would otherwise be available for public inspection if the Department performed an independent investigation.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. It 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.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Records Laws

The State of Florida has a long history of providing public access to governmental records and meetings. The Florida Legislature enacted the first public records law in 1892.¹ One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.² Article I, section 24 of the Florida Constitution provides that:

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

In addition to the State Constitution, the Public Records Act,³ which pre-dates the State Constitution's public records provisions, specifies conditions under which public access must be provided to records of an agency.⁴ Section 119.07(1)(a), F.S., provides that every person who has custody of a public record must permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."⁵

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.⁶ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁷

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such

¹ s. 1390, 1391 F.S. (Rev. 1892).

² FLA. CONST. art. I, s. 24.

³ ch. 119, F.S.

⁴ The word "agency" is defined in s. 119.011(2), F.S., to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the State Constitution.

⁵ s. 119.011(12), F.S.

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁷ *Wait v. Florida Power & Light Co.*, 372 So.2d 420 (Fla. 1979).

information may not be released by an agency to anyone other than to the persons or entities designated in the statute.⁸ If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.⁹

Only the Legislature is authorized to create exemptions to open government requirements.¹⁰ Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.¹¹ A bill enacting an exemption¹² may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹³

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹⁴ provides for the systematic review, through a five-year cycle ending October 2 of the fifth year following enactment, of an exemption from public records requirements.

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

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of the individual under this provision is exempted.
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹⁶

The Department of Agriculture and Consumer Services

The mission of the Florida Department of Agriculture and Consumer Services (Department) is to safeguard the public and support Florida's agricultural economy by:

- Ensuring the safety and wholesomeness of food and other consumer products through inspection and testing programs;
- Protecting consumers from unfair and deceptive business practices and providing consumer information;
- Assisting Florida's farmers and agricultural industries with the production and promotion of agricultural products; and

⁸ 85-62 Fla. Op. Att'y Gen. (1985).

⁹ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So.2d 289 (Fla. 1991).

¹⁰ FLA. CONST. art. I, s. 24.

¹¹ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 784 So.2d 438 (Fla. 2001); *Halifax Hospital Medical Center v. News-Journal Corp.*, 724 So.2d 567, 569 (Fla. 1999).

¹² Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹³ FLA. CONST. art. I, s. 24.

¹⁴ s. 119.15, F.S.

¹⁵ s. 119.15(6)(b), F.S.

¹⁶ *Id.*

- Conserving and protecting the state's agricultural and natural resources by reducing wildfires, promoting environmentally safe agricultural practices, and managing public lands.

The Department investigates and regulates several professions in the State of Florida, and most recently the Department's oversight and regulation of charitable organizations was significantly expanded. In 2014, Chapter 2014-122, Laws of Florida, increased oversight of charitable organizations and sponsors, professional fundraising consultants, and professional solicitors and charged the Department with the enforcement and regulation of these entities.

Florida's public records laws do not allow the Department to keep information used in administrative and civil investigations non-public after it has been provided from another state or federal agency, such as the Federal Trade Commission (FTC) or Internal Revenue Service (IRS). Due to the Department's inability to agree to maintain the confidentiality of investigative data, it is unable to participate in data sharing with several state and federal agencies.

The FTC operates a Consumer Sentinel database that is protected from public record disclosure and can only be provided to a state agency that agrees to not disseminate the information. This database contains information on subjects related to:

- Identity Theft
- Do-Not-Call Registry violations
- Computers, the Internet, and Online Auctions
- Telemarketing Scams
- Advance-fee Loans and Credit Scams
- Immigration Services
- Sweepstakes, Lotteries, and Prizes
- Business Opportunities and Work-at-Home Schemes
- Health and Weight Loss Products
- Debt Collection, Credit Reports, and Financial Matters

The IRS has expressed a willingness to share certain information, on a case by case basis, with the understanding that such information is not disseminated beyond the agency requesting the data. The IRS has access to tax filing information that would be very valuable to the Department when investigating whether an organization is observing Florida's laws.

Effect of the Bill

This bill, which is contingent upon the passage of House Bill 995, creates a public record exemption for:

- Criminal or civil intelligence or investigative information from another state or federal regulatory, administrative, or criminal justice agency which is already deemed confidential or exempt; and,
- Information received or developed in a joint or multi-agency investigation from another state or federal regulatory, administrative, or criminal justice agency. Information may be obtained in accordance with the conditions imposed by the joint multi-agency agreement.

The exemption does not apply to information obtained or developed by the Department which would otherwise be available for public inspection if the Department performed an independent investigation.

The bill provides that the section is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

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

The Legislature finds that it is a public necessity that information held by the Department of Agriculture and Consumer Services which is received or developed by the department as part of a joint or multiagency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency be made confidential and exempt from public records requirements. The exemption is necessary to enable the department to participate in joint or multiagency investigations and examinations. Without the exemption, the department would continue to be excluded from information due to the inability to maintain investigative confidentiality. Without the sharing and coordination of information, governmental agencies may be required to conduct duplicative independent investigations or examinations in order to meet their regulatory responsibilities. With this exemption, the department will strengthen relationships with other local, state, and federal agencies, allowing them to become more efficient by sharing critical investigative data.

B. SECTION DIRECTORY:

Section 1 creates s. 570.077, F.S., creating a public records exemption for investigative information obtained by the Department from another local, state, or federal agency or developed through a joint or multi-agency investigation.

Section 2 provides a public necessity statement.

Section 3 provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may create a minimal fiscal impact on the Department because staff responsible for complying with public records requests could require training related to the creation of the public records exemption. In addition, the Department could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the 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 Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a public records exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public records exemption for intelligence or investigative information from another state or federal agency that is already confidential and exempt, or information acquired or developed in a joint or multi-agency investigation.

The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues: Public Records Exemption

The bill creates a public records exemption for the Department for:

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

Based upon discussions with Department staff and a review of the public necessity statement, it appears the public records exemption for such information is repetitive and could be combined to reduce redundancy.

Drafting Issues: Retroactivity

The Supreme Court of Florida ruled that a public records exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied as such. The bill

provides that the public record exemption applies to information held by the Department “before, on, or after July 1, 2015;” however, the Department has indicated that it currently does not receive such information. As such, the retroactivity provision appears unnecessary.

Other Comments: Department of Agriculture and Consumer Services

According to the Department, adopting this public records exemption will increase efficiency in investigations by saving time on developing leads, witness data, and victim data. Further the Department believes that it will be able to field consumer complaints related to information from subjects available in the FTC’s Consumer Sentinel database.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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A bill to be entitled
An act relating to public records; creating s.
570.077, F.S.; providing an exemption from public
records requirements for information received by the
Department of Agriculture and Consumer Services from
another state or federal agency and which is otherwise
confidential or exempt pursuant to the laws of that
state or federal law; providing an exemption from
public records requirements for information received
or developed by the department as part of an
investigation with another state or federal agency;
providing applicability; providing for future
legislative review and repeal of the exemptions under
the Open Government Sunset Review Act; providing a
statement of public necessity; providing a contingent
effective date.

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

Section 1. Section 570.077, Florida Statutes, is created
to read:

570.077 Confidentiality of intelligence or investigative
information.—

(1) The following information held by the Department of
Agriculture and Consumer Services before, on, or after July 1,
2015, is confidential and exempt from s. 119.07(1) and s. 24(a),

27 | Art. I of the State Constitution:

28 | (a) Criminal or civil intelligence, investigative
 29 | information, or any other information received from another
 30 | state or federal regulatory, administrative, or criminal justice
 31 | agency which is confidential or exempt pursuant to the laws of
 32 | that state or federal law.

33 | (b) Information that is received or developed by the
 34 | department as part of a joint or multiagency examination or
 35 | investigation with another state or federal regulatory,
 36 | administrative, or criminal justice agency. The department may
 37 | obtain and use the information in accordance with the conditions
 38 | imposed by the joint or multiagency agreement.

39 | (2) This exemption does not apply to information obtained
 40 | or developed by the department which would otherwise be
 41 | available for public inspection if the department had conducted
 42 | an independent examination or investigation under Florida law.

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

47 | Section 2. (1) The Legislature finds that it is a public
 48 | necessity that criminal or civil intelligence, investigative
 49 | information, or any other information held by the Department of
 50 | Agriculture and Consumer Services before, on, or after July 1,
 51 | 2015, which is received from another state or federal
 52 | regulatory, administrative, or criminal justice agency and which

53 is confidential or exempt pursuant to the laws of that state or
54 pursuant to federal law be made confidential and exempt from
55 public records requirements. Without the exemption, the
56 department will be unable to obtain information that could
57 assist it in pursuing violations of law under its jurisdiction.
58 With this exemption, the department should increase efficiency
59 of investigations by saving time on developing investigative
60 leads, witness data, and victim data.

61 (2) The Legislature finds that it is a public necessity
62 that information held by the Department of Agriculture and
63 Consumer Services which is received or developed by the
64 department as part of a joint or multiagency examination or
65 investigation with another state or federal regulatory,
66 administrative, or criminal justice agency be made confidential
67 and exempt from public records requirements. The exemption is
68 necessary to enable the department to participate in joint or
69 multiagency investigations and examinations. Without the
70 exemption, the department would continue to be excluded from
71 information due to the inability to maintain investigative
72 confidentiality. Without the sharing and coordination of
73 information, governmental agencies may be required to conduct
74 duplicative independent investigations or examinations in order
75 to meet their regulatory responsibilities. With this exemption,
76 the department will strengthen relationships with other local,
77 state, and federal agencies, allowing them to become more
78 efficient by sharing critical investigative data.

HB 997

2015

79 Section 3. This act shall take effect upon becoming a law
80 if HB 995 or similar legislation is adopted in the same
81 legislative session or an extension thereof and becomes law.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

7 Section 1. Section 570.077, Florida Statutes, is created
8 to read:

9 570.077 Confidentiality of intelligence or investigative
10 information.-

11 (1) Criminal or civil intelligence or investigative
 12 information, or any other information, held by the department as
 13 part of a joint or multiagency examination or investigation with
 14 another state or federal regulatory, administrative, or criminal
 15 justice agency is confidential and exempt from s. 119.07(1) and
 16 s. 24(a), Art. I of the State Constitution. The department may



Amendment No.

17 obtain, use, and release the information in accordance with the
18 conditions imposed by the joint or multiagency agreement.

19 (2) The department may release information that is made
20 confidential and exempt under subsection (1):

21 (a) In the furtherance of its official duties and
22 responsibilities.

23 (b) To another governmental agency in the furtherance of
24 its official duties and responsibilities.

25 (3) The public record exemption provided in subsection (1)
26 does not apply to information held by the department as part of
27 an independent examination or investigation conducted by the
28 department.

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

33 Section 2. The Legislature finds that it is a public
34 necessity that criminal or civil intelligence or investigative
35 information, or any other information, held by the Department of
36 Agriculture and Consumer Services as part of a joint or
37 multiagency examination or investigation with another state or
38 federal regulatory, administrative, or criminal justice agency
39 be made confidential and exempt from s. 119.07(1), Florida
40 Statutes, and s. 24(a), Art. I of the State Constitution.
41 Without the exemption, the department will be unable to obtain
42 information that could assist it in pursuing violations of law



Amendment No.

43 under its jurisdiction. With this exemption, the department
 44 should increase efficiency of investigations by saving time on
 45 developing investigative leads, witness data, and victim data.
 46 Furthermore, the exemption is necessary to enable the department
 47 to participate in joint or multiagency investigations and
 48 examinations. Without the exemption, the department would
 49 continue to be excluded from information due to the inability to
 50 maintain investigative confidentiality. Without the sharing and
 51 coordination of information, governmental agencies may be
 52 required to conduct duplicative independent investigations or
 53 examinations in order to meet their regulatory responsibilities.
 54 With this exemption, the department will strengthen
 55 relationships with other local, state, and federal agencies,
 56 allowing them to become more efficient by sharing critical
 57 investigative data.

58 Section 3. This act shall take effect upon becoming a law
 59 if HB 995 or similar legislation is adopted in the same
 60 legislative session or an extension thereof and becomes law.

62 -----

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

64 Remove everything before the enacting clause and insert:
 65 An act relating to public records; creating s. 570.077, F.S.;
 66 providing an exemption from public records requirements for
 67 criminal or civil intelligence or investigative information, or
 68 any other information, held by the Department of Agriculture and



Amendment No.

69 Consumer Services as part of an investigation with another state
70 or federal regulatory, administrative, or criminal justice
71 agency; providing exceptions to the public records exemption;
72 providing applicability; providing for future legislative review
73 and repeal of the exemption under the Open Government Sunset
74 Review Act; providing a statement of public necessity; providing
75 a contingent effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1011 Addresses of Legal Residence
SPONSOR(S): Spano
TIED BILLS: **IDEN./SIM. BILLS:** SB 1360

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---------------------------------------|--------|-------------------|--|
| 1) Government Operations Subcommittee | | Toliver <i>LT</i> | Williamson <i>[Signature]</i> |
| 2) State Affairs Committee | | | |

SUMMARY ANALYSIS

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

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

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

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

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

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

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

¹ Part II, ch. 97, F.S.

² See ss. 97.041-97.105, F.S.

³ Section 97.041(1)(a), F.S.

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

⁵ See s. 97.052(2), F.S.

⁶ Section 97.053(5)(a), F.S.

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

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

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

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

¹¹ *Id.*

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

registered electors within their county.¹³ Supervisors must maintain a list of valid residential street addresses¹⁴ for the purpose of verifying the legal addresses of voters residing within their county.¹⁵

Effect of the Bill

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

The bill requires the voter registration application to include the applicant’s address of legal residence, including, if applicable, a distinguishing apartment, suite, lot, room, or dormitory room number, in order to be considered complete.

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

B. SECTION DIRECTORY:

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

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

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to impact state government revenues.

2. Expenditures:

The bill does not appear to impact state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to impact local government revenues.

¹³ Section 98.015(3), F.S.

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

¹⁵ Section 98.015(12), F.S.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Comments

The bill defines the term "address of legal residence" to include a distinguishing apartment, suite, lot, room, or dormitory room number." On lines 32 through 34, the bill clarifies that an applicant's address of legal residence, *including, if applicable, a distinguishing apartment, suite, lot, room, or dormitory room number* must be included in order to be considered complete. The inclusion of the italicized language appears redundant of the definition of "address of legal residence" and, as such, appears unnecessary.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

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

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

13
 14 Section 1. Subsections (3) through (44) of section 97.021,
 15 Florida Statutes, are renumbered as subsections (4) through
 16 (45), respectively, and a new subsection (3) is added to that
 17 section, to read:

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

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

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

27 97.053 Acceptance of voter registration applications.—

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

31 1. The applicant's name.

32 2. The applicant's address of legal residence, including a
 33 distinguishing apartment, suite, lot, room, or dormitory room
 34 number or other identifier, if appropriate ~~address~~.

35 3. The applicant's date of birth.

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

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

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

44
 45 In case an applicant has not been issued a current and valid
 46 Florida driver license, Florida identification card, or social
 47 security number, the applicant shall affirm this fact in the
 48 manner prescribed in the uniform statewide voter registration
 49 application.

50 6. A mark in the checkbox affirming that the applicant has
 51 not been convicted of a felony or that, if convicted, has had
 52 his or her civil rights restored.

53 7. A mark in the checkbox affirming that the applicant has
 54 not been adjudicated mentally incapacitated with respect to
 55 voting or that, if so adjudicated, has had his or her right to
 56 vote restored.

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

64 Section 3. Subsection (12) of section 98.015, Florida
 65 Statutes, is amended to read:

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

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

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79 | United States Postal Service, or other agencies as necessary to
80 | ensure the continued accuracy of such list. The supervisor shall
81 | provide the list of valid residential addresses to the statewide
82 | voter registration system in the manner and frequency specified
83 | by rule of the department.

84 | 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 Spano offered the following:
4

5 **Amendment**

6 Remove lines 32-34 and insert:

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1063 Government Accountability
SPONSOR(S): Metz
TIED BILLS: IDEN./SIM. BILLS: SB 1372

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---------------------------------------|--------|------------|--|
| 1) Government Operations Subcommittee | | Harrington | Williamson <i>Law</i> |
| 2) Appropriations Committee | | | |
| 3) State Affairs Committee | | | |

SUMMARY ANALYSIS

Various statutes ensure government accountability of state and local governments. For example, the Auditor General conducts audits of accounts and records of state agencies, state universities, state colleges, district school boards, and others as directed by the Legislative Auditing Committee. The Auditor General conducts operational and performance audits on public records and information technology systems. The Auditor General also reviews all audit reports of local governmental entities, charter schools, and charter technical career centers. Other statutes require publishing of budgets online, disclosing of financial interests, and registering before lobbying certain entities.

The bill amends statutes pertaining to government accountability and auditing. The bill:

- Specifies that the Governor, the Commissioner of Education, or the designee of the Governor or of the Commissioner of Education may notify the Legislative Auditing Committee of an entity's failure to comply with certain auditing and financial reporting requirements;
- Provides definitions for the terms "abuse," "fraud," and "waste;"
- Requires each agency, the judicial branch, the Justice Administrative Commission, state attorneys, public defenders, criminal conflict and civil regional counsel, the Guardian Ad Litem program, local governmental entities, governing bodies of charter schools, each school district, Florida College System institution, and each state university to establish and maintain internal controls;
- Authorizes the Chief Financial Officer or a governing body to withhold an amount of a fine owed and related administrative costs from public salary-related payments of certain individuals, and provides hardship exceptions;
- Expands the types of governmental entities that are subject to lobbyist registration requirements;
- Requires counties, municipalities, and special districts to maintain certain budget documents on the entities' websites for specified timeframes;
- Requires a unit of government to investigate and take necessary action to recover prohibited compensation, specifies methods of recovery and liability for violations, and provides a reward structure to those reporting prohibited compensation;
- Revises the monthly financial statement requirements for water management districts;
- Revises the composition of an audit committee;
- Prohibits certain officers, members, or directors from representing a person or entity before Enterprise Florida, its divisions, and the Florida Development Finance Corporation;
- Requires completion of an annual financial audit of the Florida Virtual School; and
- Requires a district school board, Florida College System board of trustees, or university board of trustees to respond to audit recommendations under certain circumstances.

The act provides that it fulfills an important state interest.

The bill may have an indeterminate fiscal impact on state and local governments. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Auditor General

The position of Auditor General is established by s. 2, Art. III of the State Constitution. The Auditor General is appointed to office to serve at the pleasure of the Legislature, by a majority vote of the members of the Legislative Auditing Committee, subject to confirmation by both houses of the Legislature.¹ The appointment of the Auditor General may be terminated at any time by a majority vote of both houses of the Legislature.² The Auditor General, before entering upon the duties of the office, must take the oath of office required of state officers by the State Constitution.³ At the time of appointment, the Auditor General must have been certified under the Public Accountancy Law in Florida for a period of at least 10 years and may not have less than 10 years' experience in an accounting or auditing related field.⁴

To carry out his or her duties, the Auditor General must make all spending decisions within the annual operating budget approved by the President of the Senate and the Speaker of the House of Representatives.⁵ The Auditor General must employ qualified persons necessary for the efficient operation of the Auditor General's office and must fix their duties and compensation and, with the approval of the President of the Senate and Speaker of the House of Representatives, must adopt and administer a uniform personnel, job classification and pay plan for employees.⁶

The Auditor General must:⁷

- Conduct audits of records and perform related duties as prescribed by law, concurrent resolution of the Legislature, or as directed by the Legislative Auditing Committee;
- Annually conduct a financial audit of state government;
- Annually conduct financial audits of all state universities and state colleges;
- Annually conduct financial audits of all accounts and records of all district school boards in counties with populations of fewer than 150,000, according to the most recent federal decennial statewide census;
- Once every three years, conduct financial audits of the accounts and records of all district school boards in counties that have populations of 150,000 or more, according to the most recent federal decennial statewide census;
- At least every three years, conduct operational audits of the accounts and records of state agencies, state universities, state colleges, district school boards, and Florida Clerks of Court Operations, water management districts, and the Florida School for the Deaf and the Blind;
- At least every three years, conduct a performance audit of the local government financial reporting system, which means any statutory provision related to local government financial reporting;
- At least every three years, conduct a performance audit of the Department of Revenue's administration of the ad valorem tax laws;
- Once every three years, review a sample of internal audit reports at each state agency⁸ to determine compliance with the current Standards for Professional Practice of Internal Auditing or, if appropriate, government auditing standards;

¹ Section 11.42(2), F.S.

² Section 11.42(5), F.S.

³ Section 11.42(4), F.S.

⁴ Section 11.42(2), F.S.

⁵ Section 11.42(3)(a), F.S.

⁶ *Id.*

⁷ Section 11.45(2), F.S.

- Conduct audits of local governmental entities when determined to be necessary by the Auditor General, when directed by the Legislative Auditing Committee, or when otherwise required by law; and
- Annually conduct operational audits of the accounts and records of eligible nonprofit scholarship-funding organizations receiving eligible contributions under s. 1002.395, F.S., to determine compliance with that section.

The Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements as determined appropriate by the Auditor General of:⁹

- The accounts and records of any governmental entity created or established by law;
- The information technology programs, activities, functions, or systems of any governmental entity created or established by law;
- The accounts and records of any charter school created or established by law;
- The accounts and records of any direct-support organization or citizen support organization created or establish by law;
- The public records associated with any appropriation made by the Legislature to a nongovernmental agency, corporation, or person;
- State financial assistance provided to any nonstate entity;
- The Tobacco Settlement Financing Corporation;
- Any purchases of federal surplus lands for use as sites for correctional facilities;
- Enterprise Florida, Inc., including any of its boards, advisory committees, or similar groups created by Enterprise Florida, Inc., and programs;
- The Florida Development Finance Corporation or the capital development board or the programs or entities created by the board;
- The records pertaining to the use of funds from voluntary contributions on a motor vehicle registration application or on a driver's license application;
- The records pertaining to the use of funds from the sale of specialty license plates;
- The transportation corporations under contract with the Department of Transportation that are acting on behalf of the state to secure and obtain rights-of-way for urgently needed transportation systems and to assist in the planning and design of such systems;
- The acquisition and divestitures related to the Florida Communities Trust Program;
- The Florida Water Pollution Control Financing Corporation;
- The school readiness program, including the early learning coalitions;
- The Florida Special Disability Trust Fund Financing Corporation;
- Workforce Florida, Inc., or other programs or entities created by Workforce Florida, Inc.;
- The corporation under contract with the Department of Business and Professional Regulation to provide administrative, investigative, examination, licensing, and prosecutorial support services;
- The Florida Engineers Management Corporation;
- The books and records of any permitholder that conducts race meetings or jai alai exhibitions;
- The corporation known as the Prison Rehabilitative Industries and Diversified Enterprise, Inc., or PRIDE Enterprises;
- The Florida Virtual School;
- Virtual education providers receiving state funds or funds from local ad valorem taxes; and
- The accounts and records of a nonprofit scholarship-funding organization participating in a state sponsored scholarship program authorized by chapter 1002, F.S.

⁸ Section 20.055, F.S., defines the term "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 courts system.

⁹ Section 11.45(3), F.S.

Auditor General Reports

The Auditor General must conduct audits, examinations, or reviews of government programs.¹⁰ Various provisions require the Auditor General to compile and submit reports. For example, the Auditor General must annually compile and transmit to the President of the Senate, Speaker of the House of Representatives, and Legislative Auditing Committee a summary of significant findings and financial trends identified in audit reports.¹¹ The Auditor General also must compile and transmit to the President of the Senate, Speaker of the House of Representatives, and Legislative Auditing Committee an annual report by December 1. The report must include a two-year work plan identifying the audit and other accountability activities to be undertaken and a list of statutory and fiscal changes recommended by the Auditor General.¹² In addition, the Auditor General must transmit recommendations at other times during the year when the information would be timely and useful to the Legislature.¹³

The annual report for the Auditor General for November 1, 2012, through October 31, 2013, recommended, among others, the following change to the current law:¹⁴

Require each state and local government to maintain internal controls designed to prevent fraud and detect fraud, waste, and abuse; ensure the administration of assigned public duties and responsibilities in accordance with applicable laws, rules, contracts, grant agreements, and best practices; promote and encourage economic and efficient operations; ensure the reliability of financial records and reports; and safeguard assets.

Local Government Auditing

Current law requires local governments¹⁵ to submit to the Department of Financial Services (DFS) an annual financial report covering their operations for the preceding fiscal year.¹⁶ 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.¹⁷

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.¹⁸ 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.¹⁹

Transparency Florida Act

The Transparency Florida Act (Act) requires specified governmental fiscal information to be made publicly available via website or management system.²⁰ The Act requires the Governor, in consultation with the appropriate committees of the House of Representatives and the Senate, to maintain a central website providing access to all other websites required to be linked under the Act. The law requires certain budget information to be readily available online, certain contract information, and minimum functionality standards.

¹⁰ Section 11.45(7), F.S.

¹¹ Section 11.45(7)(f), F.S.

¹² Section 11.45(7)(h), F.S.

¹³ *Id.*

¹⁴ A copy of the report can be found online at: <http://www.myflorida.com/audgen/pages/annualrpt.htm> (last visited March 20, 2015).

¹⁵ Section 218.31(1), F.S., defines the term "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.

¹⁶ Section 218.32(1)(a), F.S.

¹⁷ Section 218.32(1)(g), F.S.

¹⁸ Section 218.39(1), F.S.

¹⁹ Section 119.0713(2), F.S.

²⁰ Section 215.985, F.S.

Local Government Budgets

Counties,²¹ municipalities,²² and special districts²³ are required to post their tentative budgets on their websites two days prior to consideration of the budget. The final budget of a county, municipality, or special district must be posted on the website within 30 days after adoption. An amendment to a budget must be posted to the website within five days of adoption. Current law does not specify how long the items must remain on the website.

Water Management Districts

Section 373.069, F.S., provides for the creation of water management districts. A water management district (WMD) is defined as “any flood control, resource management, or water management district” operating under the authority of chapter 373, F.S.²⁴ There are five WMDs in Florida: Northwest Florida, Suwanee River, St. Johns River, Southwest Florida, and South Florida.²⁵

Budget Requirements

Section 373.536, F.S., governs WMD budget processes. The tentative budget must be posted on the WMD’s website at least two days before the budget hearings are conducted. Final budgets must be posted on the WMD’s website within 30 days of adoption.²⁶

Lobbying Registration Requirements

Persons who lobby WMDs must register annually with the WMD as a lobbyist.²⁷ The registration must include a statement signed by the principal stating that the registrant is authorized to lobby the principal, identify its main business pursuant to a classification system approved by the WMD, and disclose the existence of any direct or indirect business or financial relationship between the lobbyist and any officer or employee of the district.²⁸ A WMD may accept a completed legislative branch or executive branch lobbyist registration form in lieu of creating its own registration form.²⁹

Each WMD may levy an annual lobbyist registration fee not to exceed \$40 for each principal represented. The money collected must be used for administration of the lobbyist registration system.³⁰ The WMDs must be diligent in determining whether lobbyist are duly registered and are prohibited from knowingly allowing unregistered individuals to lobby the WMD.³¹

Financial Disclosures

The State Constitution requires all elected constitutional officers and candidates for such offices and, as may be determined by law, other public officers, candidates, and employees to file full and public disclosure of their financial interest.³² Financial disclosure requirements are contained in ss. 112.3144 and 112.3145, F.S. Section 112.3145, F.S., requires each state or local officer and each specified state employee to file a statement of financial interests no later than July 1 of each year.³³

Those who are required to file a statement of financial interests pursuant to s. 112.3145, F.S., are required to disclose primary sources of income (other than from his or her public position), secondary sources of income (in certain circumstances), real property (other than a residence or vacation home in

²¹ Sections 129.03(3)(c) and 129.06(2)(f), F.S.

²² Section 166.241, F.S.

²³ Section 189.016, F.S.

²⁴ Section 373.019(23), F.S.

²⁵ Section 373.069(1), F.S.

²⁶ Section 373.536, F.S.

²⁷ Section 112.3261(2), F.S.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Section 112.3261(5), F.S.

³¹ Section 112.3261(6), F.S.

³² Section 8, Art. II, Fla. Const.

³³ Section 112.3145(2)(b), F.S.

Florida), intangible personal property, liabilities, and interests in specified businesses. The law permits a filer to report the required interests based upon one of two thresholds. First, the filer may calculate whether an interest is required to be reported based upon whether that interest exceeds a specified percentage of his or her net worth. This is referred to as the “comparative (percentage) threshold.” Alternatively, the filer may determine whether an interest is reported if the interest exceeds a specified dollar value. This is referred to as the “dollar value threshold.”³⁴

The Commission on Ethics (Commission) serves as the depository for financial disclosure filings of state officers or employees. Those who serve at a local level file their financial disclosure with the local supervisor of elections. The Commission and supervisors of elections are statutorily required to assist each other in identifying those subject to the financial disclosure requirement, providing notice to those individuals, and tracking receipt of financial disclosures. In the event that an individual fails to timely file his or her financial disclosure, the Commission imposes an automatic fine of \$25 per day. The automatic fine is capped at \$1,500.³⁵ Neither the Commission nor the supervisor of elections is required to examine the financial disclosure filings.

Collection Methods for Unpaid Fines

Before referring any unpaid fine to DFS, the Commission must attempt to determine whether the individual owing such a fine is a current public officer or current public employee.³⁶ If so, the Commission must notify the Chief Financial Officer (CFO) or the governing body of the appropriate county, municipality, or special district of the total amount of any fine owed to the Commission. After verification from the Commission, the appropriate entity must begin withholding the lesser of 10 percent or the maximum amount allowed under federal law from any salary-related payment.³⁷ The withheld payments must be remitted until the fine is satisfied. If the individual is no longer a public officer or public employee, the Commission may seek a circuit court judgment and garnish wages to satisfy the amount of the fine owed.³⁸ Action may be taken to collect any unpaid fine within 20 years after the date the final order is rendered.³⁹

Extra Compensation Claims

Extra compensation claims are prohibited under s. 215.425, F.S., with some exceptions. The section provides that no extra compensation may be made to any officer, agent, employee, or contractor after service has been rendered or the contract made, unless such compensation or claim is allowed by a law enacted by two-thirds of the members elected to each house of the Legislature.

The section does not apply to:

- A bonus or severance pay that is paid wholly from nontax revenues and nonstate-appropriated funds, the payment and receipt of which does not otherwise violate part III of chapter 112, F.S., and which is paid to an officer, agent, employee, or contractor of a public hospital that is operated by a county or special district; or
- A clothing and maintenance allowance given to plainclothes deputies pursuant to s. 30.49, F.S.

Any policy, ordinance, rule, or resolution designed to implement a bonus scheme must:⁴⁰

- Base the award of a bonus on work performance;
- Describe the performance standards and evaluation process by which a bonus will be awarded;
- Notify all employees of the policy, ordinance, rule, or resolution before the beginning of the evaluation period on which a bonus will be based; and
- Consider all employees for the bonus.

³⁴ See s. 112.3145(3), F.S.

³⁵ Sections 112.3144(5)(e) and 112.3145(7)(f), F.S.

³⁶ Section 112.31455(1), F.S.

³⁷ Section 112.31455(1)(a), F.S.

³⁸ Section 112.31455(2), F.S.

³⁹ Section 112.31455(4), F.S.

⁴⁰ Section 215.425(3), F.S.

Current law provides requirements for severance pay provisions, which prohibit a unit of government from including severance pay in an amount greater than 20 weeks of compensation or when the employee has been fired for misconduct. In addition, an employee may receive an amount no greater than six weeks of compensation as severance if the severance pay represents the settlement of an employment dispute.⁴¹

Any agreement or contract executed on or after July 1, 2011, which involves extra compensation between a unit of government and an officer, agent, employee, or contractor, may not include provisions that limit the ability of any party to the agreement or contract to discuss the agreement or contract.⁴²

False Claims against the State

Section 68.082, F.S., prohibits a person from:

- Knowingly presenting a false or fraudulent claim for payment or approval;
- Knowingly making or using a false record or statement material to a false or fraudulent claim;
- Conspiring to commit a violation of this subsection;
- Having possession, custody, or control of property or money used or to be used by the state and knowingly delivering less than all of that money or property;
- Making or delivering a document certifying receipt of property used or to be used by the state and, intending to defraud the state, making or delivering the receipt without knowing that the information on the receipt is true;
- Knowingly buying or receiving, as a pledge of an obligation or a debt, public property from an officer or employee of the state who may not sell or pledge the property; or
- Knowingly making or using a false record or statement material to an obligation to pay or transmit money or property to the state, or knowingly concealing or knowingly and improperly avoiding or decreasing an obligation to pay or transmit money or property to the state.

A person who does any of the foregoing is liable to the state for a civil penalty of not less than \$5,500 and not more than \$11,000 and for treble the amount of damages the state sustains.⁴³

Section 68.083, F.S., authorizes the Department of Legal Affairs to investigate an allegation of a false claim against the state. If the Department of Legal Affairs determines that a violation has occurred, it is authorized to commence civil action against the violator. In addition, DFS may bring suit if the Department of Legal Affairs has not brought suit.⁴⁴

Effect of Proposed Changes

Audit Provisions

Currently the Auditor General, DFS, and the Division of Bond Finance of the State Board of Administration may notify the Legislative Auditing Committee (committee) if a local governmental entity, district school board, charter school, or charter technical career center fail to comply with certain auditing and financial reporting requirements. The bill adds to the list of entities that may notify the committee, to include the Governor, the Commissioner of Education, or the designee of the Governor or the Commissioner of Education.

The bill creates the following definitions:

- “Abuse” means behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary operational practice given the facts

⁴¹ Section 215.425(4), F.S.

⁴² Section 215.425(5), F.S.

⁴³ Section 68.082(2), F.S.

⁴⁴ Section 68.083(1), F.S.

and circumstances. The term includes the misuse of authority or position for personal gain or for the benefit of another.

- “Fraud” means obtaining something of value through willful misrepresentation, including, but not limited to, the intentional misstatements or omissions of amounts or disclosures in financial statements to deceive users of financial statements, theft of an entity’s assets, bribery, or the use of one’s position for personal enrichment through the deliberate misuse or misapplication of an organization’s resources.
- “Waste” means the act of using or expending resources unreasonably, carelessly, extravagantly, or for no useful purpose.

The bill amends the definition for “local governmental entity” to include tourist development council and county tourism promotion agency.

The bill amends s. 11.45(2)(j), F.S., to clarify that the audit provisions in that paragraph do not apply to WMDs; instead, the audit provisions in s. 11.45(2)(f), F.S., apply to WMDs. The bill expands the list of entities that must be included in the Auditor General report concerning entities that fail to comply with transparency requirements in s. 11.45, F.S., to include local governmental entities.

The bill requires each state agency, the judicial branch, the Justice Administrative Commission, state attorneys, public defenders, criminal conflict and civil regional counsel, the Guardian Ad Litem program, local governmental entities, governing bodies of charter schools, each school district, Florida College System institution, and each state university to:

- Establish and maintain internal controls, including controls designed to prevent and detect fraud, waste, and abuse;
- Promote and encourage compliance with applicable laws, rules, contracts, grant agreements, and best practices;
- Support economic and efficient operations;
- Ensure the reliability of records and reports; and
- Safeguard assets.

The bill increases the threshold total amount of state financial assistance level for purposes of triggering a state single audit or project-specific audit for nonstate entities. It raises the amount to \$750,000, rather than \$500,000. It provides that the Auditor General, after consulting with the Executive Office of the Governor, DFS, and all state awarding agencies, must review the threshold amount for requiring the audits, and if appropriate, may recommend to the Legislature a statutory change to the required amount.

The bill requires each local governmental entity required to provide an audit under s. 218.39(1), F.S., to provide an independent certified public accountant statement concerning whether or not the entity’s annual financial report is in agreement with the audit report, and if not in agreement, it must specify the significant differences between the annual financial report and the audit report.

The bill provides that DFS can request additional information when preparing a verified, annual report. The information requested must be provided to DFS within 45 days, and if the local governmental entity does not comply, DFS must notify the Legislative Auditing Committee.

If a local government audit report includes a recommendation that was previously included in the audit report, the bill requires the governing body to, during a regularly scheduled public meeting, indicate its intent regarding corrective action, or why it will not take action regarding the recommendation in the report. The bill requires the same action for audits of school districts, Florida College System institutions, and universities.

The bill requires the Florida Virtual School to have an annual financial audit of its accounts and records completed by an independent auditor. The bill provides requirements and timeframes for the submission of the audit. The bill deletes the requirement that the Auditor General conduct an

operational audit of the Florida Virtual School no later than January 31, 2014, as the language is obsolete.

Auditor Selection Procedures

The bill provides that for a municipality or special district, the audit committee must consist of at least three members who must be members of the governing body of the municipality or the special district, respectively. For a county, municipality, or special district, a member of the audit committee may not exercise financial management responsibilities for the county, municipality, or special district.

The bill provides that a contract for audit services may not allow for the contract period, including renewals, to exceed two years.

Clerks of Court

Current law requires the Clerks of Court Operations Corporation (corporation) to notify the Legislature of any clerk not meeting workload performance standards and provide a copy of any corrective action plans. The bill prescribes quarterly reporting periods for such notice, ending on the last day of the months of March, June, September, and December. The notification must be submitted no later than 45 days after the end of the quarterly period.

Unpaid Fines for Failure to Timely File Disclosure of Financial Interest

The bill authorizes the CFO or the governing body of the county, municipality, or special district to withhold the entire amount of any fine owed, and any administrative costs incurred, from the individual's next public salary-related payment, rather than 10 percent. If the fine exceeds the amount of the next salary-related payment, then the next payment must be withheld until the fine and the administrative costs are paid in full. If the current public officer or current public employee demonstrates to the CFO or the governing body that the public salary is his or her primary source of income and that withholding the full amount of any fine owed from a public salary-related payment would present undue hardship, the withheld amount may be reduced but must be at least 10 percent.

The bill creates s. 112.31456, F.S., for unpaid fines related to individuals who are no longer a public officer or public employee or for those individuals that the Commission cannot determine whether the person is a public officer or public employee.

Lobbying Registration

The bill amends s. 112.3261, F.S., which relates to lobbying before WMDs. It expands the registration and reporting requirements to include "governmental entity" as defined in the section, rather than only WMDs. It defines "governmental entity" to mean:

A WMD, a hospital district, a children's services district, an expressway authority, a port authority, or an independent special district with annual revenues of more than \$5 million, which exercises ad valorem taxing authority.

Budgets

The bill specifies that a tentative county budget must remain on the county's website for at least 45 days, and the final budget must remain on the website for at least two years. In addition, an adopted amendment to the budget must remain published on the county's website for at least two years. The bill requires the same publishing timeframes for municipalities and WMDs.

Extra Compensation

The bill amends provisions related to extra compensation. The bill requires a unit of government to investigate and take all necessary action to recover any prohibited compensation upon discovery or notification that the unit has violated the laws relating to prohibited compensation. If the violation was unintentional, the bill requires the unit of government to recover the prohibited compensation through normal recovery methods for overpayments. If the violation was willful, the unit of government must recover the prohibited compensation from either the individual receiving the compensation or the

individual or individuals responsible for approving the prohibited compensation. Each individual determined to have willfully violated the section is jointly and severally liable for repayment.

The bill makes the willful violation of the prohibition against extra compensation a misdemeanor of the first degree.⁴⁵ It authorizes the Governor to suspend an officer who willfully violates the law.

The bill provides for a reward for a person who reports a violation of the section of at least \$500, or the lesser of 10 percent of the funds recovered, or \$10,000 per incident. The bill prohibits the reward if the recovery of the prohibited compensation is based primarily on information other than what was provided by the person, or if the person was involved in the authorization, approval, or receipt of the prohibited compensation.

The bill provides that an employee has a cause of action under s. 112.3187, F.S., if the employee is discharged, demoted, suspended, threatened, harassed, or in any manner discriminated against by his or her employer because of lawful acts done by the employee concerning prohibited compensation.

If the unit of government fails to recover prohibited compensation for willful violation of this section upon discovery and notification of such prohibited payment within 90 days, a cause of action may be brought to:

- Recover state funds in accordance with ss. 68.082 and 68.083, F.S.⁴⁶
- Recover other funds by the Department of Legal Affairs using the procedures set forth in ss. 68.082 and 68.083, F.S., except that venue must lie in the circuit court of the county in which the unit of government is located.
- Recover other funds by a person using the procedures set forth in ss. 68.082 and 68.083, F.S., except that venue must lie in the circuit court of the county in which the unit of government is located.

Financial Statements

The bill requires DFS to specify the manner and form for the submission of a WMD monthly financial statement. It requires the WMD to make monthly financial statements available on its website.

Prohibited Representation

The bill prohibits specified officers and members of the board of directors from representing another person or entity for compensation before Enterprise Florida, Inc., for a period of two years after retirement from or termination of service to a division.

The bill prohibits a director of the board of directors of the Florida Development Finance Corporation from representing another person or entity for compensation before the Florida Development Finance Corporation for a period of two years after his or her service on the board.

Miscellaneous

The bill provides that it fulfills an important state interest.

B. SECTION DIRECTORY:

Section 1 amends s. 11.40, F.S., specifying that the Governor, the Commissioner of Education, or the designee of the Governor or of the Commissioner of Education may notify the Legislative Auditing Committee of an entity's failure to comply with certain auditing and financial reporting requirements.

Section 2 amends s. 11.45, F.S., defining the terms "abuse," "fraud," and "waste;" revising the definition of "local governmental entity;" excluding water management districts from certain audit requirements applicable to the Auditor General.

⁴⁵ A misdemeanor of the first degree is punishable by imprisonment not to exceed one year or a fine not to exceed \$1,000. Sections 775.082 and 775.083, F.S.

⁴⁶ Sections 68.082 and 68.083, F.S., relate to civil actions for false claims.

Section 3 amends s. 28.35, F.S., revising reporting requirements applicable to the corporation.

Sections 4, 13, 17, 23, 25 amend ss. 43.16, 215.86, 218.33, and 1002.33, 1010.01, F.S., revising the responsibilities of each state agency, the judicial branch, the Justice Administrative Commission, state attorneys, public defenders, criminal conflict and civil regional counsel, the Guardian Ad Litem program, local governmental entities, governing bodies of charter schools, each school district, Florida College System institution, and state university to establish certain internal controls.

Section 5 amends s. 112.31455, F.S., authorizing the CFO or a governing body to withhold an amount of a fine owed and related administrative costs from public salary-related payments of certain individuals; authorizing the CFO or a governing body to reduce the amount withheld if certain individuals demonstrate a hardship.

Section 6 creates s. 112.31456, F.S., authorizing the Commission to seek wage garnishment of certain individuals to satisfy unpaid fines; authorizing the Commission to refer unpaid fines to a collection agency; establishing a statute of limitations with respect to the collection of an unpaid fine.

Section 7 amends s. 112.3261, F.S., revising definitions to conform to changes made by the act; expanding the types of governmental entities that are subject to lobbyist registration requirements.

Sections 8, 9, 10, and 11 amend ss. 129.03, 129.06, 166.241, and 189.016, F.S., requiring counties, municipalities, and special districts to maintain certain budget documents on the entities' websites for a specified period.

Section 12 amends s. 215.425, F.S., requiring a unit of government to investigate and take necessary action to recover prohibited compensation; specifying methods of recovery and liability for unintentional and willful violations; providing a penalty; authorizing the Governor to suspend officers under specified circumstances; establishing eligibility criteria and amounts for awards; specifying circumstances under which an employee has a cause of action under the Whistle-blower's Act; establishing causes of action if a unit of government fails to recover prohibited compensation within a certain timeframe.

Section 14 amends s. 215.97, F.S., revising the definition of the term "audit threshold."

Section 15 amends s. 215.985, F.S., revising the requirements for a monthly financial statement provided by a WMD.

Section 16 amends s. 218.32, F.S., revising the requirements of the annual financial audit report of a local governmental entity; authorizing DFS to request additional information from a local governmental entity; requiring a local governmental entity to respond to such requests within a specified timeframe.

Section 18 amends s. 218.39, F.S., requiring an audited entity to respond to audit recommendations under specified circumstances.

Section 19 amends s. 218.391, F.S., revising the composition of an audit committee; restricting the length of a contract period.

Section 20 amends s. 288.92, F.S., prohibiting specified officers and board members of Enterprise Florida, Inc., from representing a person or entity for compensation before Enterprise Florida, Inc., for a specified timeframe.

Section 21 amends s. 288.9604, F.S., prohibiting a director of the board of directors of the Florida Development Finance Corporation from representing a person or entity for compensation before the corporation for a specified timeframe.

Section 22 amends s. 373.536, F.S., deleting obsolete language; requiring WMDs to maintain certain budget documents on the WMD's websites for a specified period.

Section 24 amends s. 1002.37, F.S., requiring completion of an annual financial audit of the Florida Virtual School; specifying audit requirements; requiring an audit report to be submitted to the board of trustees of the Florida Virtual School and the Auditor General; removing an obsolete provision.

Section 26 amends s. 1010.30, F.S., requiring a district school board, Florida College System board of trustees, or university board of trustees to respond to audit recommendations under certain circumstances.

Sections 27, 28, and 29 amend ss. 68.082, 68.083, and 218.503, F.S., conforming provisions and cross-references to changes made by the act.

Section 30 declares that the act fulfills an important state interest.

Section 31 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:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires members of the public to register as a lobbyist when lobbying a specified unit of local government. Current law authorizes a fee for each registration, which may not exceed \$40.

D. FISCAL COMMENTS:

The bill requires state agencies, the court system, court-related entities, local governments, district school boards, charter schools, and state colleges and universities to establish specified internal controls. Such requirement may require additional time and expense to create the internal controls.

The bill amends provisions related to the prohibition against extra compensation. It requires investigations of allegations, and repayment of any prohibited compensation. It also requires the payment of rewards to individuals who report violations. The changes may result in the recovery of prohibited payments, but it also will have an associated increased workload cost for investigations and the payment of rewards.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the State Constitution may apply because the bill requires county and municipal governments to establish and maintain specified internal controls. An exemption may apply if the bill results in an insignificant fiscal impact to county or municipal governments. An exception also may apply because similarly situated persons are all required to comply and the bill articulates a threshold finding of serving an important state interest.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the State Board of Education to prescribe by rule the filing deadline for the required financial statements. It also requires DFS to specify the form and manner for the submission of water management district monthly financial statements.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues: Line 208

The bill appears to have a typo on line 208 in the definition of "fraud."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to government accountability; amending
3 s. 11.40, F.S.; specifying that the Governor, the
4 Commissioner of Education, or the designee of the
5 Governor or of the Commissioner of Education may
6 notify the Legislative Auditing Committee of an
7 entity's failure to comply with certain auditing and
8 financial reporting requirements; amending s. 11.45,
9 F.S.; defining the terms "abuse", "fraud", and
10 "waste"; revising the definition of "local
11 governmental entity"; excluding water management
12 districts from certain audit requirements; revising
13 reporting requirements applicable to the Auditor
14 General; amending s. 28.35, F.S.; revising reporting
15 requirements applicable to the Florida Clerks of Court
16 Operations Corporation; amending s. 43.16, F.S.;
17 revising the responsibilities of the Justice
18 Administrative Commission, each state attorney, each
19 public defender, a criminal conflict and civil
20 regional counsel, a capital collateral counsel, and
21 the Guardian Ad Litem Program, to include the
22 establishment and maintenance of certain internal
23 controls; amending s. 112.31455, F.S.; authorizing the
24 Chief Financial Officer or a governing body to
25 withhold an amount of a fine owed and related
26 administrative costs from public salary-related

27 | payments of certain individuals; authorizing the Chief
 28 | Financial Officer or a governing body to reduce the
 29 | amount withheld if certain individuals demonstrate a
 30 | hardship; transferring a provision relating to the
 31 | garnishment of wages of specified individuals;
 32 | creating s. 112.31456, F.S.; authorizing the
 33 | Commission on Ethics to seek wage garnishment of
 34 | certain individuals to satisfy unpaid fines;
 35 | authorizing the commission to refer unpaid fines to a
 36 | collection agency; establishing a statute of
 37 | limitations with respect to the collection of an
 38 | unpaid fine; amending s. 112.3261, F.S.; revising
 39 | definitions to conform to changes made by the act;
 40 | expanding the types of governmental entities that are
 41 | subject to lobbyist registration requirements;
 42 | amending ss. 129.03, 129.06, 166.241, and 189.016,
 43 | F.S.; requiring counties, municipalities, and special
 44 | districts to maintain certain budget documents on the
 45 | entities' websites for a specified period; amending s.
 46 | 215.425, F.S.; requiring a unit of government to
 47 | investigate and take necessary action to recover
 48 | prohibited compensation; specifying methods of
 49 | recovery and liability for unintentional and willful
 50 | violations; providing a penalty; authorizing the
 51 | Governor to suspend officers under specified
 52 | circumstances; establishing eligibility criteria and

53 amounts for rewards; specifying circumstances under
 54 which an employee has a cause of action under the
 55 Whistle-blower's Act; establishing causes of action if
 56 a unit of government fails to recover prohibited
 57 compensation within a certain timeframe; amending s.
 58 215.86, F.S.; revising management systems and controls
 59 to be employed by each state agency and the judicial
 60 branch; amending s. 215.97, F.S.; revising the
 61 definition of the term "audit threshold"; amending s.
 62 215.985, F.S.; revising the requirements for a monthly
 63 financial statement provided by a water management
 64 district; amending s. 218.32, F.S.; revising the
 65 requirements of the annual financial audit report of a
 66 local governmental entity; authorizing the Department
 67 of Financial Services to request additional
 68 information from a local governmental entity;
 69 requiring a local governmental entity to respond to
 70 such requests within a specified timeframe; requiring
 71 the department to notify the Legislative Auditing
 72 Committee of noncompliance; amending s. 218.33, F.S.;
 73 requiring local government entities to establish and
 74 maintain internal controls; amending s. 218.39, F.S.;
 75 requiring an audited entity to respond to audit
 76 recommendations under specified circumstances;
 77 amending s. 218.391, F.S.; revising the composition of
 78 an audit committee; restricting the length of a

79 contract period; amending s. 288.92, F.S.; prohibiting
 80 specified officers and board members of Enterprise
 81 Florida, Inc., from representing a person or entity
 82 for compensation before Enterprise Florida, Inc., for
 83 a specified timeframe; amending s. 288.9604, F.S.;
 84 prohibiting a director of the board of directors of
 85 the Florida Development Finance Corporation from
 86 representing a person or entity for compensation
 87 before the corporation for a specified timeframe;
 88 amending s. 373.536, F.S.; deleting obsolete language;
 89 requiring water management districts to maintain
 90 certain budget documents on the districts' websites
 91 for a specified period; amending s. 1002.33, F.S.;
 92 revising the responsibilities of the governing board
 93 of a charter school to include the establishment and
 94 maintenance of internal controls; amending s. 1002.37,
 95 F.S.; requiring completion of an annual financial
 96 audit of the Florida Virtual School; specifying audit
 97 requirements; requiring an audit report to be
 98 submitted to the board of trustees of the Florida
 99 Virtual School and the Auditor General; removing an
 100 obsolete provision; amending s. 1010.01, F.S.;
 101 requiring each school district, Florida College System
 102 institution, and state university to establish and
 103 maintain certain internal controls; amending s.
 104 1010.30, F.S.; requiring a district school board,

105 Florida College System board of trustees, or
 106 university board of trustees to respond to audit
 107 recommendations under certain circumstances; amending
 108 ss. 68.082, 68.083, and 218.503, F.S.; conforming
 109 provisions and cross-references to changes made by the
 110 act; declaring that the act fulfills an important
 111 state interest; providing an effective date.
 112

113 Be It Enacted by the Legislature of the State of Florida:
 114

115 Section 1. Subsection (2) of section 11.40, Florida
 116 Statutes, is amended to read:

117 11.40 Legislative Auditing Committee.—

118 (2) Following notification by the Auditor General, the
 119 Department of Financial Services, ~~or~~ the Division of Bond
 120 Finance of the State Board of Administration, the Governor or
 121 his or her designee, or the Commissioner of Education or his or
 122 her designee of the failure of a local governmental entity,
 123 district school board, charter school, or charter technical
 124 career center to comply with the applicable provisions within s.
 125 11.45(5)-(7), s. 218.32(1), s. 218.38, or s. 218.503(3), the
 126 Legislative Auditing Committee may schedule a hearing to
 127 determine if the entity should be subject to further state
 128 action. If the committee determines that the entity should be
 129 subject to further state action, the committee shall:

130 (a) In the case of a local governmental entity or district

131 school board, direct the Department of Revenue and the
 132 Department of Financial Services to withhold any funds not
 133 pledged for bond debt service satisfaction which are payable to
 134 such entity until the entity complies with the law. The
 135 committee shall specify the date such action shall begin, and
 136 the directive must be received by the Department of Revenue and
 137 the Department of Financial Services 30 days before the date of
 138 the distribution mandated by law. The Department of Revenue and
 139 the Department of Financial Services may implement the
 140 provisions of this paragraph.

141 (b) In the case of a special district created by:

142 1. A special act, notify the President of the Senate, the
 143 Speaker of the House of Representatives, the standing committees
 144 of the Senate and the House of Representatives charged with
 145 special district oversight as determined by the presiding
 146 officers of each respective chamber, the legislators who
 147 represent a portion of the geographical jurisdiction of the
 148 special district pursuant to s. 189.034(2), and the Department
 149 of Economic Opportunity that the special district has failed to
 150 comply with the law. Upon receipt of notification, the
 151 Department of Economic Opportunity shall proceed pursuant to s.
 152 189.062 or s. 189.067. If the special district remains in
 153 noncompliance after the process set forth in s. 189.034(3), or
 154 if a public hearing is not held, the Legislative Auditing
 155 Committee may request the department to proceed pursuant to s.
 156 189.067(3).

157 2. A local ordinance, notify the chair or equivalent of
 158 the local general-purpose government pursuant to s. 189.035(2)
 159 and the Department of Economic Opportunity that the special
 160 district has failed to comply with the law. Upon receipt of
 161 notification, the department shall proceed pursuant to s.
 162 189.062 or s. 189.067. If the special district remains in
 163 noncompliance after the process set forth in s. 189.034(3), or
 164 if a public hearing is not held, the Legislative Auditing
 165 Committee may request the department to proceed pursuant to s.
 166 189.067(3).

167 3. Any manner other than a special act or local ordinance,
 168 notify the Department of Economic Opportunity that the special
 169 district has failed to comply with the law. Upon receipt of
 170 notification, the department shall proceed pursuant to s.
 171 189.062 or s. 189.067(3).

172 (c) In the case of a charter school or charter technical
 173 career center, notify the appropriate sponsoring entity, which
 174 may terminate the charter pursuant to ss. 1002.33 and 1002.34.

175 Section 2. Subsection (1), paragraph (j) of subsection
 176 (2), and paragraph (i) of subsection (7) of section 11.45,
 177 Florida Statutes, are amended to read:

178 11.45 Definitions; duties; authorities; reports; rules.-

179 (1) DEFINITIONS.—As used in ss. 11.40-11.51, the term:

180 (a) "Abuse" means behavior that is deficient or improper
 181 when compared with behavior that a prudent person would consider
 182 reasonable and necessary operational practice given the facts

183 and circumstances. The term includes the misuse of authority or
 184 position for personal gain or for the benefit of another.

185 (b)~~(a)~~ "Audit" means a financial audit, operational audit,
 186 or performance audit.

187 (c)~~(b)~~ "County agency" means a board of county
 188 commissioners or other legislative and governing body of a
 189 county, however styled, including that of a consolidated or
 190 metropolitan government, a clerk of the circuit court, a
 191 separate or ex officio clerk of the county court, a sheriff, a
 192 property appraiser, a tax collector, a supervisor of elections,
 193 or any other officer in whom any portion of the fiscal duties of
 194 the above are under law separately placed.

195 (d)~~(e)~~ "Financial audit" means an examination of financial
 196 statements in order to express an opinion on the fairness with
 197 which they are presented in conformity with generally accepted
 198 accounting principles and an examination to determine whether
 199 operations are properly conducted in accordance with legal and
 200 regulatory requirements. Financial audits must be conducted in
 201 accordance with auditing standards generally accepted in the
 202 United States and government auditing standards as adopted by
 203 the Board of Accountancy. When applicable, the scope of
 204 financial audits shall encompass the additional activities
 205 necessary to establish compliance with the Single Audit Act
 206 Amendments of 1996, 31 U.S.C. ss. 7501-7507, and other
 207 applicable federal law.

208 (e) "Fraud" means obtaining of something of value through

209 willful misrepresentation, including, but not limited to, the
 210 intentional misstatements or omissions of amounts or disclosures
 211 in financial statements to deceive users of financial
 212 statements, theft of an entity's assets, bribery, or the use of
 213 one's position for personal enrichment through the deliberate
 214 misuse or misapplication of an organization's resources.

215 (f)~~(d)~~ "Governmental entity" means a state agency, a
 216 county agency, or any other entity, however styled, that
 217 independently exercises any type of state or local governmental
 218 function.

219 (g)~~(e)~~ "Local governmental entity" means a county agency,
 220 municipality, tourist development council, county tourism
 221 promotion agency, or special district as defined in s. 189.012.
 222 The term,~~but~~ does not include any housing authority established
 223 under chapter 421.

224 (h)~~(f)~~ "Management letter" means a statement of the
 225 auditor's comments and recommendations.

226 (i)~~(g)~~ "Operational audit" means an audit whose purpose is
 227 to evaluate management's performance in establishing and
 228 maintaining internal controls, including controls designed to
 229 prevent and detect fraud, waste, and abuse, and in administering
 230 assigned responsibilities in accordance with applicable laws,
 231 administrative rules, contracts, grant agreements, and other
 232 guidelines. Operational audits must be conducted in accordance
 233 with government auditing standards. Such audits examine internal
 234 controls that are designed and placed in operation to promote

235 and encourage the achievement of management's control objectives
 236 in the categories of compliance, economic and efficient
 237 operations, reliability of financial records and reports, and
 238 safeguarding of assets, and identify weaknesses in those
 239 internal controls.

240 (j)~~(h)~~ "Performance audit" means an examination of a
 241 program, activity, or function of a governmental entity,
 242 conducted in accordance with applicable government auditing
 243 standards or auditing and evaluation standards of other
 244 appropriate authoritative bodies. The term includes an
 245 examination of issues related to:

- 246 1. Economy, efficiency, or effectiveness of the program.
- 247 2. Structure or design of the program to accomplish its
 248 goals and objectives.
- 249 3. Adequacy of the program to meet the needs identified by
 250 the Legislature or governing body.
- 251 4. Alternative methods of providing program services or
 252 products.
- 253 5. Goals, objectives, and performance measures used by the
 254 agency to monitor and report program accomplishments.
- 255 6. The accuracy or adequacy of public documents, reports,
 256 or requests prepared under the program by state agencies.
- 257 7. Compliance of the program with appropriate policies,
 258 rules, or laws.
- 259 8. Any other issues related to governmental entities as
 260 directed by the Legislative Auditing Committee.

261 (k)~~(i)~~ "Political subdivision" means a separate agency or
 262 unit of local government created or established by law and
 263 includes, but is not limited to, the following and the officers
 264 thereof: authority, board, branch, bureau, city, commission,
 265 consolidated government, county, department, district,
 266 institution, metropolitan government, municipality, office,
 267 officer, public corporation, town, or village.

268 (l)~~(j)~~ "State agency" means a separate agency or unit of
 269 state government created or established by law and includes, but
 270 is not limited to, the following and the officers thereof:
 271 authority, board, branch, bureau, commission, department,
 272 division, institution, office, officer, or public corporation,
 273 as the case may be, except any such agency or unit within the
 274 legislative branch of state government other than the Florida
 275 Public Service Commission.

276 (m) "Waste" means the act of using or expending resources
 277 unreasonably, carelessly, extravagantly, or for no useful
 278 purpose.

279 (2) DUTIES.—The Auditor General shall:

280 (j) Conduct audits of local governmental entities when
 281 determined to be necessary by the Auditor General, when directed
 282 by the Legislative Auditing Committee, or when otherwise
 283 required by law. No later than 18 months after the release of
 284 the audit report, the Auditor General shall perform such
 285 appropriate followup procedures as he or she deems necessary to
 286 determine the audited entity's progress in addressing the

287 findings and recommendations contained within the Auditor
 288 General's previous report. The Auditor General shall notify each
 289 member of the audited entity's governing body and the
 290 Legislative Auditing Committee of the results of his or her
 291 determination. For purposes of this paragraph, local
 292 governmental entities do not include water management districts.
 293

294 The Auditor General shall perform his or her duties
 295 independently but under the general policies established by the
 296 Legislative Auditing Committee. This subsection does not limit
 297 the Auditor General's discretionary authority to conduct other
 298 audits or engagements of governmental entities as authorized in
 299 subsection (3).

300 (7) AUDITOR GENERAL REPORTING REQUIREMENTS.—

301 (i) The Auditor General shall annually transmit by July
 302 15, to the President of the Senate, the Speaker of the House of
 303 Representatives, and the Department of Financial Services, a
 304 list of all school districts, charter schools, charter technical
 305 career centers, Florida College System institutions, state
 306 universities, and local governmental entities ~~water management~~
 307 ~~districts~~ that have failed to comply with the transparency
 308 requirements as identified in the audit reports reviewed
 309 pursuant to paragraph (b) and those conducted pursuant to
 310 subsection (2).

311 Section 3. Paragraph (d) of subsection (2) of section
 312 28.35, Florida Statutes, is amended to read:

313 28.35 Florida Clerks of Court Operations Corporation.—

314 (2) The duties of the corporation shall include the
 315 following:

316 (d) Developing and certifying a uniform system of workload
 317 measures and applicable workload standards for court-related
 318 functions as developed by the corporation and clerk workload
 319 performance in meeting the workload performance standards. These
 320 workload measures and workload performance standards shall be
 321 designed to facilitate an objective determination of the
 322 performance of each clerk in accordance with minimum standards
 323 for fiscal management, operational efficiency, and effective
 324 collection of fines, fees, service charges, and court costs. The
 325 corporation shall develop the workload measures and workload
 326 performance standards in consultation with the Legislature. When
 327 the corporation finds a clerk has not met the workload
 328 performance standards, the corporation shall identify the nature
 329 of each deficiency and any corrective action recommended and
 330 taken by the affected clerk of the court. For quarterly periods
 331 ending on the last day of March, June, September, and December
 332 of each year, the corporation shall notify the Legislature of
 333 any clerk not meeting workload performance standards and provide
 334 a copy of any corrective action plans. Such notifications shall
 335 be submitted no later than 45 days after the end of the
 336 preceding quarterly period. As used in this subsection, the
 337 term:

338 1. "Workload measures" means the measurement of the

339 activities and frequency of the work required for the clerk to
 340 adequately perform the court-related duties of the office as
 341 defined by the membership of the Florida Clerks of Court
 342 Operations Corporation.

343 2. "Workload performance standards" means the standards
 344 developed to measure the timeliness and effectiveness of the
 345 activities that are accomplished by the clerk in the performance
 346 of the court-related duties of the office as defined by the
 347 membership of the Florida Clerks of Court Operations
 348 Corporation.

349 Section 4. Present subsections (6) and (7) of section
 350 43.16, Florida Statutes, are redesignated as subsections (7) and
 351 (8), respectively, and a new subsection (6) is added to that
 352 section, to read:

353 43.16 Justice Administrative Commission; membership,
 354 powers and duties.—

355 (6) The commission, each state attorney, each public
 356 defender, the criminal conflict and civil regional counsel, the
 357 capital collateral regional counsel, and the Guardian Ad Litem
 358 Program shall establish and maintain internal controls designed
 359 to:

- 360 (a) Prevent and detect fraud, waste, and abuse.
- 361 (b) Promote and encourage compliance with applicable laws,
- 362 rules, contracts, grant agreements, and best practices.
- 363 (c) Support economic and efficient operations.
- 364 (d) Ensure reliability of records and reports.

365 (e) Safeguard assets.

366 Section 5. Section 112.31455, Florida Statutes, is amended
367 to read:

368 112.31455 Withholding of public salary-related payments
369 ~~Collection methods~~ for unpaid automatic fines for failure to
370 timely file disclosure of financial interests.—

371 (1) Before referring any unpaid fine accrued pursuant to
372 s. 112.3144(5) or s. 112.3145(7) ~~s. 112.3145(6)~~ to the
373 Department of Financial Services, the commission shall attempt
374 to determine whether the individual owing such a fine is a
375 current public officer or current public employee. If so, the
376 commission may notify the Chief Financial Officer or the
377 governing body of the appropriate county, municipality, or
378 special district of the total amount of any fine owed to the
379 commission by such individual.

380 (a) After receipt and verification of the notice from the
381 commission, the Chief Financial Officer or the governing body of
382 the county, municipality, or special district shall withhold the
383 entire amount of any fine owed, and any administrative costs
384 incurred, from the individual's next public salary-related
385 payment. If the fine exceeds the amount of the next public
386 salary-related payment, all public salary-related payments must
387 be withheld until the fine and administrative costs are paid in
388 full ~~begin withholding the lesser of 10 percent or the maximum~~
389 ~~amount allowed under federal law from any salary-related~~
390 ~~payment.~~ The Chief Financial Officer or the governing body of

391 the county, municipality, or special district may retain an
 392 amount of each withheld payment, as provided in s. 77.0305, to
 393 cover the administrative costs incurred under this section. The
 394 withheld payments shall be remitted to the commission until the
 395 fine is satisfied.

396 ~~(b) The Chief Financial Officer or the governing body of~~
 397 ~~the county, municipality, or special district may retain an~~
 398 ~~amount of each withheld payment, as provided in s. 77.0305, to~~
 399 ~~cover the administrative costs incurred under this section.~~

400 (b) If a current public officer or current public employee
 401 demonstrates to the Chief Financial Officer or the governing
 402 body responsible for paying him or her that the public salary is
 403 his or her primary source of income and that withholding the
 404 full amount of any fine owed from a public salary-related
 405 payment would present an undue hardship, the withheld amount may
 406 be reduced but must be at least 10 percent of the public salary-
 407 related payment.

408 ~~(2) If the commission determines that the individual who~~
 409 ~~is the subject of an unpaid fine accrued pursuant to s.~~
 410 ~~112.3144(5) or s. 112.3145(6) is no longer a public officer or~~
 411 ~~public employee or if the commission is unable to determine~~
 412 ~~whether the individual is a current public officer or public~~
 413 ~~employee, the commission may, 6 months after the order becomes~~
 414 ~~final, seek garnishment of any wages to satisfy the amount of~~
 415 ~~the fine, or any unpaid portion thereof, pursuant to chapter 77.~~
 416 ~~Upon recording the order imposing the fine with the clerk of the~~

417 ~~ircuit court, the order shall be deemed a judgment for purposes~~
 418 ~~of garnishment pursuant to chapter 77.~~

419 ~~(2)~~⁽³⁾ The commission may refer unpaid fines to the
 420 appropriate collection agency, as directed by the Chief
 421 Financial Officer, to use ~~utilize~~ any collection methods
 422 provided by law. Except as expressly limited by this section,
 423 any other collection methods authorized by law are allowed.

424 ~~(3)~~⁽⁴⁾ Action may be taken to collect any unpaid fine
 425 imposed by ss. 112.3144 and 112.3145 within 20 years after the
 426 date the final order is rendered.

427 Section 6. Section 112.31456, Florida Statutes, is created
 428 to read:

429 112.31456 Garnishment of wages for unpaid automatic fines
 430 for failure to timely file disclosure of financial interests.-

431 (1) Before referring any unpaid fine accrued pursuant to
 432 s. 112.3144(5) or s. 112.3145(7) to the Department of Financial
 433 Services, the commission shall attempt to determine whether the
 434 individual owing such a fine is a current public officer or
 435 current public employee. If the commission determines that an
 436 individual who is the subject of an unpaid fine accrued pursuant
 437 to s. 112.3144(5) or s. 112.3145(7) is no longer a public
 438 officer or public employee or if the commission cannot determine
 439 whether the individual is a current public officer or current
 440 public employee, the commission may, 6 months after the order
 441 becomes final, seek garnishment of any wages to satisfy the
 442 amount of the fine, or any unpaid portion thereof, pursuant to

443 chapter 77. Upon recording the order imposing the fine with the
 444 clerk of the circuit court, the order shall be deemed a judgment
 445 for purposes of garnishment pursuant to chapter 77.

446 (2) The commission may refer unpaid fines to the
 447 appropriate collection agency, as directed by the Chief
 448 Financial Officer, to use any collection methods provided by
 449 law. Except as expressly limited by this section, any other
 450 collection method authorized by law is allowed.

451 (3) Action may be taken to collect any unpaid fine imposed
 452 by ss. 112.3144 and 112.3145 within 20 years after the date the
 453 final order is rendered.

454 Section 7. Section 112.3261, Florida Statutes, is amended
 455 to read:

456 112.3261 Lobbying before governmental entities ~~water~~
 457 ~~management districts~~; registration and reporting.-

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

459 (a) "Governmental entity" or "entity" ~~"District"~~ means a
 460 water management district created in s. 373.069 and operating
 461 under the authority of chapter 373, a hospital district, a
 462 children's services district, an expressway authority as the
 463 term "authority" is defined in s. 348.0002, a port authority as
 464 the term is defined in s. 315.02, or an independent special
 465 district with annual revenues of more than \$5 million which
 466 exercises ad valorem taxing authority.

467 (b) "Lobbies" means seeking, on behalf of another person,
 468 to influence a governmental entity ~~district~~ with respect to a

469 decision of the entity ~~district~~ in an area of policy or
 470 procurement or an attempt to obtain the goodwill of an ~~a~~
 471 ~~district~~ official or employee of a governmental entity. The term
 472 "lobbies" shall be interpreted and applied consistently with the
 473 rules of the commission implementing s. 112.3215.

474 (c) "Lobbyist" has the same meaning as provided in s.
 475 112.3215.

476 (d) "Principal" has the same meaning as provided in s.
 477 112.3215.

478 (2) A person may not lobby a governmental entity ~~district~~
 479 until such person has registered as a lobbyist with that entity
 480 ~~district~~. Such registration shall be due upon initially being
 481 retained to lobby and is renewable on a calendar-year basis
 482 thereafter. Upon registration, the person shall provide a
 483 statement signed by the principal or principal's representative
 484 stating that the registrant is authorized to represent the
 485 principal. The principal shall also identify and designate its
 486 main business on the statement authorizing that lobbyist
 487 pursuant to a classification system approved by the governmental
 488 entity ~~district~~. Any changes to the information required by this
 489 section must be disclosed within 15 days by filing a new
 490 registration form. The registration form shall require each
 491 lobbyist to disclose, under oath, the following:

492 (a) The lobbyist's name and business address.

493 (b) The name and business address of each principal
 494 represented.

495 (c) The existence of any direct or indirect business
 496 association, partnership, or financial relationship with an
 497 official ~~any officer~~ or employee of a governmental entity
 498 ~~district~~ with which he or she lobbies or intends to lobby.

499 (d) In lieu of creating its own lobbyist registration
 500 forms, a governmental entity ~~district~~ may accept a completed
 501 legislative branch or executive branch lobbyist registration
 502 form.

503 (3) A governmental entity ~~district~~ shall make lobbyist
 504 registrations available to the public. If a governmental entity
 505 ~~district~~ maintains a website, a database of currently registered
 506 lobbyists and principals must be available on the entity's
 507 ~~district's~~ website.

508 (4) A lobbyist shall promptly send a written statement to
 509 the governmental entity ~~district~~ canceling the registration for
 510 a principal upon termination of the lobbyist's representation of
 511 that principal. A governmental entity ~~district~~ may remove the
 512 name of a lobbyist from the list of registered lobbyists if the
 513 principal notifies the entity ~~district~~ that a person is no
 514 longer authorized to represent that principal.

515 (5) A governmental entity ~~district~~ may establish an annual
 516 lobbyist registration fee, not to exceed \$40, for each principal
 517 represented. The governmental entity ~~district~~ may use
 518 registration fees only to administer this section.

519 (6) A governmental entity ~~district~~ shall be diligent to
 520 ascertain whether persons required to register pursuant to this

521 section have complied. A governmental entity ~~district~~ may not
 522 knowingly authorize a person who is not registered pursuant to
 523 this section to lobby the entity ~~district~~.

524 (7) Upon receipt of a sworn complaint alleging that a
 525 lobbyist or principal has failed to register with a governmental
 526 entity ~~district~~ or has knowingly submitted false information in
 527 a report or registration required under this section, the
 528 commission shall investigate a lobbyist or principal pursuant to
 529 the procedures established under s. 112.324. The commission
 530 shall provide the Governor with a report of its findings and
 531 recommendations in any investigation conducted pursuant to this
 532 subsection. The Governor is authorized to enforce the
 533 commission's findings and recommendations.

534 (8) A governmental entity ~~Water management districts~~ may
 535 adopt rules to establish procedures to govern the registration
 536 of lobbyists, including the adoption of forms and the
 537 establishment of a lobbyist registration fee.

538 Section 8. Paragraph (c) of subsection (3) of section
 539 129.03, Florida Statutes, is amended to read:

540 129.03 Preparation and adoption of budget.—

541 (3) The county budget officer, after tentatively
 542 ascertaining the proposed fiscal policies of the board for the
 543 next fiscal year, shall prepare and present to the board a
 544 tentative budget for the next fiscal year for each of the funds
 545 provided in this chapter, including all estimated receipts,
 546 taxes to be levied, and balances expected to be brought forward

547 | and all estimated expenditures, reserves, and balances to be
 548 | carried over at the end of the year.

549 | (c) The board shall hold public hearings to adopt
 550 | tentative and final budgets pursuant to s. 200.065. The hearings
 551 | shall be primarily for the purpose of hearing requests and
 552 | complaints from the public regarding the budgets and the
 553 | proposed tax levies and for explaining the budget and any
 554 | proposed or adopted amendments. The tentative budget must be
 555 | posted on the county's official website at least 2 days before
 556 | the public hearing to consider such budget and must remain on
 557 | the website for at least 45 days. The final budget must be
 558 | posted on the website within 30 days after adoption and must
 559 | remain on the website for at least 2 years. The tentative
 560 | budgets, adopted tentative budgets, and final budgets shall be
 561 | filed in the office of the county auditor as a public record.
 562 | Sufficient reference in words and figures to identify the
 563 | particular transactions shall be made in the minutes of the
 564 | board to record its actions with reference to the budgets.

565 | Section 9. Paragraph (f) of subsection (2) of section
 566 | 129.06, Florida Statutes, is amended to read:

567 | 129.06 Execution and amendment of budget.—

568 | (2) The board at any time within a fiscal year may amend a
 569 | budget for that year, and may within the first 60 days of a
 570 | fiscal year amend the budget for the prior fiscal year, as
 571 | follows:

572 | (f) Unless otherwise prohibited by law, if an amendment to

573 a budget is required for a purpose not specifically authorized
 574 in paragraphs (a)-(e), the amendment may be authorized by
 575 resolution or ordinance of the board of county commissioners
 576 adopted following a public hearing.

577 1. The public hearing must be advertised at least 2 days,
 578 but not more than 5 days, before the date of the hearing. The
 579 advertisement must appear in a newspaper of paid general
 580 circulation and must identify the name of the taxing authority,
 581 the date, place, and time of the hearing, and the purpose of the
 582 hearing. The advertisement must also identify each budgetary
 583 fund to be amended, the source of the funds, the use of the
 584 funds, and the total amount of each fund's appropriations.

585 2. If the board amends the budget pursuant to this
 586 paragraph, the adopted amendment must be posted on the county's
 587 official website within 5 days after adoption and must remain on
 588 the website for at least 2 years.

589 Section 10. Subsections (3) and (5) of section 166.241,
 590 Florida Statutes, are amended to read:

591 166.241 Fiscal years, budgets, and budget amendments.—

592 (3) The tentative budget must be posted on the
 593 municipality's official website at least 2 days before the
 594 budget hearing, held pursuant to s. 200.065 or other law, to
 595 consider such budget, and must remain on the website for at
 596 least 45 days. The final adopted budget must be posted on the
 597 municipality's official website within 30 days after adoption
 598 and must remain on the website for at least 2 years. If the

599 municipality does not operate an official website, the
 600 municipality must, within a reasonable period of time as
 601 established by the county or counties in which the municipality
 602 is located, transmit the tentative budget and final budget to
 603 the manager or administrator of such county or counties who
 604 shall post the budgets on the county's website.

605 (5) If the governing body of a municipality amends the
 606 budget pursuant to paragraph (4)(c), the adopted amendment must
 607 be posted on the official website of the municipality within 5
 608 days after adoption and must remain on the website for at least
 609 2 years. If the municipality does not operate an official
 610 website, the municipality must, within a reasonable period of
 611 time as established by the county or counties in which the
 612 municipality is located, transmit the adopted amendment to the
 613 manager or administrator of such county or counties who shall
 614 post the adopted amendment on the county's website.

615 Section 11. Subsections (4) and (7) of section 189.016,
 616 Florida Statutes, are amended to read:

617 189.016 Reports; budgets; audits.—

618 (4) The tentative budget must be posted on the special
 619 district's official website at least 2 days before the budget
 620 hearing, held pursuant to s. 200.065 or other law, to consider
 621 such budget, and must remain on the website for at least 45
 622 days. The final adopted budget must be posted on the special
 623 district's official website within 30 days after adoption and
 624 must remain on the website for at least 2 years. If the special

625 district does not operate an official website, the special
 626 district must, within a reasonable period of time as established
 627 by the local general-purpose government or governments in which
 628 the special district is located or the local governing authority
 629 to which the district is dependent, transmit the tentative
 630 budget or final budget to the manager or administrator of the
 631 local general-purpose government or the local governing
 632 authority. The manager or administrator shall post the tentative
 633 budget or final budget on the website of the local general-
 634 purpose government or governing authority. This subsection and
 635 subsection (3) do not apply to water management districts as
 636 defined in s. 373.019.

637 (7) If the governing body of a special district amends the
 638 budget pursuant to paragraph (6)(c), the adopted amendment must
 639 be posted on the official website of the special district within
 640 5 days after adoption and must remain on the website for at
 641 least 2 years. If the special district does not operate an
 642 official website, the special district must, within a reasonable
 643 period of time as established by the local general-purpose
 644 government or governments in which the special district is
 645 located or the local governing authority to which the district
 646 is dependent, transmit the adopted amendment to the manager or
 647 administrator of the local general-purpose government or
 648 governing authority. The manager or administrator shall post the
 649 adopted amendment on the website of the local general-purpose
 650 government or governing authority.

651 Section 12. Subsections (6) through (10) are added to
 652 section 215.425, Florida Statutes, to read:

653 215.425 Extra compensation claims prohibited; bonuses;
 654 severance pay.—

655 (6) Upon discovery or notification that a unit of
 656 government has provided prohibited compensation to any officer,
 657 agent, employee, or contractor in violation of this section,
 658 such unit of government shall investigate and take all necessary
 659 action to recover the prohibited compensation.

660 (a) If the violation was unintentional, the unit of
 661 government shall recover the prohibited compensation from the
 662 individual receiving the prohibited compensation through normal
 663 recovery methods for overpayments.

664 (b) If the violation was willful, the unit of government
 665 shall recover the prohibited compensation from either the
 666 individual receiving the prohibited compensation or the
 667 individual or individuals responsible for approving the
 668 prohibited compensation. Each individual determined to have
 669 willfully violated this section is jointly and severally liable
 670 for repayment of the prohibited compensation.

671 (7) A person who willfully violates this section commits a
 672 misdemeanor of the first degree, punishable as provided in s.
 673 775.082 or s. 775.083. The Governor may suspend an officer who
 674 willfully violates this section.

675 (8) (a) A person who reports a violation of this section is
 676 eligible for a reward of at least \$500, or the lesser of 10

677 percent of the funds recovered or \$10,000 per incident of a
 678 prohibited compensation payment recovered by the unit of
 679 government, depending upon the extent to which the person
 680 substantially contributed to the discovery, notification, and
 681 recovery of such prohibited payment.

682 (b) In the event that the recovery of the prohibited
 683 compensation is based primarily on disclosures of specific
 684 information, other than information provided by such person,
 685 relating to allegations or transactions in a criminal, civil, or
 686 administrative hearing; a legislative, administrative, inspector
 687 general, or other government report; auditor general report,
 688 hearing, audit, or investigation; or from the news media, such
 689 person is not eligible for a reward, or for an award of a
 690 portion of the proceeds or payment of attorney fees and costs
 691 pursuant to s. 68.085.

692 (c) If it is determined that the person who reported a
 693 violation of this section was involved in the authorization,
 694 approval, or receipt of the prohibited compensation or is
 695 convicted of criminal conduct arising from his or her role in
 696 the authorization, approval, or receipt of the prohibited
 697 compensation, such person is not eligible for a reward, or for
 698 an award of a portion of the proceeds or payment of attorney
 699 fees and costs pursuant to s. 68.085.

700 (9) An employee who is discharged, demoted, suspended,
 701 threatened, harassed, or in any manner discriminated against in
 702 the terms and conditions of employment by his or her employer

703 because of lawful acts done by the employee on behalf of the
 704 employee or others in furtherance of an action under this
 705 section, including investigation for initiation of, testimony
 706 for, or assistance in an action filed or to be filed under this
 707 section, has a cause of action under s. 112.3187.

708 (10) If the unit of government fails to recover prohibited
 709 compensation for a willful violation of this section upon
 710 discovery and notification of such prohibited payment within 90
 711 days, a cause of action may be brought to:

712 (a) Recover state funds in accordance with ss. 68.082 and
 713 68.083.

714 (b) Recover other funds by the Department of Legal Affairs
 715 using the procedures set forth in ss. 68.082 and 68.083, except
 716 that venue shall lie in the circuit court of the county in which
 717 the unit of government is located.

718 (c) Recover other funds by a person using the procedures
 719 set forth in ss. 68.082 and 68.083, except that venue shall lie
 720 in the circuit court of the county in which the unit of
 721 government is located.

722 Section 13. Section 215.86, Florida Statutes, is amended
 723 to read:

724 215.86 Management systems and controls.—Each state agency
 725 and the judicial branch as defined in s. 216.011 shall establish
 726 and maintain management systems and internal controls designed
 727 to:

728 (1) Prevent and detect fraud, waste, and abuse. ~~that~~

729 (2) Promote and encourage compliance with applicable laws,
 730 rules, contracts, grant agreements, and best practices.†

731 (3) Support economic, efficient, and effective
 732 operations.†

733 (4) Ensure reliability of records and reports.†

734 (5) Safeguard ~~and safeguarding of~~ assets. ~~Accounting~~
 735 ~~systems and procedures shall be designed to fulfill the~~
 736 ~~requirements of generally accepted accounting principles.~~

737 Section 14. Paragraph (a) of subsection (2) of section
 738 215.97, Florida Statutes, is amended to read:

739 215.97 Florida Single Audit Act.—

740 (2) Definitions; as used in this section, the term:

741 (a) "Audit threshold" means the threshold amount used to
 742 determine when a state single audit or project-specific audit of
 743 a nonstate entity shall be conducted in accordance with this
 744 section. Each nonstate entity that expends a total amount of
 745 state financial assistance equal to or in excess of \$750,000
 746 ~~\$500,000~~ in any fiscal year of such nonstate entity shall be
 747 required to have a state single audit, or a project-specific
 748 audit, for such fiscal year in accordance with the requirements
 749 of this section. Periodically, ~~Every 2 years~~ the Auditor
 750 General, after consulting with the Executive Office of the
 751 Governor, the Department of Financial Services, and all state
 752 awarding agencies, shall review the threshold amount for
 753 requiring audits under this section and, if appropriate, may
 754 recommend to the Legislature a statutory change to revise the

755 threshold amount in the annual report submitted pursuant to s.
 756 11.45(7)(f) may adjust such threshold amount consistent with the
 757 purposes of this section.

758 Section 15. Subsection (11) of section 215.985, Florida
 759 Statutes, is amended to read:

760 215.985 Transparency in government spending.—

761 (11) Each water management district shall provide a
 762 monthly financial statement in the form and manner prescribed by
 763 the Department of Financial Services to the district's its
 764 governing board and make such monthly financial statement
 765 available for public access on its website.

766 Section 16. Paragraph (d) of subsection (1) and subsection
 767 (2) of section 218.32, Florida Statutes, are amended to read:

768 218.32 Annual financial reports; local governmental
 769 entities.—

770 (1)

771 (d) Each local governmental entity that is required to
 772 provide for an audit under s. 218.39(1) must submit a copy of
 773 the audit report and annual financial report to the department
 774 within 45 days after the completion of the audit report but no
 775 later than 9 months after the end of the fiscal year. An
 776 independent certified public accountant completing an audit of a
 777 local governmental entity pursuant to s. 218.39 shall report, as
 778 part of the audit, whether or not the entity's annual financial
 779 report is in agreement with the audit report, and, if the report
 780 is not in agreement, shall specify the significant differences

781 that exist between the annual financial report and the audit
 782 report.

783 (2) The department shall annually by December 1 file a
 784 verified report with the Governor, the Legislature, the Auditor
 785 General, and the Special District Accountability Program of the
 786 Department of Economic Opportunity showing the revenues, both
 787 locally derived and derived from intergovernmental transfers,
 788 and the expenditures of each local governmental entity, regional
 789 planning council, local government finance commission, and
 790 municipal power corporation that is required to submit an annual
 791 financial report. In preparing the verified report, the
 792 department may request additional information from the local
 793 governmental entity. The information requested must be provided
 794 to the department within 45 days of the request. If the local
 795 governmental entity does not comply with the request, the
 796 department shall notify the Legislative Auditing Committee,
 797 which may take action pursuant to s. 11.40(2). The report must
 798 include, but is not limited to:

799 (a) The total revenues and expenditures of each local
 800 governmental entity that is a component unit included in the
 801 annual financial report of the reporting entity.

802 (b) The amount of outstanding long-term debt by each local
 803 governmental entity. For purposes of this paragraph, the term
 804 "long-term debt" means any agreement or series of agreements to
 805 pay money, which, at inception, contemplate terms of payment
 806 exceeding 1 year in duration.

807 Section 17. Present subsection (3) of section 218.33,
 808 Florida Statutes, is redesignated as subsection (4), and a new
 809 subsection (3) is added to that section, to read:

810 218.33 Local governmental entities; establishment of
 811 uniform fiscal years and accounting practices and procedures.—

812 (3) Each local governmental entity shall establish and
 813 maintain internal controls designed to:

814 (a) Prevent and detect fraud, waste, and abuse.

815 (b) Promote and encourage compliance with applicable laws,
 816 rules, contracts, grant agreements, and best practices.

817 (c) Support economic and efficient operations.

818 (d) Ensure reliability of financial records and reports.

819 (e) Safeguard assets.

820 Section 18. Present subsections (8) through (12) of
 821 section 218.39, Florida Statutes, are redesignated as
 822 subsections (9) through (13), respectively, and a new subsection
 823 (8) is added to that section, to read:

824 218.39 Annual financial audit reports.—

825 (8) If the audit report includes a recommendation that was
 826 previously included in the preceding financial audit report, the
 827 governing body of the audited entity, within 60 days after the
 828 delivery of the audit report to the governing body and during a
 829 regularly scheduled public meeting, shall indicate its intent
 830 regarding corrective action, the corrective action to be taken,
 831 and when the corrective action will occur. If the governing body
 832 does not intend to take corrective action, it shall explain why

833 such action will not be taken at the regularly scheduled public
 834 meeting.

835 Section 19. Subsection (2) and paragraph (c) of subsection
 836 (7) of section 218.391, Florida Statutes, are amended to read:

837 218.391 Auditor selection procedures.-

838 (2) The governing body of a ~~charter~~ county, municipality,
 839 special district, district school board, charter school, or
 840 charter technical career center shall establish an audit
 841 committee. For a county, the ~~Each noncharter county shall~~
 842 ~~establish an~~ audit committee ~~that~~, at a minimum, shall consist
 843 of each of the county officers elected pursuant to the county
 844 charter or s. 1(d), Art. VIII of the State Constitution, or a
 845 designee, and one member of the board of county commissioners or
 846 its designee. For a municipality or a special district, the
 847 audit committee shall consist of at least three members, who
 848 must be members of the governing body of the municipality or the
 849 special district, respectively. For a county, municipality, or
 850 special district, a member of the audit committee may not
 851 exercise financial management responsibilities for the county,
 852 municipality, or special district. The primary purpose of the
 853 audit committee is to assist the governing body in selecting an
 854 auditor to conduct the annual financial audit required in s.
 855 218.39; however, the audit committee may serve other audit
 856 oversight purposes as determined by the entity's governing body.
 857 The public may ~~shall~~ not be excluded from the proceedings under
 858 this section.

859 (7) Every procurement of audit services shall be evidenced
 860 by a written contract embodying all provisions and conditions of
 861 the procurement of such services. For purposes of this section,
 862 an engagement letter signed and executed by both parties shall
 863 constitute a written contract. The written contract shall, at a
 864 minimum, include the following:

865 (c) A provision specifying the contract period, including
 866 renewals, and conditions under which the contract may be
 867 terminated or renewed. The contract period, including renewals,
 868 may not exceed 2 years.

869 Section 20. Paragraph (b) of subsection (2) of section
 870 288.92, Florida Statutes, is amended to read:

871 288.92 Divisions of Enterprise Florida, Inc.-

872 (2)

873 (b)1. The following officers and board members are subject
 874 to ss. 112.313(1)-(8), (10), (12), and (15); 112.3135; and
 875 112.3143(2):

876 a. Officers and members of the board of directors of the
 877 divisions of Enterprise Florida, Inc.

878 b. Officers and members of the board of directors of
 879 subsidiaries of Enterprise Florida, Inc.

880 c. Officers and members of the board of directors of
 881 corporations created to carry out the missions of Enterprise
 882 Florida, Inc.

883 d. Officers and members of the board of directors of
 884 corporations with which a division is required by law to

885 contract to carry out its missions.

886 2. The officers and members of the board of directors
 887 specified in subparagraph 1. may not represent another person or
 888 entity for compensation before Enterprise Florida, Inc., for a
 889 period of 2 years after retirement from or termination of
 890 service to a division.

891 ~~3.2.~~ For purposes of applying ss. 112.313(1)-(8), (10),
 892 (12), and (15); 112.3135; and 112.3143(2) to activities of the
 893 officers and members of the board of directors specified in
 894 subparagraph 1., those persons shall be considered public
 895 officers or employees and the corporation shall be considered
 896 their agency.

897 ~~4.3.~~ It is not a violation of s. 112.3143(2) or (4) for
 898 the officers or members of the board of directors of the Florida
 899 Tourism Industry Marketing Corporation to:

900 a. Vote on the 4-year marketing plan required under s.
 901 288.923 or vote on any individual component of or amendment to
 902 the plan.

903 b. Participate in the establishment or calculation of
 904 payments related to the private match requirements of s.
 905 288.904(3). The officer or member must file an annual disclosure
 906 describing the nature of his or her interests or the interests
 907 of his or her principals, including corporate parents and
 908 subsidiaries of his or her principal, in the private match
 909 requirements. This annual disclosure requirement satisfies the
 910 disclosure requirement of s. 112.3143(4). This disclosure must

911 be placed either on the Florida Tourism Industry Marketing
 912 Corporation's website or included in the minutes of each meeting
 913 of the Florida Tourism Industry Marketing Corporation's board of
 914 directors at which the private match requirements are discussed
 915 or voted upon.

916 Section 21. Paragraph (a) of subsection (3) of section
 917 288.9604, Florida Statutes, is amended to read:

918 288.9604 Creation of the authority.—

919 (3)(a)1. A director may not receive compensation for his
 920 or her services, but is entitled to necessary expenses,
 921 including travel expenses, incurred in the discharge of his or
 922 her duties. Each director shall hold office until his or her
 923 successor has been appointed.

924 2. Directors are subject to ss. 112.313(1)-(8), (10),
 925 (12), and (15); 112.3135; and 112.3143(2). For purposes of
 926 applying ss. 112.313(1)-(8), (10), (12), and (15); 112.3135; and
 927 112.3143(2) to activities of directors, directors shall be
 928 considered public officers and the corporation shall be
 929 considered their agency.

930 3. A director of the board of directors of the corporation
 931 may not represent another person or entity for compensation
 932 before the corporation for a period of 2 years following his or
 933 her service on the board of directors.

934 Section 22. Paragraph (e) of subsection (4), paragraph (d)
 935 of subsection (5), and paragraph (d) of subsection (6) of
 936 section 373.536, Florida Statutes, are amended to read:

937 373.536 District budget and hearing thereon.—

938 (4) BUDGET CONTROLS; FINANCIAL INFORMATION.—

939 (e) ~~By September 1, 2012,~~ Each district shall provide a
 940 monthly financial statement in the form and manner prescribed by
 941 the Department of Financial Services to the district's governing
 942 board and make such monthly financial statement available for
 943 public access on its website.

944 (5) TENTATIVE BUDGET CONTENTS AND SUBMISSION; REVIEW AND
 945 APPROVAL.—

946 (d) Each district shall, by August 1 of each year, submit
 947 for review a tentative budget and a description of any
 948 significant changes from the preliminary budget submitted to the
 949 Legislature pursuant to s. 373.535 to the Governor, the
 950 President of the Senate, the Speaker of the House of
 951 Representatives, the chairs of all legislative committees and
 952 subcommittees having substantive or fiscal jurisdiction over
 953 water management districts, as determined by the President of
 954 the Senate or the Speaker of the House of Representatives, as
 955 applicable, the secretary of the department, and the governing
 956 body of each county in which the district has jurisdiction or
 957 derives any funds for the operations of the district. The
 958 tentative budget must be posted on the district's official
 959 website at least 2 days before budget hearings held pursuant to
 960 s. 200.065 or other law and must remain on the website for at
 961 least 45 days.

962 (6) FINAL BUDGET; ANNUAL AUDIT; CAPITAL IMPROVEMENTS PLAN;

963 WATER RESOURCE DEVELOPMENT WORK PROGRAM.—

964 (d) The final adopted budget must be posted on the water
 965 management district's official website within 30 days after
 966 adoption and must remain on the website for at least 2 years.

967 Section 23. Paragraph (j) of subsection (9) of section
 968 1002.33, Florida Statutes, is amended to read:

969 1002.33 Charter schools.—

970 (9) CHARTER SCHOOL REQUIREMENTS.—

971 (j) The governing body of the charter school shall be
 972 responsible for:

973 1. Establishing and maintaining internal controls designed
 974 to:

975 a. Prevent and detect fraud, waste, and abuse.

976 b. Promote and encourage compliance with applicable laws,
 977 rules, contracts, grant agreements, and best practices.

978 c. Support economic and efficient operations.

979 d. Ensure reliability of financial records and reports.

980 e. Safeguard assets.

981 ~~2.1.~~ Ensuring that the charter school has retained the
 982 services of a certified public accountant or auditor for the
 983 annual financial audit, pursuant to s. 1002.345(2), who shall
 984 submit the report to the governing body.

985 ~~3.2.~~ Reviewing and approving the audit report, including
 986 audit findings and recommendations for the financial recovery
 987 plan.

988 ~~4.a.3.a.~~ Performing the duties in s. 1002.345, including

989 monitoring a corrective action plan.

990 b. Monitoring a financial recovery plan in order to ensure
991 compliance.

992 ~~5.4.~~ Participating in governance training approved by the
993 department which must include government in the sunshine,
994 conflicts of interest, ethics, and financial responsibility.

995 Section 24. Present subsections (6) through (10) of
996 section 1002.37, Florida Statutes, are redesignated as
997 subsections (7) through (11), respectively, a new subsection (6)
998 is added to that section, and present subsections (6) and (11)
999 of that section are amended, to read:

1000 1002.37 The Florida Virtual School.—

1001 (6) The Florida Virtual School shall have an annual
1002 financial audit of its accounts and records completed by an
1003 independent auditor who is a certified public accountant
1004 licensed under chapter 473. The independent auditor shall
1005 conduct the audit in accordance with rules adopted by the
1006 Auditor General pursuant to s. 11.45 and, upon completion of the
1007 audit, shall prepare an audit report in accordance with such
1008 rules. The independent auditor shall submit the audit report to
1009 the board of trustees and the Auditor General no later than 9
1010 months after the end of the preceding fiscal year.

1011 ~~(7)-(6)~~ The board of trustees shall annually submit to the
1012 Governor, the Legislature, the Commissioner of Education, and
1013 the State Board of Education a complete and detailed report
1014 setting forth:

1015 (a) The operations and accomplishments of the Florida
 1016 Virtual School within the state and those occurring outside the
 1017 state as Florida Virtual School Global.

1018 (b) The marketing and operational plan for the Florida
 1019 Virtual School and Florida Virtual School Global, including
 1020 recommendations regarding methods for improving the delivery of
 1021 education through the Internet and other distance learning
 1022 technology.

1023 (c) The assets and liabilities of the Florida Virtual
 1024 School and Florida Virtual School Global at the end of the
 1025 fiscal year.

1026 (d) A copy of the an annual financial audit report
 1027 completed pursuant to subsection (6), and a written statement of
 1028 the board of trustees describing corrective action to be taken
 1029 in response to each of the independent auditor's recommendations
 1030 included in the audit report. ~~of the accounts and records of the~~
 1031 ~~Florida Virtual School and Florida Virtual School Global,~~
 1032 ~~conducted by an independent certified public accountant and~~
 1033 ~~performed in accordance with rules adopted by the Auditor~~
 1034 ~~General.~~

1035 (e) Recommendations regarding the unit cost of providing
 1036 services to students through the Florida Virtual School and
 1037 Florida Virtual School Global. In order to most effectively
 1038 develop public policy regarding any future funding of the
 1039 Florida Virtual School, it is imperative that the cost of the
 1040 program is accurately identified. The identified cost of the

1041 program must be based on reliable data.

1042 (f) Recommendations regarding an accountability mechanism
 1043 to assess the effectiveness of the services provided by the
 1044 Florida Virtual School and Florida Virtual School Global.

1045 ~~(11) The Auditor General shall conduct an operational~~
 1046 ~~audit of the Florida Virtual School, including Florida Virtual~~
 1047 ~~School Global. The scope of the audit shall include, but not be~~
 1048 ~~limited to, the administration of responsibilities relating to~~
 1049 ~~personnel; procurement and contracting; revenue production;~~
 1050 ~~school funds, including internal funds; student enrollment~~
 1051 ~~records; franchise agreements; information technology~~
 1052 ~~utilization, assets, and security; performance measures and~~
 1053 ~~standards; and accountability. The final report on the audit~~
 1054 ~~shall be submitted to the President of the Senate and the~~
 1055 ~~Speaker of the House of Representatives no later than January~~
 1056 ~~31, 2014.~~

1057 Section 25. Subsection (5) is added to section 1010.01,
 1058 Florida Statutes, to read:

1059 1010.01 Uniform records and accounts.—

1060 (5) Each school district, Florida College System
 1061 institution, and state university shall establish and maintain
 1062 internal controls designed to:

1063 (a) Prevent and detect fraud, waste, and abuse.

1064 (b) Promote and encourage compliance with applicable laws,
 1065 rules, contracts, grant agreements, and best practices.

1066 (c) Support economic and efficient operations.

1067 (d) Ensure reliability of financial records and reports.

1068 (e) Safeguard assets.

1069 Section 26. Subsection (2) of section 1010.30, Florida
1070 Statutes, is amended to read:

1071 1010.30 Audits required.—

1072 (2) If a school district, Florida College System
1073 institution, or university audit report includes a
1074 recommendation that was previously included in the preceding
1075 financial audit report, an audit contains a significant finding,
1076 the district school board, the Florida College System
1077 institution board of trustees, or the university board of
1078 trustees, within 60 days after the delivery of the audit report
1079 to the school district, Florida College System institution, or
1080 university and shall conduct an audit overview during a
1081 regularly scheduled public meeting, shall indicate its intent
1082 regarding corrective action, the corrective action to be taken,
1083 and when the corrective action will occur. If the district
1084 school board, Florida College System institution board of
1085 trustees, or university board of trustees does not intend to
1086 take corrective action, it shall explain why such action will
1087 not be taken at the regularly scheduled public meeting.

1088 Section 27. Subsection (2) of section 68.082, Florida
1089 Statutes, is amended to read:

1090 68.082 False claims against the state; definitions;
1091 liability.—

1092 (2) Any person who:

1093 (a) Knowingly presents or causes to be presented a false
1094 or fraudulent claim for payment or approval;

1095 (b) Knowingly authorizes, approves, or receives payment of
1096 prohibited compensation in violation of s. 215.425;

1097 (c)~~(b)~~ Knowingly makes, uses, or causes to be made or used
1098 a false record or statement material to a false or fraudulent
1099 claim;

1100 (d)~~(e)~~ Conspires to commit a violation of this subsection;

1101 (e)~~(d)~~ Has possession, custody, or control of property or
1102 money used or to be used by the state and knowingly delivers or
1103 causes to be delivered less than all of that money or property;

1104 (f)~~(e)~~ Is authorized to make or deliver a document
1105 certifying receipt of property used or to be used by the state
1106 and, intending to defraud the state, makes or delivers the
1107 receipt without knowing that the information on the receipt is
1108 true;

1109 (g)~~(f)~~ Knowingly buys or receives, as a pledge of an
1110 obligation or a debt, public property from an officer or
1111 employee of the state who may not sell or pledge the property;
1112 or

1113 (h)~~(g)~~ Knowingly makes, uses, or causes to be made or used
1114 a false record or statement material to an obligation to pay or
1115 transmit money or property to the state, or knowingly conceals
1116 or knowingly and improperly avoids or decreases an obligation to
1117 pay or transmit money or property to the state

1118

1119 is liable to the state for a civil penalty of not less than
 1120 \$5,500 and not more than \$11,000 and for treble the amount of
 1121 damages the state sustains because of the act of that person.

1122 Section 28. Subsection (1) of section 68.083, Florida
 1123 Statutes, is amended to read:

1124 68.083 Civil actions for false claims.—

1125 (1) The department may diligently investigate a violation
 1126 under s. 68.082. If the department finds that a person has
 1127 violated or is violating s. 68.082, the department may bring a
 1128 civil action under the Florida False Claims Act against the
 1129 person. The Department of Financial Services may bring a civil
 1130 action under this section if the action arises from an
 1131 investigation by that department and the Department of Legal
 1132 Affairs has not filed an action under this act. For a violation
 1133 of s. 68.082 regarding prohibited compensation paid from state
 1134 funds, the Department of Financial Services may bring a civil
 1135 action under this section if the action arises from an
 1136 investigation by that department concerning a violation of s.
 1137 215.425 by the state and the Department of Legal Affairs has not
 1138 filed an action under this act.

1139 Section 29. Subsection (3) of section 218.503, Florida
 1140 Statutes, is amended to read:

1141 218.503 Determination of financial emergency.—

1142 (3) Upon notification that one or more of the conditions
 1143 in subsection (1) have occurred or will occur if action is not
 1144 taken to assist the local governmental entity or district school

1145 board, the Governor or his or her designee shall contact the
 1146 local governmental entity or the Commissioner of Education or
 1147 his or her designee shall contact the district school board to
 1148 determine what actions have been taken by the local governmental
 1149 entity or the district school board to resolve or prevent the
 1150 condition. The information requested must be provided within 45
 1151 days after the date of the request. If the local governmental
 1152 entity or the district school board does not comply with the
 1153 request, the Governor or his or her designee or the Commissioner
 1154 of Education or his or her designee shall notify ~~the members of~~
 1155 the Legislative Auditing Committee, which ~~who~~ may take action
 1156 pursuant to s. 11.40(2) ~~s. 11.40~~. The Governor or the
 1157 Commissioner of Education, as appropriate, shall determine
 1158 whether the local governmental entity or the district school
 1159 board needs state assistance to resolve or prevent the
 1160 condition. If state assistance is needed, the local governmental
 1161 entity or district school board is considered to be in a state
 1162 of financial emergency. The Governor or the Commissioner of
 1163 Education, as appropriate, has the authority to implement
 1164 measures as set forth in ss. 218.50-218.504 to assist the local
 1165 governmental entity or district school board in resolving the
 1166 financial emergency. Such measures may include, but are not
 1167 limited to:

- 1168 (a) Requiring approval of the local governmental entity's
- 1169 budget by the Governor or approval of the district school
- 1170 board's budget by the Commissioner of Education.

1171 (b) Authorizing a state loan to a local governmental
1172 entity and providing for repayment of same.

1173 (c) Prohibiting a local governmental entity or district
1174 school board from issuing bonds, notes, certificates of
1175 indebtedness, or any other form of debt until such time as it is
1176 no longer subject to this section.

1177 (d) Making such inspections and reviews of records,
1178 information, reports, and assets of the local governmental
1179 entity or district school board as are needed. The appropriate
1180 local officials shall cooperate in such inspections and reviews.

1181 (e) Consulting with officials and auditors of the local
1182 governmental entity or the district school board and the
1183 appropriate state officials regarding any steps necessary to
1184 bring the books of account, accounting systems, financial
1185 procedures, and reports into compliance with state requirements.

1186 (f) Providing technical assistance to the local
1187 governmental entity or the district school board.

1188 (g)1. Establishing a financial emergency board to oversee
1189 the activities of the local governmental entity or the district
1190 school board. If a financial emergency board is established for
1191 a local governmental entity, the Governor shall appoint board
1192 members and select a chair. If a financial emergency board is
1193 established for a district school board, the State Board of
1194 Education shall appoint board members and select a chair. The
1195 financial emergency board shall adopt such rules as are
1196 necessary for conducting board business. The board may:

1197 a. Make such reviews of records, reports, and assets of
 1198 the local governmental entity or the district school board as
 1199 are needed.

1200 b. Consult with officials and auditors of the local
 1201 governmental entity or the district school board and the
 1202 appropriate state officials regarding any steps necessary to
 1203 bring the books of account, accounting systems, financial
 1204 procedures, and reports of the local governmental entity or the
 1205 district school board into compliance with state requirements.

1206 c. Review the operations, management, efficiency,
 1207 productivity, and financing of functions and operations of the
 1208 local governmental entity or the district school board.

1209 d. Consult with other governmental entities for the
 1210 consolidation of all administrative direction and support
 1211 services, including, but not limited to, services for asset
 1212 sales, economic and community development, building inspections,
 1213 parks and recreation, facilities management, engineering and
 1214 construction, insurance coverage, risk management, planning and
 1215 zoning, information systems, fleet management, and purchasing.

1216 2. The recommendations and reports made by the financial
 1217 emergency board must be submitted to the Governor for local
 1218 governmental entities or to the Commissioner of Education and
 1219 the State Board of Education for district school boards for
 1220 appropriate action.

1221 (h) Requiring and approving a plan, to be prepared by
 1222 officials of the local governmental entity or the district

1223 school board in consultation with the appropriate state
 1224 officials, prescribing actions that will cause the local
 1225 governmental entity or district school board to no longer be
 1226 subject to this section. The plan must include, but need not be
 1227 limited to:

1228 1. Provision for payment in full of obligations outlined
 1229 in subsection (1), designated as priority items, which are
 1230 currently due or will come due.

1231 2. Establishment of priority budgeting or zero-based
 1232 budgeting in order to eliminate items that are not affordable.

1233 3. The prohibition of a level of operations which can be
 1234 sustained only with nonrecurring revenues.

1235 4. Provisions implementing the consolidation, sourcing, or
 1236 discontinuance of all administrative direction and support
 1237 services, including, but not limited to, services for asset
 1238 sales, economic and community development, building inspections,
 1239 parks and recreation, facilities management, engineering and
 1240 construction, insurance coverage, risk management, planning and
 1241 zoning, information systems, fleet management, and purchasing.

1242 Section 30. The Legislature finds that a proper and
 1243 legitimate state purpose is served when internal controls are
 1244 established to prevent and detect fraud, waste, and abuse and to
 1245 safeguard and account for government funds and property.

1246 Therefore, the Legislature determines and declares that this act
 1247 fulfills an important state interest.

1248 Section 31. 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 Metz offered the following:
 4

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:
 7 Section 1. Subsection (2) of section 11.40, Florida
 8 Statutes, is amended to read:

9 11.40 Legislative Auditing Committee.—

10 (2) Following notification by the Auditor General, the
 11 Department of Financial Services, ~~or~~ the Division of Bond
 12 Finance of the State Board of Administration, the Governor or
 13 his or her designee, or the Commissioner of Education or his or
 14 her designee of the failure of a local governmental entity,
 15 district school board, charter school, or charter technical
 16 career center to comply with the applicable provisions within s.
 17 11.45(5)-(7), s. 218.32(1), s. 218.38, or s. 218.503(3), the



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18 Legislative Auditing Committee may schedule a hearing to
19 determine if the entity should be subject to further state
20 action. If the committee determines that the entity should be
21 subject to further state action, the committee shall:

22 (a) In the case of a local governmental entity or district
23 school board, direct the Department of Revenue and the
24 Department of Financial Services to withhold any funds not
25 pledged for bond debt service satisfaction which are payable to
26 such entity until the entity complies with the law. The
27 committee shall specify the date such action shall begin, and
28 the directive must be received by the Department of Revenue and
29 the Department of Financial Services 30 days before the date of
30 the distribution mandated by law. The Department of Revenue and
31 the Department of Financial Services may implement the
32 provisions of this paragraph.

33 (b) In the case of a special district created by:

34 1. A special act, notify the President of the Senate, the
35 Speaker of the House of Representatives, the standing committees
36 of the Senate and the House of Representatives charged with
37 special district oversight as determined by the presiding
38 officers of each respective chamber, the legislators who
39 represent a portion of the geographical jurisdiction of the
40 special district pursuant to s. 189.034(2), and the Department
41 of Economic Opportunity that the special district has failed to
42 comply with the law. Upon receipt of notification, the
43 Department of Economic Opportunity shall proceed pursuant to s.



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44 189.062 or s. 189.067. If the special district remains in
45 noncompliance after the process set forth in s. 189.034(3), or
46 if a public hearing is not held, the Legislative Auditing
47 Committee may request the department to proceed pursuant to s.
48 189.067(3).

49 2. A local ordinance, notify the chair or equivalent of
50 the local general-purpose government pursuant to s. 189.035(2)
51 and the Department of Economic Opportunity that the special
52 district has failed to comply with the law. Upon receipt of
53 notification, the department shall proceed pursuant to s.
54 189.062 or s. 189.067. If the special district remains in
55 noncompliance after the process set forth in s. 189.034(3), or
56 if a public hearing is not held, the Legislative Auditing
57 Committee may request the department to proceed pursuant to s.
58 189.067(3).

59 3. Any manner other than a special act or local ordinance,
60 notify the Department of Economic Opportunity that the special
61 district has failed to comply with the law. Upon receipt of
62 notification, the department shall proceed pursuant to s.
63 189.062 or s. 189.067(3).

64 (c) In the case of a charter school or charter technical
65 career center, notify the appropriate sponsoring entity, which
66 may terminate the charter pursuant to ss. 1002.33 and 1002.34.

67 Section 2. Subsection (1), paragraph (j) of subsection
68 (2), paragraph (v) of subsection (3), and paragraph (i) of



Amendment No.

69 subsection (7) of section 11.45, Florida Statutes, are amended
70 to read:

71 11.45 Definitions; duties; authorities; reports; rules.—

72 (1) DEFINITIONS.—As used in ss. 11.40-11.51, the term:

73 (a) "Abuse" means behavior that is deficient or improper
74 when compared with behavior that a prudent person would consider
75 reasonable and necessary operational practice given the facts
76 and circumstances. The term includes the misuse of authority or
77 position for personal gain or for the benefit of another.

78 ~~(b)~~ (a) "Audit" means a financial audit, operational audit,
79 or performance audit.

80 ~~(c)~~ (b) "County agency" means a board of county
81 commissioners or other legislative and governing body of a
82 county, however styled, including that of a consolidated or
83 metropolitan government, a clerk of the circuit court, a
84 separate or ex officio clerk of the county court, a sheriff, a
85 property appraiser, a tax collector, a supervisor of elections,
86 or any other officer in whom any portion of the fiscal duties of
87 the above are under law separately placed.

88 ~~(d)~~ (e) "Financial audit" means an examination of financial
89 statements in order to express an opinion on the fairness with
90 which they are presented in conformity with generally accepted
91 accounting principles and an examination to determine whether
92 operations are properly conducted in accordance with legal and
93 regulatory requirements. Financial audits must be conducted in
94 accordance with auditing standards generally accepted in the



Amendment No.

95 United States and government auditing standards as adopted by
96 the Board of Accountancy. When applicable, the scope of
97 financial audits shall encompass the additional activities
98 necessary to establish compliance with the Single Audit Act
99 Amendments of 1996, 31 U.S.C. ss. 7501-7507, and other
100 applicable federal law.

101 (e) "Fraud" means obtaining something of value through
102 willful misrepresentation, including, but not limited to, the
103 intentional misstatements or omissions of amounts or disclosures
104 in financial statements to deceive users of financial
105 statements, theft of an entity's assets, bribery, or the use of
106 one's position for personal enrichment through the deliberate
107 misuse or misapplication of an organization's resources.

108 (f) ~~(d)~~ "Governmental entity" means a state agency, a
109 county agency, or any other entity, however styled, that
110 independently exercises any type of state or local governmental
111 function.

112 (g) ~~(e)~~ "Local governmental entity" means a county agency,
113 municipality, tourist development council, county tourism
114 promotion agency, or special district as defined in s. 189.012.
115 The term, ~~but~~ does not include any housing authority established
116 under chapter 421.

117 (h) ~~(f)~~ "Management letter" means a statement of the
118 auditor's comments and recommendations.

119 (i) ~~(g)~~ "Operational audit" means an audit whose purpose is
120 to evaluate management's performance in establishing and



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121 maintaining internal controls, including controls designed to
122 prevent and detect fraud, waste, and abuse, and in administering
123 assigned responsibilities in accordance with applicable laws,
124 administrative rules, contracts, grant agreements, and other
125 guidelines. Operational audits must be conducted in accordance
126 with government auditing standards. Such audits examine internal
127 controls that are designed and placed in operation to promote
128 and encourage the achievement of management's control objectives
129 in the categories of compliance, economic and efficient
130 operations, reliability of financial records and reports, and
131 safeguarding of assets, and identify weaknesses in those
132 internal controls.

133 (j)~~(h)~~ "Performance audit" means an examination of a
134 program, activity, or function of a governmental entity,
135 conducted in accordance with applicable government auditing
136 standards or auditing and evaluation standards of other
137 appropriate authoritative bodies. The term includes an
138 examination of issues related to:

- 139 1. Economy, efficiency, or effectiveness of the program.
- 140 2. Structure or design of the program to accomplish its
141 goals and objectives.
- 142 3. Adequacy of the program to meet the needs identified by
143 the Legislature or governing body.
- 144 4. Alternative methods of providing program services or
145 products.



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146 5. Goals, objectives, and performance measures used by the
147 agency to monitor and report program accomplishments.

148 6. The accuracy or adequacy of public documents, reports,
149 or requests prepared under the program by state agencies.

150 7. Compliance of the program with appropriate policies,
151 rules, or laws.

152 8. Any other issues related to governmental entities as
153 directed by the Legislative Auditing Committee.

154 (k)~~(i)~~ "Political subdivision" means a separate agency or
155 unit of local government created or established by law and
156 includes, but is not limited to, the following and the officers
157 thereof: authority, board, branch, bureau, city, commission,
158 consolidated government, county, department, district,
159 institution, metropolitan government, municipality, office,
160 officer, public corporation, town, or village.

161 (l)~~(j)~~ "State agency" means a separate agency or unit of
162 state government created or established by law and includes, but
163 is not limited to, the following and the officers thereof:
164 authority, board, branch, bureau, commission, department,
165 division, institution, office, officer, or public corporation,
166 as the case may be, except any such agency or unit within the
167 legislative branch of state government other than the Florida
168 Public Service Commission.

169 (m) "Waste" means the act of using or expending resources
170 unreasonably, carelessly, extravagantly, or for no useful
171 purpose.



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172 (2) DUTIES.—The Auditor General shall:
173 (j) Conduct audits of local governmental entities when
174 determined to be necessary by the Auditor General, when directed
175 by the Legislative Auditing Committee, or when otherwise
176 required by law. No later than 18 months after the release of
177 the audit report, the Auditor General shall perform such
178 appropriate followup procedures as he or she deems necessary to
179 determine the audited entity's progress in addressing the
180 findings and recommendations contained within the Auditor
181 General's previous report. The Auditor General shall notify each
182 member of the audited entity's governing body and the
183 Legislative Auditing Committee of the results of his or her
184 determination. For purposes of this paragraph, local
185 governmental entities do not include water management districts.
186

187 The Auditor General shall perform his or her duties
188 independently but under the general policies established by the
189 Legislative Auditing Committee. This subsection does not limit
190 the Auditor General's discretionary authority to conduct other
191 audits or engagements of governmental entities as authorized in
192 subsection (3).

193 (3) AUTHORITY FOR AUDITS AND OTHER ENGAGEMENTS.—The
194 Auditor General may, pursuant to his or her own authority, or at
195 the direction of the Legislative Auditing Committee, conduct
196 audits or other engagements as determined appropriate by the
197 Auditor General of:



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198 (v) The Florida Virtual School ~~pursuant to s. 1002.37.~~

199 (7) AUDITOR GENERAL REPORTING REQUIREMENTS.-

200 (i) The Auditor General shall annually transmit by July
201 15, to the President of the Senate, the Speaker of the House of
202 Representatives, and the Department of Financial Services, a
203 list of all school districts, charter schools, charter technical
204 career centers, Florida College System institutions, state
205 universities, and local governmental entities ~~water management~~
206 ~~districts~~ that have failed to comply with the transparency
207 requirements as identified in the audit reports reviewed
208 pursuant to paragraph (b) and those conducted pursuant to
209 subsection (2).

210 Section 3. Paragraph (d) of subsection (2) of section
211 28.35, Florida Statutes, is amended to read:

212 28.35 Florida Clerks of Court Operations Corporation.-

213 (2) The duties of the corporation shall include the
214 following:

215 (d) Developing and certifying a uniform system of workload
216 measures and applicable workload standards for court-related
217 functions as developed by the corporation and clerk workload
218 performance in meeting the workload performance standards. These
219 workload measures and workload performance standards shall be
220 designed to facilitate an objective determination of the
221 performance of each clerk in accordance with minimum standards
222 for fiscal management, operational efficiency, and effective
223 collection of fines, fees, service charges, and court costs. The



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224 corporation shall develop the workload measures and workload
225 performance standards in consultation with the Legislature. When
226 the corporation finds a clerk has not met the workload
227 performance standards, the corporation shall identify the nature
228 of each deficiency and any corrective action recommended and
229 taken by the affected clerk of the court. For quarterly periods
230 ending on the last day of March, June, September, and December
231 of each year, the corporation shall notify the Legislature of
232 any clerk not meeting workload performance standards and provide
233 a copy of any corrective action plans. Such notifications shall
234 be submitted no later than 45 days after the end of the
235 preceding quarterly period. As used in this subsection, the
236 term:

237 1. "Workload measures" means the measurement of the
238 activities and frequency of the work required for the clerk to
239 adequately perform the court-related duties of the office as
240 defined by the membership of the Florida Clerks of Court
241 Operations Corporation.

242 2. "Workload performance standards" means the standards
243 developed to measure the timeliness and effectiveness of the
244 activities that are accomplished by the clerk in the performance
245 of the court-related duties of the office as defined by the
246 membership of the Florida Clerks of Court Operations
247 Corporation.

248 Section 4. Present subsections (6) and (7) of section
249 43.16, Florida Statutes, are redesignated as subsections (7) and



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250 (8), respectively, and a new subsection (6) is added to that
251 section, to read:

252 43.16 Justice Administrative Commission; membership,
253 powers and duties.—

254 (6) The commission, each state attorney, each public
255 defender, the criminal conflict and civil regional counsel, the
256 capital collateral regional counsel, and the Guardian Ad Litem
257 Program shall establish and maintain internal controls designed
258 to:

259 (a) Prevent and detect fraud, waste, and abuse.

260 (b) Promote and encourage compliance with applicable laws,
261 rules, contracts, grant agreements, and best practices.

262 (c) Support economic and efficient operations.

263 (d) Ensure reliability of financial records and reports.

264 (e) Safeguard assets.

265 Section 5. Section 112.31455, Florida Statutes, is amended
266 to read:

267 112.31455 Withholding of public salary-related payments
268 ~~Collection methods~~ for unpaid automatic fines for failure to
269 timely file disclosure of financial interests.—

270 (1) Before referring any unpaid fine accrued pursuant to
271 s. 112.3144(5) or s. 112.3145(7) ~~s. 112.3145(6)~~ to the
272 Department of Financial Services, the commission shall attempt
273 to determine whether the individual owing such a fine is a
274 current public officer or current public employee. If so, the
275 commission may notify the Chief Financial Officer or the



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276 governing body of the appropriate county, municipality, or
277 special district of the total amount of any fine owed to the
278 commission by such individual.

279 (a) After receipt and verification of the notice from the
280 commission, the Chief Financial Officer or the governing body of
281 the county, municipality, or special district shall withhold 25
282 percent of the entire amount of any fine owed, and any
283 administrative costs incurred, from the individual's next public
284 salary-related payment. The same percentage of each successive
285 public salary-related payment shall be withheld until the fine
286 and administrative costs are paid in full ~~begin withholding the~~
287 ~~lesser of 10 percent or the maximum amount allowed under federal~~
288 ~~law from any salary related payment. The Chief Financial Officer~~
289 ~~or the governing body of the county, municipality, or special~~
290 ~~district may retain an amount of each withheld payment, as~~
291 ~~provided in s. 77.0305, to cover the administrative costs~~
292 ~~incurred under this section. The withheld payments shall be~~
293 ~~remitted to the commission until the fine is satisfied.~~

294 ~~(b) The Chief Financial Officer or the governing body of~~
295 ~~the county, municipality, or special district may retain an~~
296 ~~amount of each withheld payment, as provided in s. 77.0305, to~~
297 ~~cover the administrative costs incurred under this section.~~

298 (b) If a current public officer or current public employee
299 demonstrates to the Chief Financial Officer or the governing
300 body responsible for paying him or her that the public salary is
301 his or her primary source of income and that withholding 25



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302 percent of the amount of any fine owed from a public salary-
303 related payment would present an undue hardship, the withheld
304 amount may be reduced but must be at least 10 percent of the
305 public salary-related payment.

306 ~~(2) If the commission determines that the individual who~~
307 ~~is the subject of an unpaid fine accrued pursuant to s.~~
308 ~~112.3144(5) or s. 112.3145(6) is no longer a public officer or~~
309 ~~public employee or if the commission is unable to determine~~
310 ~~whether the individual is a current public officer or public~~
311 ~~employee, the commission may, 6 months after the order becomes~~
312 ~~final, seek garnishment of any wages to satisfy the amount of~~
313 ~~the fine, or any unpaid portion thereof, pursuant to chapter 77.~~
314 ~~Upon recording the order imposing the fine with the clerk of the~~
315 ~~circuit court, the order shall be deemed a judgment for purposes~~
316 ~~of garnishment pursuant to chapter 77.~~

317 (2)(3) The commission may refer unpaid fines to the
318 appropriate collection agency, as directed by the Chief
319 Financial Officer, to use utilize any collection methods
320 provided by law. Except as expressly limited by this section,
321 any other collection methods authorized by law are allowed.

322 (3)(4) Action may be taken to collect any unpaid fine
323 imposed by ss. 112.3144 and 112.3145 within 20 years after the
324 date the final order is rendered.

325 Section 6. Section 112.31456, Florida Statutes, is created
326 to read:



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327 112.31456 Garnishment of wages for unpaid automatic fines
328 for failure to timely file disclosure of financial interests.-
329 (1) Before referring any unpaid fine accrued pursuant to
330 s. 112.3144(5) or s. 112.3145(7) to the Department of Financial
331 Services, the commission shall attempt to determine whether the
332 individual owing such a fine is a current public officer or
333 current public employee. If the commission determines that an
334 individual who is the subject of an unpaid fine accrued pursuant
335 to s. 112.3144(5) or s. 112.3145(7) is no longer a public
336 officer or public employee or if the commission cannot determine
337 whether the individual is a current public officer or current
338 public employee, the commission may, 6 months after the order
339 becomes final, seek garnishment of any wages to satisfy the
340 amount of the fine, or any unpaid portion thereof, pursuant to
341 chapter 77. Upon recording the order imposing the fine with the
342 clerk of the circuit court, the order shall be deemed a judgment
343 for purposes of garnishment pursuant to chapter 77.
344 (2) The commission may refer unpaid fines to the
345 appropriate collection agency, as directed by the Chief
346 Financial Officer, to use any collection methods provided by
347 law. Except as expressly limited by this section, any other
348 collection method authorized by law is allowed.
349 (3) Action may be taken to collect any unpaid fine imposed
350 by ss. 112.3144 and 112.3145 within 20 years after the date the
351 final order is rendered.



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352 Section 7. Section 112.3261, Florida Statutes, is amended
353 to read:

354 112.3261 Lobbying before governmental entities ~~water~~
355 ~~management districts~~; registration and reporting.—

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

357 (a) "Governmental entity" or "entity" ~~"District"~~ means a
358 water management district created in s. 373.069 and operating
359 under the authority of chapter 373, a hospital district, a
360 children's services district, an expressway authority as the
361 term "authority" is defined in s. 348.0002, a port authority as
362 the term is defined in s. 315.02, or an independent special
363 district with annual revenues of more than \$5 million which
364 exercises ad valorem taxing authority.

365 (b) "Lobbies" means seeking, on behalf of another person,
366 to influence a governmental entity ~~district~~ with respect to a
367 decision of the entity ~~district~~ in an area of policy or
368 procurement or an attempt to obtain the goodwill of an a
369 ~~district~~ official or employee of a governmental entity. The term
370 "lobbies" shall be interpreted and applied consistently with the
371 rules of the commission implementing s. 112.3215.

372 (c) "Lobbyist" has the same meaning as provided in s.
373 112.3215.

374 (d) "Principal" has the same meaning as provided in s.
375 112.3215.

376 (2) A person may not lobby a governmental entity ~~district~~
377 until such person has registered as a lobbyist with that entity



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378 ~~district~~. Such registration shall be due upon initially being
379 retained to lobby and is renewable on a calendar-year basis
380 thereafter. Upon registration, the person shall provide a
381 statement signed by the principal or principal's representative
382 stating that the registrant is authorized to represent the
383 principal. The principal shall also identify and designate its
384 main business on the statement authorizing that lobbyist
385 pursuant to a classification system approved by the governmental
386 entity ~~district~~. Any changes to the information required by this
387 section must be disclosed within 15 days by filing a new
388 registration form. The registration form shall require each
389 lobbyist to disclose, under oath, the following:

390 (a) The lobbyist's name and business address.

391 (b) The name and business address of each principal
392 represented.

393 (c) The existence of any direct or indirect business
394 association, partnership, or financial relationship with an
395 official ~~any officer~~ or employee of a governmental entity
396 ~~district~~ with which he or she lobbies or intends to lobby.

397 (d) ~~In lieu of creating its own lobbyist registration~~
398 ~~forms,~~ A governmental entity must create a lobbyist registration
399 form modeled after the ~~district may accept a completed~~
400 legislative branch or executive branch lobbyist registration
401 form that requires the form to be returned to the governmental
402 entity.



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403 (3) A governmental entity ~~district~~ shall make lobbyist
404 registrations available to the public. If a governmental entity
405 ~~district~~ maintains a website, a database of currently registered
406 lobbyists and principals must be available on the entity's
407 ~~district's~~ website.

408 (4) A lobbyist shall promptly send a written statement to
409 the governmental entity ~~district~~ canceling the registration for
410 a principal upon termination of the lobbyist's representation of
411 that principal. A governmental entity ~~district~~ may remove the
412 name of a lobbyist from the list of registered lobbyists if the
413 principal notifies the entity ~~district~~ that a person is no
414 longer authorized to represent that principal.

415 (5) A governmental entity ~~district~~ may establish an annual
416 lobbyist registration fee, not to exceed \$40, for each principal
417 represented. The governmental entity ~~district~~ may use
418 registration fees only to administer this section.

419 (6) A governmental entity ~~district~~ shall be diligent to
420 ascertain whether persons required to register pursuant to this
421 section have complied. A governmental entity ~~district~~ may not
422 knowingly authorize a person who is not registered pursuant to
423 this section to lobby the entity ~~district~~.

424 (7) Upon receipt of a sworn complaint alleging that a
425 lobbyist or principal has failed to register with a governmental
426 entity ~~district~~ or has knowingly submitted false information in
427 a report or registration required under this section, the
428 commission shall investigate a lobbyist or principal pursuant to



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429 the procedures established under s. 112.324. The commission
430 shall provide the Governor with a report of its findings and
431 recommendations in any investigation conducted pursuant to this
432 subsection. The Governor is authorized to enforce the
433 commission's findings and recommendations.

434 (8) A governmental entity ~~Water management districts~~ may
435 adopt rules to establish procedures to govern the registration
436 of lobbyists, including the adoption of forms and the
437 establishment of a lobbyist registration fee.

438 Section 8. Paragraph (c) of subsection (3) of section
439 129.03, Florida Statutes, is amended to read:

440 129.03 Preparation and adoption of budget.—

441 (3) The county budget officer, after tentatively
442 ascertaining the proposed fiscal policies of the board for the
443 next fiscal year, shall prepare and present to the board a
444 tentative budget for the next fiscal year for each of the funds
445 provided in this chapter, including all estimated receipts,
446 taxes to be levied, and balances expected to be brought forward
447 and all estimated expenditures, reserves, and balances to be
448 carried over at the end of the year.

449 (c) The board shall hold public hearings to adopt
450 tentative and final budgets pursuant to s. 200.065. The hearings
451 shall be primarily for the purpose of hearing requests and
452 complaints from the public regarding the budgets and the
453 proposed tax levies and for explaining the budget and any
454 proposed or adopted amendments. The tentative budget must be



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455 posted on the county's official website at least 2 days before
456 the public hearing to consider such budget and must remain on
457 the website for at least 45 days. The final budget must be
458 posted on the website within 30 days after adoption and must
459 remain on the website for at least 2 years. The tentative
460 budgets, adopted tentative budgets, and final budgets shall be
461 filed in the office of the county auditor as a public record.
462 Sufficient reference in words and figures to identify the
463 particular transactions shall be made in the minutes of the
464 board to record its actions with reference to the budgets.

465 Section 9. Paragraph (f) of subsection (2) of section
466 129.06, Florida Statutes, is amended to read:

467 129.06 Execution and amendment of budget.—

468 (2) The board at any time within a fiscal year may amend a
469 budget for that year, and may within the first 60 days of a
470 fiscal year amend the budget for the prior fiscal year, as
471 follows:

472 (f) Unless otherwise prohibited by law, if an amendment to
473 a budget is required for a purpose not specifically authorized
474 in paragraphs (a)-(e), the amendment may be authorized by
475 resolution or ordinance of the board of county commissioners
476 adopted following a public hearing.

477 1. The public hearing must be advertised at least 2 days,
478 but not more than 5 days, before the date of the hearing. The
479 advertisement must appear in a newspaper of paid general
480 circulation and must identify the name of the taxing authority,



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481 the date, place, and time of the hearing, and the purpose of the
482 hearing. The advertisement must also identify each budgetary
483 fund to be amended, the source of the funds, the use of the
484 funds, and the total amount of each fund's appropriations.

485 2. If the board amends the budget pursuant to this
486 paragraph, the adopted amendment must be posted on the county's
487 official website within 5 days after adoption and must remain on
488 the website for at least 2 years.

489 Section 10. Subsections (3) and (5) of section 166.241,
490 Florida Statutes, are amended to read:

491 166.241 Fiscal years, budgets, and budget amendments.—

492 (3) The tentative budget must be posted on the
493 municipality's official website at least 2 days before the
494 budget hearing, held pursuant to s. 200.065 or other law, to
495 consider such budget, and must remain on the website for at
496 least 45 days. The final adopted budget must be posted on the
497 municipality's official website within 30 days after adoption
498 and must remain on the website for at least 2 years. If the
499 municipality does not operate an official website, the
500 municipality must, within a reasonable period of time as
501 established by the county or counties in which the municipality
502 is located, transmit the tentative budget and final budget to
503 the manager or administrator of such county or counties who
504 shall post the budgets on the county's website.

505 (5) If the governing body of a municipality amends the
506 budget pursuant to paragraph (4)(c), the adopted amendment must



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507 be posted on the official website of the municipality within 5
508 days after adoption and must remain on the website for at least
509 2 years. If the municipality does not operate an official
510 website, the municipality must, within a reasonable period of
511 time as established by the county or counties in which the
512 municipality is located, transmit the adopted amendment to the
513 manager or administrator of such county or counties who shall
514 post the adopted amendment on the county's website.

515 Section 11. Subsections (4) and (7) of section 189.016,
516 Florida Statutes, are amended to read:

517 189.016 Reports; budgets; audits.-

518 (4) The tentative budget must be posted on the special
519 district's official website at least 2 days before the budget
520 hearing, held pursuant to s. 200.065 or other law, to consider
521 such budget, and must remain on the website for at least 45
522 days. The final adopted budget must be posted on the special
523 district's official website within 30 days after adoption and
524 must remain on the website for at least 2 years. If the special
525 district does not operate an official website, the special
526 district must, within a reasonable period of time as established
527 by the local general-purpose government or governments in which
528 the special district is located or the local governing authority
529 to which the district is dependent, transmit the tentative
530 budget or final budget to the manager or administrator of the
531 local general-purpose government or the local governing
532 authority. The manager or administrator shall post the tentative



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533 budget or final budget on the website of the local general-
534 purpose government or governing authority. This subsection and
535 subsection (3) do not apply to water management districts as
536 defined in s. 373.019.

537 (7) If the governing body of a special district amends the
538 budget pursuant to paragraph (6)(c), the adopted amendment must
539 be posted on the official website of the special district within
540 5 days after adoption and must remain on the website for at
541 least 2 years. If the special district does not operate an
542 official website, the special district must, within a reasonable
543 period of time as established by the local general-purpose
544 government or governments in which the special district is
545 located or the local governing authority to which the district
546 is dependent, transmit the adopted amendment to the manager or
547 administrator of the local general-purpose government or
548 governing authority. The manager or administrator shall post the
549 adopted amendment on the website of the local general-purpose
550 government or governing authority.

551 Section 12. Subsections (6) through (10) are added to
552 section 215.425, Florida Statutes, to read:

553 215.425 Extra compensation claims prohibited; bonuses;
554 severance pay.—

555 (6) Upon discovery or notification that a unit of
556 government has provided prohibited compensation to any officer,
557 agent, employee, or contractor in violation of this section,



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558 such unit of government shall investigate and take all necessary
559 action to recover the prohibited compensation.

560 (a) If the violation was unintentional, the unit of
561 government shall recover the prohibited compensation from the
562 individual receiving the prohibited compensation through normal
563 recovery methods for overpayments.

564 (b) If the violation was willful, the unit of government
565 shall recover the prohibited compensation from either the
566 individual receiving the prohibited compensation or the
567 individual or individuals responsible for approving the
568 prohibited compensation. Each individual determined to have
569 willfully violated this section is jointly and severally liable
570 for repayment of the prohibited compensation.

571 (7) A person who willfully violates this section commits a
572 misdemeanor of the first degree, punishable as provided in s.
573 775.082 or s. 775.083. The Governor may suspend an officer who
574 willfully violates this section.

575 (8)(a) A person who reports a violation of this section is
576 eligible for a reward of at least \$500, or the lesser of 10
577 percent of the funds recovered or \$10,000 per incident of a
578 prohibited compensation payment recovered by the unit of
579 government, depending upon the extent to which the person
580 substantially contributed to the discovery, notification, and
581 recovery of such prohibited payment.

582 (b) In the event that the recovery of the prohibited
583 compensation is based primarily on disclosures of specific



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584 information, other than information provided by such person,
585 relating to allegations or transactions in a criminal, civil, or
586 administrative hearing; a legislative, administrative, inspector
587 general, or other government report; auditor general report,
588 hearing, audit, or investigation; or from the news media, such
589 person is not eligible for a reward, or for an award of a
590 portion of the proceeds or payment of attorney fees and costs
591 pursuant to s. 68.085.

592 (c) If it is determined that the person who reported a
593 violation of this section was involved in the authorization,
594 approval, or receipt of the prohibited compensation or is
595 convicted of criminal conduct arising from his or her role in
596 the authorization, approval, or receipt of the prohibited
597 compensation, such person is not eligible for a reward, or for
598 an award of a portion of the proceeds or payment of attorney
599 fees and costs pursuant to s. 68.085.

600 (9) An employee who is discharged, demoted, suspended,
601 threatened, harassed, or in any manner discriminated against in
602 the terms and conditions of employment by his or her employer
603 because of lawful acts done by the employee on behalf of the
604 employee or others in furtherance of an action under this
605 section, including investigation for initiation of, testimony
606 for, or assistance in an action filed or to be filed under this
607 section, has a cause of action under s. 112.3187.

608 (10) If the unit of government fails to recover prohibited
609 compensation for a willful violation of this section upon



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610 discovery and notification of such prohibited payment within 90
611 days, a cause of action may be brought to:

612 (a) Recover state funds in accordance with ss. 68.082 and
613 68.083.

614 (b) Recover other funds by the Department of Legal Affairs
615 using the procedures set forth in ss. 68.082 and 68.083, except
616 that venue shall lie in the circuit court of the county in which
617 the unit of government is located.

618 (c) Recover other funds by a person using the procedures
619 set forth in ss. 68.082 and 68.083, except that venue shall lie
620 in the circuit court of the county in which the unit of
621 government is located.

622 Section 13. Section 215.86, Florida Statutes, is amended
623 to read:

624 215.86 Management systems and controls.—Each state agency
625 and the judicial branch as defined in s. 216.011 shall establish
626 and maintain management systems and internal controls designed
627 to:

628 (1) Prevent and detect fraud, waste, and abuse. ~~that~~

629 (2) Promote and encourage compliance with applicable laws,
630 rules, contracts, grant agreements, and best practices.†

631 (3) Support economic and, efficient, and effective
632 operations.†

633 (4) Ensure reliability of financial records and reports.†



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634 (5) Safeguard and ~~safeguarding~~ of assets. ~~Accounting~~
635 ~~systems and procedures shall be designed to fulfill the~~
636 ~~requirements of generally accepted accounting principles.~~

637 Section 14. Paragraph (a) of subsection (2) of section
638 215.97, Florida Statutes, is amended to read:

639 215.97 Florida Single Audit Act.—

640 (2) Definitions; as used in this section, the term:

641 (a) "Audit threshold" means the threshold amount used to
642 determine when a state single audit or project-specific audit of
643 a nonstate entity shall be conducted in accordance with this
644 section. Each nonstate entity that expends a total amount of
645 state financial assistance equal to or in excess of \$750,000
646 ~~\$500,000~~ in any fiscal year of such nonstate entity shall be
647 required to have a state single audit, or a project-specific
648 audit, for such fiscal year in accordance with the requirements
649 of this section. Periodically, ~~Every 2 years~~ the Auditor
650 General, after consulting with the Executive Office of the
651 Governor, the Department of Financial Services, and all state
652 awarding agencies, shall review the threshold amount for
653 requiring audits under this section and, if appropriate, may
654 recommend to the Legislature a statutory change to revise the
655 threshold amount in the annual report submitted pursuant to s.
656 11.45(7)(h) ~~may adjust such threshold amount consistent with the~~
657 ~~purposes of this section.~~

658 Section 15. Subsection (11) of section 215.985, Florida
659 Statutes, is amended to read:



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660 215.985 Transparency in government spending.-

661 (11) Each water management district shall provide a
662 monthly financial statement in the form and manner prescribed by
663 the Department of Financial Services to the district's its
664 governing board and make such monthly financial statement
665 available for public access on its website.

666 Section 16. Paragraph (d) of subsection (1) and subsection
667 (2) of section 218.32, Florida Statutes, are amended to read:

668 218.32 Annual financial reports; local governmental
669 entities.-

670 (1)

671 (d) Each local governmental entity that is required to
672 provide for an audit under s. 218.39(1) must submit a copy of
673 the audit report and annual financial report to the department
674 within 45 days after the completion of the audit report but no
675 later than 9 months after the end of the fiscal year. An
676 independent certified public accountant completing an audit of a
677 local governmental entity pursuant to s. 218.39 shall report, as
678 part of the audit, whether or not the entity's annual financial
679 report agrees with the audited financial statements. Such
680 determination shall be made at the level of detail required for
681 the annual financial report. If the annual financial report does
682 not agree, the auditor shall specify the significant differences
683 that exist between the annual financial report and the audited
684 financial statements and explain such differences.



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685 (2) The department shall annually by December 1 file a
686 verified report with the Governor, the Legislature, the Auditor
687 General, and the Special District Accountability Program of the
688 Department of Economic Opportunity showing the revenues, both
689 locally derived and derived from intergovernmental transfers,
690 and the expenditures of each local governmental entity, regional
691 planning council, local government finance commission, and
692 municipal power corporation that is required to submit an annual
693 financial report. In preparing the verified report, the
694 department may request additional information from the local
695 governmental entity. The information requested must be provided
696 to the department within 45 days after the request. If the local
697 governmental entity does not comply with the request, the
698 department shall notify the Legislative Auditing Committee,
699 which may take action pursuant to s. 11.40(2). The report must
700 include, but is not limited to:

701 (a) The total revenues and expenditures of each local
702 governmental entity that is a component unit included in the
703 annual financial report of the reporting entity.

704 (b) The amount of outstanding long-term debt by each local
705 governmental entity. For purposes of this paragraph, the term
706 "long-term debt" means any agreement or series of agreements to
707 pay money, which, at inception, contemplate terms of payment
708 exceeding 1 year in duration.



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709 Section 17. Present subsection (3) of section 218.33,
710 Florida Statutes, is redesignated as subsection (4), and a new
711 subsection (3) is added to that section, to read:

712 218.33 Local governmental entities; establishment of
713 uniform fiscal years and accounting practices and procedures.—

714 (3) Each local governmental entity shall establish and
715 maintain internal controls designed to:

716 (a) Prevent and detect fraud, waste, and abuse.

717 (b) Promote and encourage compliance with applicable laws,
718 rules, contracts, grant agreements, and best practices.

719 (c) Support economic and efficient operations.

720 (d) Ensure reliability of financial records and reports.

721 (e) Safeguard assets.

722 Section 18. Present subsections (8) through (12) of
723 section 218.39, Florida Statutes, are redesignated as
724 subsections (9) through (13), respectively, and a new subsection
725 (8) is added to that section, to read:

726 218.39 Annual financial audit reports.—

727 (8) If the audit report includes a recommendation that was
728 previously included in the preceding financial audit report, the
729 governing body of the audited entity, within 60 days after the
730 delivery of the audit report to the governing body and during a
731 regularly scheduled public meeting, shall indicate its intent
732 regarding corrective action, the corrective action to be taken,
733 and when the corrective action will occur. If the governing body
734 does not intend to take corrective action, it shall explain why



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735 such action will not be taken at the regularly scheduled public
736 meeting.

737 Section 19. Subsection (2) of section 218.391, Florida
738 Statutes, is amended, and subsection (9) is added to that
739 section, to read:

740 218.391 Auditor selection procedures.—

741 (2) The governing body of a ~~charter~~ county, municipality,
742 special district, district school board, charter school, or
743 charter technical career center shall establish an audit
744 committee. For a county, the ~~Each noncharter county shall~~
745 ~~establish an~~ audit committee ~~that~~, at a minimum, shall consist
746 of each of the county officers elected pursuant to the county
747 charter or s. 1(d), Art. VIII of the State Constitution, or a
748 designee, and one member of the board of county commissioners or
749 its designee. For a municipality, special district, district
750 school board, charter school, or charter technical career
751 center, the audit committee shall consist of at least three
752 members, one of whom must be a member of the governing body of
753 the municipality, special district, district school board,
754 charter school, or charter technical career center. The chair of
755 the audit committee must also be a member of such governing
756 body. For a county, municipality, special district, district
757 school board, charter school, or charter technical career
758 center, a member of the audit committee may not exercise
759 financial management responsibilities for the county,
760 municipality, special district, district school board, charter



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761 school, or charter technical career center. The primary purpose
762 of the audit committee is to assist the governing body in
763 selecting an auditor to conduct the annual financial audit
764 required in s. 218.39; however, the audit committee may serve
765 other audit oversight purposes as determined by the entity's
766 governing body. The public may ~~shall~~ not be excluded from the
767 proceedings under this section.

768 (9) Audit reports submitted pursuant to s. 218.39 must
769 include an affidavit signed by the chair of the audit committee
770 of the local governmental entity, district school board, charter
771 school, or charter technical career center stating that the
772 local governmental entity, district school board, charter
773 school, charter technical career center has complied with
774 subsections (3)-(6) in selecting the auditor pursuant to this
775 section. If a local governmental entity, district school board,
776 charter school, or charter technical career center fails to
777 comply with subsections (3)-(6) in selecting an auditor pursuant
778 to this section, the local governmental entity, district school
779 board, charter school, or charter technical career center shall
780 reselect an auditor in accordance with this section for
781 subsequent fiscal years' audits if the audit was performed under
782 a multiyear contract. If the reselection of the auditor would
783 preclude the local governmental entity, district school board,
784 charter school, or charter technical career center from timely
785 completion of the annual financial audit required by s. 218.39,
786 the local governmental entity, district school board, charter



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787 school, or charter technical career center shall reselect an
788 auditor in accordance with this section for the next annual
789 financial audit required by s. 218.39.

790 Section 20. Paragraph (b) of subsection (2) of section
791 288.92, Florida Statutes, is amended to read:

792 288.92 Divisions of Enterprise Florida, Inc.—

793 (2)

794 (b)1. The following officers and board members are subject
795 to ss. 112.313(1)-(8), (10), (12), and (15); 112.3135; and
796 112.3143(2):

797 a. Officers and members of the board of directors of the
798 divisions of Enterprise Florida, Inc.

799 b. Officers and members of the board of directors of
800 subsidiaries of Enterprise Florida, Inc.

801 c. Officers and members of the board of directors of
802 corporations created to carry out the missions of Enterprise
803 Florida, Inc.

804 d. Officers and members of the board of directors of
805 corporations with which a division is required by law to
806 contract to carry out its missions.

807 2. The officers and members of the board of directors
808 specified in subparagraph 1. may not represent another person or
809 entity for compensation before Enterprise Florida, Inc., for a
810 period of 2 years after retirement from or termination of
811 service to a division.



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812 ~~3.2.~~ For purposes of applying ss. 112.313(1)-(8), (10),
813 (12), and (15); 112.3135; and 112.3143(2) to activities of the
814 officers and members of the board of directors specified in
815 subparagraph 1., those persons shall be considered public
816 officers or employees and the corporation shall be considered
817 their agency.

818 ~~4.3.~~ It is not a violation of s. 112.3143(2) or (4) for
819 the officers or members of the board of directors of the Florida
820 Tourism Industry Marketing Corporation to:

821 a. Vote on the 4-year marketing plan required under s.
822 288.923 or vote on any individual component of or amendment to
823 the plan.

824 b. Participate in the establishment or calculation of
825 payments related to the private match requirements of s.
826 288.904(3). The officer or member must file an annual disclosure
827 describing the nature of his or her interests or the interests
828 of his or her principals, including corporate parents and
829 subsidiaries of his or her principal, in the private match
830 requirements. This annual disclosure requirement satisfies the
831 disclosure requirement of s. 112.3143(4). This disclosure must
832 be placed either on the Florida Tourism Industry Marketing
833 Corporation's website or included in the minutes of each meeting
834 of the Florida Tourism Industry Marketing Corporation's board of
835 directors at which the private match requirements are discussed
836 or voted upon.



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837 Section 21. Paragraph (a) of subsection (3) of section
838 288.9604, Florida Statutes, is amended to read:

839 288.9604 Creation of the authority.—

840 (3)(a)1. A director may not receive compensation for his
841 or her services, but is entitled to necessary expenses,
842 including travel expenses, incurred in the discharge of his or
843 her duties. Each director shall hold office until his or her
844 successor has been appointed.

845 2. Directors are subject to ss. 112.313(1)-(8), (10),
846 (12), and (15); 112.3135; and 112.3143(2). For purposes of
847 applying ss. 112.313(1)-(8), (10), (12), and (15); 112.3135; and
848 112.3143(2) to activities of directors, directors shall be
849 considered public officers and the corporation shall be
850 considered their agency.

851 3. A director of the board of directors of the corporation
852 may not represent another person or entity for compensation
853 before the corporation for a period of 2 years following his or
854 her service on the board of directors.

855 Section 22. Paragraph (e) of subsection (4), paragraph (d)
856 of subsection (5), and paragraph (d) of subsection (6) of
857 section 373.536, Florida Statutes, are amended to read:

858 373.536 District budget and hearing thereon.—

859 (4) BUDGET CONTROLS; FINANCIAL INFORMATION.—

860 (e) ~~By September 1, 2012,~~ Each district shall provide a
861 monthly financial statement in the form and manner prescribed by
862 the Department of Financial Services to the district's governing



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863 board and make such monthly financial statement available for
864 public access on its website.

865 (5) TENTATIVE BUDGET CONTENTS AND SUBMISSION; REVIEW AND
866 APPROVAL.—

867 (d) Each district shall, by August 1 of each year, submit
868 for review a tentative budget and a description of any
869 significant changes from the preliminary budget submitted to the
870 Legislature pursuant to s. 373.535 to the Governor, the
871 President of the Senate, the Speaker of the House of
872 Representatives, the chairs of all legislative committees and
873 subcommittees having substantive or fiscal jurisdiction over
874 water management districts, as determined by the President of
875 the Senate or the Speaker of the House of Representatives, as
876 applicable, the secretary of the department, and the governing
877 body of each county in which the district has jurisdiction or
878 derives any funds for the operations of the district. The
879 tentative budget must be posted on the district's official
880 website at least 2 days before budget hearings held pursuant to
881 s. 200.065 or other law and must remain on the website for at
882 least 45 days.

883 (6) FINAL BUDGET; ANNUAL AUDIT; CAPITAL IMPROVEMENTS PLAN;
884 WATER RESOURCE DEVELOPMENT WORK PROGRAM.—

885 (d) The final adopted budget must be posted on the water
886 management district's official website within 30 days after
887 adoption and must remain on the website for at least 2 years.



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888 Section 23. Paragraph (j) of subsection (9) of section
889 1002.33, Florida Statutes, is amended to read:

890 1002.33 Charter schools.—

891 (9) CHARTER SCHOOL REQUIREMENTS.—

892 (j) The governing body of the charter school shall be
893 responsible for:

894 1. Establishing and maintaining internal controls designed
895 to:

896 a. Prevent and detect fraud, waste, and abuse.

897 b. Promote and encourage compliance with applicable laws,
898 rules, contracts, grant agreements, and best practices.

899 c. Support economic and efficient operations.

900 d. Ensure reliability of financial records and reports.

901 e. Safeguard assets.

902 ~~2.1.~~ Ensuring that the charter school has retained the
903 services of a certified public accountant or auditor for the
904 annual financial audit, pursuant to s. 1002.345(2), who shall
905 submit the report to the governing body.

906 ~~3.2.~~ Reviewing and approving the audit report, including
907 audit findings and recommendations for the financial recovery
908 plan.

909 ~~4.a.3.a.~~ Performing the duties in s. 1002.345, including
910 monitoring a corrective action plan.

911 b. Monitoring a financial recovery plan in order to ensure
912 compliance.



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913 ~~5.4.~~ Participating in governance training approved by the
914 department which must include government in the sunshine,
915 conflicts of interest, ethics, and financial responsibility.

916 Section 24. Present subsections (6) through (10) of
917 section 1002.37, Florida Statutes, are redesignated as
918 subsections (7) through (11), respectively, a new subsection (6)
919 is added to that section, and present subsections (6) and (11)
920 of that section are amended, to read:

921 1002.37 The Florida Virtual School.—

922 (6) The Florida Virtual School shall have an annual
923 financial audit of its accounts and records completed by an
924 independent auditor who is a certified public accountant
925 licensed under chapter 473. The independent auditor shall
926 conduct the audit in accordance with rules adopted by the
927 Auditor General pursuant to s. 11.45 and, upon completion of the
928 audit, shall prepare an audit report in accordance with such
929 rules. The audit report shall include a written statement of the
930 board of trustees describing corrective action to be taken in
931 response to each of the independent auditor's recommendations
932 included in the audit report. The independent auditor shall
933 submit the audit report to the board of trustees and the Auditor
934 General no later than 9 months after the end of the preceding
935 fiscal year.

936 (7)-(6) The board of trustees shall annually submit to the
937 Governor, the Legislature, the Commissioner of Education, and
938 the State Board of Education the audit report prepared pursuant



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939 to subsection (6) and a complete and detailed report setting
940 forth:

941 (a) The operations and accomplishments of the Florida
942 Virtual School within the state and those occurring outside the
943 state as Florida Virtual School Global.

944 (b) The marketing and operational plan for the Florida
945 Virtual School and Florida Virtual School Global, including
946 recommendations regarding methods for improving the delivery of
947 education through the Internet and other distance learning
948 technology.

949 (c) The assets and liabilities of the Florida Virtual
950 School and Florida Virtual School Global at the end of the
951 fiscal year.

952 ~~(d) A copy of an annual financial audit of the accounts~~
953 ~~and records of the Florida Virtual School and Florida Virtual~~
954 ~~School Global, conducted by an independent certified public~~
955 ~~accountant and performed in accordance with rules adopted by the~~
956 ~~Auditor General.~~

957 (d)-(e) Recommendations regarding the unit cost of
958 providing services to students through the Florida Virtual
959 School and Florida Virtual School Global. In order to most
960 effectively develop public policy regarding any future funding
961 of the Florida Virtual School, it is imperative that the cost of
962 the program is accurately identified. The identified cost of the
963 program must be based on reliable data.



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964 (e)(f) Recommendations regarding an accountability
965 mechanism to assess the effectiveness of the services provided
966 by the Florida Virtual School and Florida Virtual School Global.

967 ~~(11) The Auditor General shall conduct an operational~~
968 ~~audit of the Florida Virtual School, including Florida Virtual~~
969 ~~School Global. The scope of the audit shall include, but not be~~
970 ~~limited to, the administration of responsibilities relating to~~
971 ~~personnel, procurement and contracting, revenue production,~~
972 ~~school funds, including internal funds, student enrollment~~
973 ~~records, franchise agreements, information technology~~
974 ~~utilization, assets, and security, performance measures and~~
975 ~~standards, and accountability. The final report on the audit~~
976 ~~shall be submitted to the President of the Senate and the~~
977 ~~Speaker of the House of Representatives no later than January~~
978 ~~31, 2014.~~

979 Section 25. Subsection (5) is added to section 1010.01,
980 Florida Statutes, to read:

981 1010.01 Uniform records and accounts.—

982 (5) Each school district, Florida College System
983 institution, and state university shall establish and maintain
984 internal controls designed to:

985 (a) Prevent and detect fraud, waste, and abuse.

986 (b) Promote and encourage compliance with applicable laws,
987 rules, contracts, grant agreements, and best practices.

988 (c) Support economic and efficient operations.

989 (d) Ensure reliability of financial records and reports.



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990 (e) Safeguard assets.

991 Section 26. Subsection (2) of section 1010.30, Florida
992 Statutes, is amended to read:

993 1010.30 Audits required.—

994 (2) If a school district, Florida College System
995 institution, or university audit report includes a
996 recommendation that was previously included in the preceding
997 financial audit report ~~an audit contains a significant finding,~~
998 the district school board, the Florida College System
999 institution board of trustees, or the university board of
1000 trustees, within 60 days after the delivery of the audit report
1001 to the school district, Florida College System institution, or
1002 university and shall ~~conduct an audit overview~~ during a
1003 regularly scheduled public meeting, shall indicate its intent
1004 regarding corrective action, the corrective action to be taken,
1005 and when the corrective action will occur. If the district
1006 school board, Florida College System institution board of
1007 trustees, or university board of trustees does not intend to
1008 take corrective action, it shall explain why such action will
1009 not be taken at the regularly scheduled public meeting.

1010 Section 27. Subsection (2) of section 68.082, Florida
1011 Statutes, is amended to read:

1012 68.082 False claims against the state; definitions;
1013 liability.—

1014 (2) Any person who:



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- 1015 (a) Knowingly presents or causes to be presented a false
1016 or fraudulent claim for payment or approval;
- 1017 (b) Knowingly authorizes, approves, or receives payment of
1018 prohibited compensation in violation of s. 215.425;
- 1019 (c)~~(b)~~ Knowingly makes, uses, or causes to be made or used
1020 a false record or statement material to a false or fraudulent
1021 claim;
- 1022 (d)~~(e)~~ Conspires to commit a violation of this subsection;
- 1023 (e)~~(d)~~ Has possession, custody, or control of property or
1024 money used or to be used by the state and knowingly delivers or
1025 causes to be delivered less than all of that money or property;
- 1026 (f)~~(e)~~ Is authorized to make or deliver a document
1027 certifying receipt of property used or to be used by the state
1028 and, intending to defraud the state, makes or delivers the
1029 receipt without knowing that the information on the receipt is
1030 true;
- 1031 (g)~~(f)~~ Knowingly buys or receives, as a pledge of an
1032 obligation or a debt, public property from an officer or
1033 employee of the state who may not sell or pledge the property;
1034 or
- 1035 (h)~~(g)~~ Knowingly makes, uses, or causes to be made or used
1036 a false record or statement material to an obligation to pay or
1037 transmit money or property to the state, or knowingly conceals
1038 or knowingly and improperly avoids or decreases an obligation to
1039 pay or transmit money or property to the state

1040



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1041 is liable to the state for a civil penalty of not less than
1042 \$5,500 and not more than \$11,000 and for treble the amount of
1043 damages the state sustains because of the act of that person.

1044 Section 28. Subsection (1) of section 68.083, Florida
1045 Statutes, is amended to read:

1046 68.083 Civil actions for false claims.—

1047 (1) The department may diligently investigate a violation
1048 under s. 68.082. If the department finds that a person has
1049 violated or is violating s. 68.082, the department may bring a
1050 civil action under the Florida False Claims Act against the
1051 person. The Department of Financial Services may bring a civil
1052 action under this section if the action arises from an
1053 investigation by that department and the Department of Legal
1054 Affairs has not filed an action under this act. For a violation
1055 of s. 68.082 regarding prohibited compensation paid from state
1056 funds, the Department of Financial Services may bring a civil
1057 action under this section if the action arises from an
1058 investigation by that department concerning a violation of s.
1059 215.425 by the state and the Department of Legal Affairs has not
1060 filed an action under this act.

1061 Section 29. Subsection (3) of section 218.503, Florida
1062 Statutes, is amended to read:

1063 218.503 Determination of financial emergency.—

1064 (3) Upon notification that one or more of the conditions
1065 in subsection (1) have occurred or will occur if action is not
1066 taken to assist the local governmental entity or district school



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1067 board, the Governor or his or her designee shall contact the
1068 local governmental entity or the Commissioner of Education or
1069 his or her designee shall contact the district school board to
1070 determine what actions have been taken by the local governmental
1071 entity or the district school board to resolve or prevent the
1072 condition. The information requested must be provided within 45
1073 days after the date of the request. If the local governmental
1074 entity or the district school board does not comply with the
1075 request, the Governor or his or her designee or the Commissioner
1076 of Education or his or her designee shall notify ~~the members of~~
1077 the Legislative Auditing Committee, which ~~who~~ may take action
1078 pursuant to s. 11.40(2) ~~s. 11.40~~. The Governor or the
1079 Commissioner of Education, as appropriate, shall determine
1080 whether the local governmental entity or the district school
1081 board needs state assistance to resolve or prevent the
1082 condition. If state assistance is needed, the local governmental
1083 entity or district school board is considered to be in a state
1084 of financial emergency. The Governor or the Commissioner of
1085 Education, as appropriate, has the authority to implement
1086 measures as set forth in ss. 218.50-218.504 to assist the local
1087 governmental entity or district school board in resolving the
1088 financial emergency. Such measures may include, but are not
1089 limited to:

1090 (a) Requiring approval of the local governmental entity's
1091 budget by the Governor or approval of the district school
1092 board's budget by the Commissioner of Education.



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1093 (b) Authorizing a state loan to a local governmental
1094 entity and providing for repayment of same.

1095 (c) Prohibiting a local governmental entity or district
1096 school board from issuing bonds, notes, certificates of
1097 indebtedness, or any other form of debt until such time as it is
1098 no longer subject to this section.

1099 (d) Making such inspections and reviews of records,
1100 information, reports, and assets of the local governmental
1101 entity or district school board as are needed. The appropriate
1102 local officials shall cooperate in such inspections and reviews.

1103 (e) Consulting with officials and auditors of the local
1104 governmental entity or the district school board and the
1105 appropriate state officials regarding any steps necessary to
1106 bring the books of account, accounting systems, financial
1107 procedures, and reports into compliance with state requirements.

1108 (f) Providing technical assistance to the local
1109 governmental entity or the district school board.

1110 (g)1. Establishing a financial emergency board to oversee
1111 the activities of the local governmental entity or the district
1112 school board. If a financial emergency board is established for
1113 a local governmental entity, the Governor shall appoint board
1114 members and select a chair. If a financial emergency board is
1115 established for a district school board, the State Board of
1116 Education shall appoint board members and select a chair. The
1117 financial emergency board shall adopt such rules as are
1118 necessary for conducting board business. The board may:



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1119 a. Make such reviews of records, reports, and assets of
1120 the local governmental entity or the district school board as
1121 are needed.

1122 b. Consult with officials and auditors of the local
1123 governmental entity or the district school board and the
1124 appropriate state officials regarding any steps necessary to
1125 bring the books of account, accounting systems, financial
1126 procedures, and reports of the local governmental entity or the
1127 district school board into compliance with state requirements.

1128 c. Review the operations, management, efficiency,
1129 productivity, and financing of functions and operations of the
1130 local governmental entity or the district school board.

1131 d. Consult with other governmental entities for the
1132 consolidation of all administrative direction and support
1133 services, including, but not limited to, services for asset
1134 sales, economic and community development, building inspections,
1135 parks and recreation, facilities management, engineering and
1136 construction, insurance coverage, risk management, planning and
1137 zoning, information systems, fleet management, and purchasing.

1138 2. The recommendations and reports made by the financial
1139 emergency board must be submitted to the Governor for local
1140 governmental entities or to the Commissioner of Education and
1141 the State Board of Education for district school boards for
1142 appropriate action.

1143 (h) Requiring and approving a plan, to be prepared by
1144 officials of the local governmental entity or the district



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1145 school board in consultation with the appropriate state
1146 officials, prescribing actions that will cause the local
1147 governmental entity or district school board to no longer be
1148 subject to this section. The plan must include, but need not be
1149 limited to:

1150 1. Provision for payment in full of obligations outlined
1151 in subsection (1), designated as priority items, which are
1152 currently due or will come due.

1153 2. Establishment of priority budgeting or zero-based
1154 budgeting in order to eliminate items that are not affordable.

1155 3. The prohibition of a level of operations which can be
1156 sustained only with nonrecurring revenues.

1157 4. Provisions implementing the consolidation, sourcing, or
1158 discontinuance of all administrative direction and support
1159 services, including, but not limited to, services for asset
1160 sales, economic and community development, building inspections,
1161 parks and recreation, facilities management, engineering and
1162 construction, insurance coverage, risk management, planning and
1163 zoning, information systems, fleet management, and purchasing.

1164 Section 30. Paragraph (c) of subsection (2) of section
1165 1002.455, Florida Statutes, is amended to read:

1166 1002.455 Student eligibility for K-12 virtual
1167 instruction.—

1168 (2) A student is eligible to participate in virtual
1169 instruction if:



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1170 (c) The student was enrolled during the prior school year
 1171 in a virtual instruction program under s. 1002.45 or a full-time
 1172 Florida Virtual School program under s. 1002.37(9)(a)
 1173 ~~1002.37(8)(a)~~;

1174 Section 31. The Legislature finds that a proper and
 1175 legitimate state purpose is served when internal controls are
 1176 established to prevent and detect fraud, waste, and abuse and to
 1177 safeguard and account for government funds and property.
 1178 Therefore, the Legislature determines and declares that this act
 1179 fulfills an important state interest.

1180 Section 32. This act shall take effect October 1, 2015.

1181

1182 -----

1183 T I T L E A M E N D M E N T

1184 Remove everything before the enacting clause and insert:

1185 A bill to be entitled

1186 An act relating to government accountability; amending
 1187 s. 11.40, F.S.; specifying that the Governor, the
 1188 Commissioner of Education, or the designee of the
 1189 Governor or of the Commissioner of Education may
 1190 notify the Legislative Auditing Committee of an
 1191 entity's failure to comply with certain auditing and
 1192 financial reporting requirements; amending s. 11.45,
 1193 F.S.; revising and providing definitions; excluding
 1194 water management districts from certain audit
 1195 requirements; revising reporting requirements



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1196 applicable to the Auditor General; amending s. 28.35,
1197 F.S.; revising reporting requirements applicable to
1198 the Florida Clerks of Court Operations Corporation;
1199 amending s. 43.16, F.S.; revising the responsibilities
1200 of the Justice Administrative Commission, each state
1201 attorney, each public defender, a criminal conflict
1202 and civil regional counsel, a capital collateral
1203 counsel, and the Guardian Ad Litem Program, to include
1204 the establishment and maintenance of certain internal
1205 controls; amending s. 112.31455, F.S.; authorizing the
1206 Chief Financial Officer or a governing body to
1207 withhold a specified percentage of an amount of a fine
1208 owed and related administrative costs from public
1209 salary-related payments of certain individuals;
1210 authorizing the Chief Financial Officer or a governing
1211 body to reduce the amount withheld if certain
1212 individuals demonstrate a hardship; transferring a
1213 provision relating to the garnishment of wages of
1214 specified individuals; creating s. 112.31456, F.S.;
1215 authorizing the Commission on Ethics to seek wage
1216 garnishment of certain individuals to satisfy unpaid
1217 fines; authorizing the commission to refer unpaid
1218 fines to a collection agency; establishing a statute
1219 of limitations with respect to the collection of an
1220 unpaid fine; amending s. 112.3261, F.S.; revising
1221 definitions to conform to changes made by the act;



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1222 expanding the types of governmental entities that are
1223 subject to lobbyist registration requirements;
1224 amending ss. 129.03, 129.06, 166.241, and 189.016,
1225 F.S.; requiring counties, municipalities, and special
1226 districts to maintain certain budget documents on the
1227 entities' websites for a specified period; amending s.
1228 215.425, F.S.; requiring a unit of government to
1229 investigate and take necessary action to recover
1230 prohibited compensation; specifying methods of
1231 recovery and liability for unintentional and willful
1232 violations; providing a penalty; authorizing the
1233 Governor to suspend officers under specified
1234 circumstances; establishing eligibility criteria and
1235 amounts for rewards; specifying circumstances under
1236 which an employee has a cause of action under the
1237 Whistle-blower's Act; establishing causes of action if
1238 a unit of government fails to recover prohibited
1239 compensation within a certain timeframe; amending s.
1240 215.86, F.S.; revising management systems and controls
1241 to be employed by each state agency and the judicial
1242 branch; amending s. 215.97, F.S.; revising the
1243 definition of the term "audit threshold"; amending s.
1244 215.985, F.S.; revising the requirements for a monthly
1245 financial statement provided by a water management
1246 district; amending s. 218.32, F.S.; revising the
1247 requirements of the annual financial audit report of a



Amendment No.

1248 local governmental entity; authorizing the Department
1249 of Financial Services to request additional
1250 information from a local governmental entity;
1251 requiring a local governmental entity to respond to
1252 such requests within a specified timeframe; requiring
1253 the department to notify the Legislative Auditing
1254 Committee of noncompliance; amending s. 218.33, F.S.;
1255 requiring local government entities to establish and
1256 maintain internal controls; amending s. 218.39, F.S.;
1257 requiring an audited entity to respond to audit
1258 recommendations under specified circumstances;
1259 amending s. 218.391, F.S.; revising the composition of
1260 audit committees; requiring audit reports to contain
1261 an affidavit of compliance; providing procedures for
1262 reselection of an auditor under certain circumstances;
1263 providing that certain multiyear audit contracts are
1264 void; amending s. 288.92, F.S.; prohibiting specified
1265 officers and board members of Enterprise Florida,
1266 Inc., from representing a person or entity for
1267 compensation before Enterprise Florida, Inc., for a
1268 specified timeframe; amending s. 288.9604, F.S.;
1269 prohibiting a director of the board of directors of
1270 the Florida Development Finance Corporation from
1271 representing a person or entity for compensation
1272 before the corporation for a specified timeframe;
1273 amending s. 373.536, F.S.; deleting obsolete language;



Amendment No.

1274 requiring water management districts to maintain
1275 certain budget documents on the districts' websites
1276 for a specified period; amending s. 1002.33, F.S.;
1277 revising the responsibilities of the governing board
1278 of a charter school to include the establishment and
1279 maintenance of internal controls; amending s. 1002.37,
1280 F.S.; requiring completion of an annual financial
1281 audit of the Florida Virtual School; specifying audit
1282 requirements; requiring an audit report to be
1283 submitted to the board of trustees of the Florida
1284 Virtual School and the Auditor General; requiring the
1285 board of trustees to submit specified reports to the
1286 Governor, Legislature, Commissioner of Education, and
1287 State Board of Education; removing an obsolete
1288 provision; amending s. 1010.01, F.S.; requiring each
1289 school district, Florida College System institution,
1290 and state university to establish and maintain certain
1291 internal controls; amending s. 1010.30, F.S.;
1292 requiring a district school board, Florida College
1293 System board of trustees, or university board of
1294 trustees to respond to audit recommendations under
1295 certain circumstances; amending ss. 68.082, 68.083,
1296 218.503, and 1002.455, F.S.; conforming provisions and
1297 cross-references to changes made by the act; declaring
1298 that the act fulfills an important state interest;
1299 providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1083 Employment Opportunities for Persons with Disabilities
SPONSOR(S): Rooney, Jr.
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 848

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|--------|-------------------|--|
| 1) Government Operations Subcommittee | | Toliver <i>LT</i> | Williamson <i>W</i> |
| 2) Government Operations Appropriations Subcommittee | | | |
| 3) State Affairs Committee | | | |

SUMMARY ANALYSIS

In 2013, Governor Scott issued Executive Order Number 13-284 to require certain agencies and organizations to develop and implement an interagency cooperative agreement to improve the employment outcomes for disabled persons. The agreement became effective on July 1, 2014.

The bill provides legislative findings regarding employment opportunities for persons with disabilities.

The bill requires certain agencies and organizations to develop and implement an interagency cooperative agreement (agreement) to provide the framework for a long-term commitment to improving employment outcomes for persons with disabilities. It requires the agreement to:

- Establish a commitment among the leadership of each agency and organization to maximize resources and to coordinate with other agencies and organizations to improve employment outcomes for persons with disabilities;
- Develop strategic goals and benchmarks to assist each agency and organization in implementing the agreement;
- Identify financing and contracting methods that will prioritize employment for persons with disabilities;
- Identify how training opportunities may be better utilized by employees of each agency and organization to ensure effectiveness of supported employment services;
- Ensure collaboration between each agency and organization during the development of supported employment services when persons with disabilities are served by multiple agencies and organizations to achieve their employment goals;
- Promote the innovation of supported employment services; and
- Identify accountability measures to ensure sustainability of agreement initiatives.

The bill provides definitions and authorizes the participant agencies and organizations to adopt rules to implement the provisions of the bill.

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

Americans with Disabilities Act

The Americans with Disabilities Act (ADA) was passed by congress and signed by President George H. W. Bush in 1990.¹ Its purpose is to provide "a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."² The ADA specifically prohibits discrimination against disabled individuals with regard to employment:³

No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

Florida Statutes

The Legislature enacted the Florida Civil Rights Act of 1992,⁴ which prohibits discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status.⁵ Section 760.10(1)(a), F.S., provides that it is unlawful to discharge or to fail to refuse to hire any individual, or otherwise discriminate against any individual with respect to compensation, terms, conditions or privileges of employment, because of such individuals handicap.

Furthermore, it is the state's policy that:⁶

[A]n individual with a disability be employed in the service of the state or political subdivisions of the state, in the public schools, and in all other employment supported in whole or in part by public funds, and an employer may not refuse employment to such a person on the basis of the disability along, unless it is shown that the particular disability prevents the satisfactory performance of the work involved.

Gubernatorial Executive Orders

In 1993, Governor Chiles issued Executive Order Number 93-166 which created the Florida Coordinating Council (coordinating council) for the ADA. The purpose of the coordinating council was to aid in the elimination of discrimination against disabled individuals in the areas of employment, transportation, telecommunications, state and local services, and public accommodations.⁷

In 1997, Governor Chiles issued Executive Order Number 97-56 in an effort to refocus Florida's efforts in implementing the ADA. The executive order disbanded the coordinating council and created the Americans with Disabilities Act Working Group (working group).⁸ The working group was created to foster a cooperative effort between state and local governments, the education

¹ Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327.

² 42 U.S.C. s. 12101(b)(1) (2015).

³ 42 U.S.C. s. 12112(a) (2015).

⁴ Sections 760.01-760.11, F.S.

⁵ Section 760.01(2), F.S.

⁶ Section 413.08(5), F.S.

⁷ Fla. Exec. Order No. 93-166 (1993).

⁸ Fla. Exec. Order No. 97-56 (1997).

community, the business community, the private sector, and the disability community.⁹ In 1999, Governor Bush issued Executive Order Number 99-80 to expand the responsibilities of the working group to “provide information, referrals, education, and recommendations for compliance and implementation of the [ADA] in order to increase the independence and quality of life for citizens of Florida with disabilities.”¹⁰

In 2007, Governor Crist extended the duration of the working group¹¹ before dissolving the group and creating the Governor’s Commission on Disabilities.¹² The commission was responsible for identifying and recommending methods to maximize the freedom and independence of Floridians with disabilities, with a focus on employment, transportation, education, and independent living.¹³

In 2011, Governor Scott superseded created the Governor’s Commission on Jobs for Floridians with Disabilities (commission).¹⁴ The vision of the commission is to “advance job and employment opportunities for Floridians with disabilities in order to help those Floridians achieve greater independence.”¹⁵ The commission, which consists of 13 members appointed by the Governor,¹⁶ has three responsibilities:¹⁷

- Identify and recommend strategies to cultivate job opportunities for persons with disabilities in the State of Florida;
- Identify barriers in state and local programs that hinder individuals with disabilities from gaining employment and proposing solutions to mitigate those barriers;
- Develop and leverage state and community resources to advance service delivery.

Each year, on or before July 26, the commission must provide a report to the Governor outlining its accomplishments during the previous 12 months.¹⁸

In 2013, Governor Scott issued Executive Order Number 13-284, which ordered that an interagency cooperative agreement (agreement) be created “among state agencies and other disabilities service organizations to ensure the continuation of this long-term commitment to improving employment outcomes for this population.” It required certain agencies¹⁹ to develop and implement the agreement with the following objectives:²⁰

- Establish a commitment among the agencies’ leadership to maximize resources and coordinate with each other to improve employment outcomes for persons with disabilities seeking publicly funded services;

⁹ *Id.*

¹⁰ Fla. Exec. Order No. 99-80 s. 1 (1999).

¹¹ Fla. Exec. Order No. 07-04 (2007).

¹² Fla. Exec. Order No. 07-148 (2007).

¹³ *Id.* at s. 2.

¹⁴ Fla. Exec. Order No. 11-161 (2011); Governor’s Commission on Jobs for Floridians with Disabilities, <http://www.flgov.com/gcjfd/> (last visited 3/17/15).

¹⁵ Fla. Exec. Order No 11-161, s. 1 (2011).

¹⁶ *Id.* at s. 4. The commission membership is as follows: two Florida citizens representing persons with physical or developmental disabilities; four individuals representing the business community who have personal experience in creating private-sector jobs; two individuals representing the state community college system who have experience in education-to-employment transition programs; one individual who has a background in employment recruiting or experience in job training for persons with disabilities; one representative from the Able Trust; one representative from the Division of Vocation Rehabilitation, Department of Education; one representative from the Agency for Persons with Disabilities; and one representative from the Agency for Workforce Development.

¹⁷ *Id.* at s. 2.

¹⁸ *Id.* at s. 3.

¹⁹ The following agencies were tasked with developing the agreement: Division of Vocational Rehabilitation, Department of Education; Division of Blind Services, Department of Education; Bureau of Exception Education and Student Services, Department of Education; Agency for Persons with Disabilities; Mental Health and Substance Abuse Program, Department of Children and Families; Workforce Florida, Inc.; Florida Developmental Disabilities Council; and other state agencies and disability organizations that wish to participate. Fla. Exec. Order No. 13-284 at s. 4.

²⁰ *Id.* at s. 3.

- Develop strategic goals and reasonable benchmarks to assist the agencies in implementing the agreement;
- Identify financing and contracting methods that will prioritize employment among the array of services paid for or provided by agencies;
- Identify ways training opportunities can be better utilized by agency employees and contracted providers to ensure effectiveness of employment services;
- Ensure collaboration occurs during the development of service plans, including the Individual Plan for Employment, when individuals are served by multiple agencies to achieve their employment goals;
- Promote service innovation; and
- Identify accountability measures to ensure sustainability.

The agreement was executed and became effective on July 1, 2014.²¹ The agreement incorporates the objectives from the executive order and establishes an organizational structure.²² The agreement establishes three entities to carry out its required responsibilities: the Employment Partnership Coalition,²³ the State Level Employment First Collaborative Team,²⁴ and the Grassroots Level Group.²⁵ The agreement further provides that it will automatically terminate on June 30, 2019, unless it is renewed.²⁶

Effect of the Bill

The bill provides legislative findings regarding employment opportunities for persons with disabilities.

The bill requires the following agencies and organizations to develop and implement an interagency cooperative agreement (agreement) to provide the framework for a long-term commitment to improving employment outcomes for persons with disabilities:

- The Division of Vocational Rehabilitation, Department of Education;
- The Division of Blind Services, Department of Education;
- The Bureau of Exceptional Education and Student Services, Department of Education;
- The Substance Abuse and Mental Health Program, Department of Children and Families;
- The Department of Children and Families;
- The Department of Economic Opportunity;
- Workforce Florida, Inc.;
- The Florida Developmental Disabilities Council; and
- The Florida Association of Rehabilitation Facilities, Inc.

The agreement must:

- Establish a commitment among the leadership of each agency and organization to maximize resources and to coordinate with other agencies and organizations to improve employment outcomes for persons with disabilities;
- Develop strategic goals and benchmarks to assist each agency and organization in implementing the agreement;

²¹ Interagency Cooperative Agreement: Employment First Initiative, s. VI, FLDOE Contract No. IA-556.

²² *Id.* at s. IV.

²³ The coalition is composed of the leaders of each agency or organization that is a participant in the agreement and charged with overall coordination and implementation of activities required by the agreement, as well as to ensure continuous improvement.

²⁴ The team is composed of staff assigned by the participating entities and meet on a monthly basis. The team is responsible for identifying the barriers within extant systems and practices and creating potential solutions for those barriers. The team will present recommendations based upon their findings to the coalition.

²⁵ The group is “composed of self-advocates and local stakeholders representing a cross-section of persons with various disabilities.” The group meets quarterly to share information and “ensure the voice of the stakeholders is heard.”

²⁶ FLDOE Contract No. IA-556 at s. VI.

- Identify financing and contracting methods that will prioritize employment for persons with disabilities;
- Identify how training opportunities may be better utilized by employees of each agency and organization to ensure effectiveness of supported employment services;²⁷
- Ensure collaboration between each agency and organization during the development of supported employment services when persons with disabilities are served by multiple agencies and organizations to achieve their employment goals;
- Promote the innovation of supported employment services; and
- Identify accountability measures to ensure sustainability of agreement initiatives.

The bill defines the term “employment” to mean a person with disabilities performing an activity or service in return for a minimum wage or greater paid by an employer, is fully integrated in the community workforce, and is working towards maximum self-sufficiency. It provides that the term includes integrated employment designed to provide jobs for persons with disabilities in workplace settings where the majority of persons employed are not persons with disabilities, supported employment, customized employment designed to personalize the employment relationship between a person with disabilities and his or her employer in a way that meets both their needs, and suitable gainful employment.²⁸

The bill also defines the term “employment outcome” as having the same meaning as in s. 413.20(9), F.S. Section 413.20(9), F.S., defines the term “employment outcome” to mean “with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market to the greatest extent practicable, supported employment, or any other type of employment, including self-employment, telework, or business ownership, that is consistent with an individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.”

Lastly, the bill authorizes the participant agencies and organizations to adopt rules to implement the section.

B. SECTION DIRECTORY:

Section 1: Creates s. 445.08, F.S. regarding employment opportunities for persons with disabilities.

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

²⁷ Section 413.20(23), F.S. defines the term “supported employment services” to mean on-going support services and other appropriate services needed to support and maintain a person who has a most significant disability in supported employment. It provides that supported employment services are based upon a determination of the needs of the eligible individual as specified in the person’s individualized plan for employment. The services are provided singly or in combination and are organized and made available in such a way as to assist eligible individuals in entering or maintaining integrated, competitive employment. The services are provided for a period not to extend beyond 18 months, but can be extended under special circumstances with the consent of the individual in order to achieve the objectives of the rehabilitation plan.

²⁸ Section 440.491(1)(g), F.S. defines the term “suitable gainful employment” to mean employment or self-employment that is reasonably attainable in light of the employee’s age, education, work history, transferable skills, previous occupation, and injury, and which offers an opportunity to restore the individual as soon as practicable and as nearly as possible to his or her average weekly earnings at the time of injury.

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:

None.

D. FISCAL COMMENTS:

The bill does not appear to have a fiscal impact on state government since it appears to codify the creation of an agreement that was created at the direction of Executive Order Number 13-284.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes multiple agencies and organizations to adopt rules to implement the provisions within the bill. It is unclear if the agencies and organizations must work together to ensure the same rules are promulgated. If the agencies do not work together, then varying rules could be promulgated to implement the same section of law.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill appears to codify several provisions in Executive Order Number 13-284.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

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A bill to be entitled
 An act relating to employment opportunities for
 persons with disabilities; creating s. 445.08, F.S.;
 providing legislative findings and purpose; providing
 definitions; requiring specified state agencies and
 organizations to develop and implement an interagency
 cooperative agreement for certain purposes; providing
 requirements; authorizing specified state agencies and
 organizations to adopt rules; providing an effective
 date.

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

Section 1. Section 445.08, Florida Statutes, is created to
 read:

445.08 Employment opportunities for persons with
 disabilities; interagency cooperative agreements.-

(1) The Legislature finds that persons with disabilities
 are confronted by unique employment barriers that inhibit their
 opportunities in the labor force and that employment of such
 persons is the most direct and cost-effective means to help them
 achieve independence and self-fulfillment. Therefore, the
 Legislature finds that employment for persons with disabilities
 should be prioritized and a means to support such employment
 should be encouraged. The purpose of this section is to require
 a collaborative effort by state agencies and organizations to

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

27 determine the barriers to achieving better employment outcomes
 28 for persons with disabilities and to act collaboratively to
 29 eliminate such barriers.

30 (2) For purposes of this section, the term:

31 (a) "Employment" means a person with disabilities is
 32 performing an activity or service in return for minimum wage or
 33 greater paid by an employer, is fully integrated in the
 34 community workforce, and is working towards maximum self-
 35 sufficiency. The term includes integrated employment designed to
 36 provide jobs for a persons with disabilities in workplace
 37 settings where the majority of persons employed are not persons
 38 with disabilities, supported employment as defined in s.
 39 393.063(38), customized employment designed to personalize the
 40 employment relationship between a person with disabilities and
 41 his or her employer in a way that meets both of their needs, and
 42 suitable gainful employment as defined in s. 440.491(1)(g).

43 (b) "Employment outcome" has the same meaning as in s.
 44 413.20(9).

45 (3)(a) The following state agencies and organizations
 46 shall develop and implement an interagency cooperative agreement
 47 to provide the framework, including their roles and
 48 responsibilities, for a long-term commitment to improving
 49 employment outcomes for persons with disabilities in this state:

50 1. The Division of Vocational Rehabilitation of the
 51 Department of Education.

52 2. The Division of Blind Services of the Department of

53 | Education.
54 | 3. The Bureau of Exceptional Education and Student
55 | Services of the Department of Education.
56 | 4. The Substance Abuse and Mental Health Program of the
57 | Department of Children and Families.
58 | 5. The Department of Children and Families.
59 | 6. The Department of Economic Opportunity.
60 | 7. Workforce Florida, Inc.
61 | 8. The Florida Developmental Disabilities Council.
62 | 9. The Florida Association of Rehabilitation Facilities,
63 | Inc.
64 | (b) The interagency cooperative agreement shall:
65 | 1. Establish a commitment among the leadership of each
66 | agency and organization to maximize resources and to coordinate
67 | with other agencies and organizations to improve employment
68 | outcomes for persons with disabilities.
69 | 2. Develop strategic goals and benchmarks to assist each
70 | agency and organization in implementing the agreement.
71 | 3. Identify financing and contracting methods that will
72 | prioritize employment for persons with disabilities.
73 | 4. Identify how training opportunities may be better
74 | utilized by employees of each agency and organization to ensure
75 | effectiveness of supported employment services as defined in s.
76 | 413.20(23).
77 | 5. Ensure collaboration between each agency and
78 | organization during the development of supported employment

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

79 | services when persons with disabilities are served by multiple
80 | agencies and organizations to achieve their employment goals.

81 | 6. Promote the innovation of supported employment
82 | services.

83 | 7. Identify accountability measures to ensure
84 | sustainability of agreement initiatives.

85 | (4) The agencies and organizations provided in subsection
86 | (3) may adopt rules to implement this section.

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



Amendment No. /

COMMITTEE/SUBCOMMITTEE ACTION

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

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

4
5 **Amendment**

6 Remove line 58 and insert:

7 5. The Agency for Persons with Disabilities.

8



Amendment No. **2**

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove lines 85-86

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

Remove lines 8-9 and insert:
requirements; providing an effective

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1147 Honor and Remember Flag
SPONSOR(S): Burgess, Jr. and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 1410

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|--------|-----------------|--|
| 1) Government Operations Subcommittee | | Moore <i>AM</i> | Williamson <i>W</i> |
| 2) Government Operations Appropriations Subcommittee | | | |
| 3) State Affairs Committee | | | |

SUMMARY ANALYSIS

Current law regulates the display of certain flags at specified locations in the state. The United States flag, the Florida state flag, and the POW-MIA flag must be displayed at certain venues on specified days. In addition, the Firefighter Memorial Flag may be displayed at certain locations and events.

The bill designates the Honor and Remember Flag, created by Honor and Remember, Inc., as an emblem of the state to honor the service and sacrifice of the brave men and women of the United States Armed Forces who have given their lives in the line of duty. The bill authorizes the flag to be displayed at specified state-owned locations on certain days.

The bill also authorizes local governments to display the flag and authorizes each department, agency, or local government displaying the flag to establish regulations related to display of the flag. The bill allows the Department of Management Services to procure and distribute the flags.

The fiscal impact to state and local governments is unknown because the provisions of the bill are permissive.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Display of United States and Florida State Flags

Current law requires the United States and Florida state flags to be displayed in certain venues. The United States flag must be displayed daily, when the weather permits, at the state capitol, at every county courthouse,¹ at every publicly supported and controlled auditorium,² and on the grounds and in the classrooms of public K-20 educational institutions.³ The U.S. flag also must be displayed at each polling station on election days.⁴

The state flag must be displayed daily, when the weather permits, on the grounds of every public K-20 educational institution in the state, except when the institution or school is closed for vacation.⁵ The Governor is required to adopt a protocol on state flag display.⁶ The protocol must provide guidelines for the proper display of the flag and for the lowering of the flag to half-staff on appropriate occasions, such as on holidays and upon the death of high-ranking state officials, uniformed law enforcement and fire service personnel, and prominent citizens.⁷

POW-MIA Flag

A POW-MIA flag must be displayed at each state-owned building at which the U.S. flag is displayed if the POW-MIA flag is available free of charge to the agency that occupies the building and if such display is in accordance with federal laws and regulations.⁸ The Department of Transportation also must display the flag year round at each rest area along an interstate highway in the state.⁹ In addition, the Department of Environmental Protection must display the POW-MIA flag year round at each state park where the U.S. flag is displayed.¹⁰

Firefighter Memorial Flag

The Division of State Fire Marshal of the Department of Financial Services is directed by law to design, produce, and implement the creation and distribution of an official state Firefighter Memorial Flag to honor firefighters who have died in the line of duty.¹¹ The flag may be displayed at memorial or funeral services of firefighters who have died in the line of duty, at firefighter memorials, at fire stations, at the Fallen Firefighter Memorial located at the Florida State Fire College in Ocala, by the families of fallen firefighters, and at any other location designated by the State Fire Marshal.¹²

¹ Section 256.01, F.S.

² Section 256.11, F.S.

³ Section 1000.06(1), F.S.

⁴ Section 256.011(1), F.S.

⁵ Sections 256.032 and 1000.06(1), F.S.

⁶ Section 256.015(1), F.S.

⁷ *Id.*

⁸ Section 256.12, F.S.

⁹ Section 256.13, F.S.

¹⁰ Section 256.14, F.S.

¹¹ Section 256.15, F.S.

¹² Section 256.15(1), F.S.

Honor and Remember Flag

The Honor and Remember Flag was created by the 501(c)3 charitable organization Honor and Remember, Inc., to serve as a visible reminder to all Americans of the U.S. military lives that have been lost in the defense and service of our national freedoms.¹³ The mission of the organization is to establish the Honor and Remember Flag as a nationally recognized flag.¹⁴

The Honor and Remember Flag has been endorsed by various organizations, including American Gold Star Mothers, Gold Star Wives of America, Blue Star Mothers of America, Vietnam Veterans of America, the Fleet Reserve Association, the Military Officers Association of America, the Air Force Security Forces Association, the Naval Reserve Association, and the Associations of the U.S. Army, Navy, and Air Force.¹⁵

The Honor and Remember Flag has been adopted as an official state symbol by 20 states: Delaware, Louisiana, North Carolina, Maryland, Oklahoma, Oregon, Pennsylvania, Utah, Virginia, Kansas, Arizona, Missouri, South Carolina, New Jersey, Indiana, Texas, Wisconsin, South Dakota, Tennessee, and West Virginia.¹⁶ Sixteen additional states, including Florida, have introduced legislation to adopt the flag as an official state symbol.¹⁷ The Honor and Remember flags range in price from \$50 for a screen-printed flag to \$300 for a personalized hand-stitched flag and may be purchased from Honor and Remember, Inc.¹⁸

Effect of Proposed Changes

The bill designates the Honor and Remember Flag (flag), created by Honor and Remember, Inc., as the state's emblem of the service and sacrifice of the brave men and women of the U.S. Armed Forces who have given their lives in the line of duty.

The bill authorizes the flag to be displayed at the following locations:

- Each state-owned building at which the U.S. flag is displayed;
- All state-owned military memorials; and
- Any other state-owned location deemed appropriate.

The bill authorizes the flag to be displayed on the following days:

- Armed Forces Day, the third Saturday in May;
- Memorial Day, the last Monday in May;
- Flag Day, June 14;
- Independence Day, July 4;
- National POW-MIA Recognition Day, the third Friday in September;
- Veterans' Day, November 11; and
- Gold Star Mother's Day, the last Sunday in September.

In addition, a local government may display the flag at any local government building at which the U.S. flag is displayed and at any other local government location it deems appropriate.

¹³ Honor and Remember, *Our Mission*, <http://www.honorandremember.org/our-mission> (last visited March 20, 2015).

¹⁴ *Id.*

¹⁵ Honor and Remember, *Official Endorsements*, <http://www.honorandremember.org/category/supporters/official-endorsements> (last visited March 20, 2015).

¹⁶ Honor and Remember, *Progress Map*, <http://www.honorandremember.org/progress-map> (last visited March 20, 2015).

¹⁷ Honor and Remember, <http://www.honorandremember.org> (last visited March 20, 2015).

¹⁸ Honor and Remember, *Featured Products*, <https://honorandremember.3dcartstores.com> (last visited March 20, 2015).

The bill authorizes each department, agency, local government, or other establishment responsible for one of the authorized locations to prescribe regulations as necessary to carry out these provisions by July 1, 2016. The regulations may not require an employee to report to work solely to display the flag.

The bill also authorizes the Department of Management Services to begin procurement and distribution of the flag as necessary by July 31, 2016.

B. SECTION DIRECTORY:

Section 1. creates s. 256.16, F.S., relating to the Honor and Remember Flag.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See FISCAL COMMENTS section.

D. FISCAL COMMENTS:

The fiscal impacts to the state and local governments as well as to Honor and Remember, Inc., are unknown because the bill language is permissive, and it will depend on how many flags are purchased. Honor and Remember, Inc., sells the flags for \$50 to \$300 each.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes each department, agency, local government, or other establishment responsible for one of the authorized locations to prescribe regulations as necessary to carry out the provisions of the bill by July 1, 2016.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

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A bill to be entitled
An act relating to the Honor and Remember flag;
creating s. 256.16, F.S.; designating the Honor and
Remember flag as an emblem of the state; authorizing
that the flag be displayed at specified locations, on
specified days, and in a specified manner; authorizing
local governments to display the flag; authorizing
each department, agency, or local government
displaying the flag to establish certain regulations;
authorizing the Department of Management Services to
procure and distribute such flags; providing an
effective date.

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

Section 1. Section 256.16, Florida Statutes, is created to
read:

256.16 Honor and Remember flag.-

(1) The Honor and Remember flag, created by Honor and
Remember, Inc., is designated as the state's emblem of the
service and sacrifice of the brave men and women of the United
States Armed Forces who have given their lives in the line of
duty.

(2) The flag may be displayed:

(a) At the following locations:

1. Each state-owned building at which the United States

27 | flag is displayed.

28 | 2. All state-owned military memorials.

29 | 3. Any other state-owned location deemed appropriate.

30 | (b) On the following days:

31 | 1. Armed Forces Day, the third Saturday in May.

32 | 2. Memorial Day, the last Monday in May.

33 | 3. Flag Day, June 14.

34 | 4. Independence Day, July 4.

35 | 5. National POW-MIA Recognition Day, the third Friday in

36 | September.

37 | 6. Veterans' Day, November 11.

38 | 7. Gold Star Mother's Day, the last Sunday in September.

39 | (c) In a manner designed to ensure visibility to the

40 | public.

41 | (3) A local government may choose to display the flag in

42 | accordance with paragraphs (2)(b) and (c) at any local

43 | government building at which the United States flag is displayed

44 | and at any other local government location it deems appropriate.

45 | (4) By July 1, 2016, each department, agency, or other

46 | establishment responsible for a location specified in paragraph

47 | (2)(a), or a local government pursuant to subsection (3), may

48 | prescribe such regulations as necessary to carry out this

49 | section. Such regulations may not require an employee to report

50 | to work solely to provide for display of the flag.

51 | (5) By July 31, 2016, the Department of Management

52 | Services may begin procurement and distribution of the flag as

HB 1147

2015

53 | necessary to comply with this section.

54 | Section 2. This act shall take effect January 1, 2016.



Amendment No. /

COMMITTEE/SUBCOMMITTEE ACTION

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

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

4
 5 **Amendment**
 6 Remove lines 19-20 and insert:
 7 (1) The Honor and Remember flag is designated as the
 8 state's emblem of the



Amendment No. **2**

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Government Operations
 2 Subcommittee

3 Representative Burgess offered the following:

4

5 **Amendment**

6 Between lines 38 and 39, insert:

7 8. A day on which a member of the United States Armed
 8 Forces who is a resident of the state loses his or her life in
 9 the line of duty.



Amendment No. **3**

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 Burgess offered the following:

4

5 **Amendment**

6 Between lines 40 and 41, insert:

7 (d) With no more than two additional flags when displayed
 8 on a flagpole.



Amendment No. **4**

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 Burgess offered the following:

Amendment (with title amendment)

Between lines 40 and 41, insert:

7 (3) A flag displayed pursuant to this section must be made
 8 in the United States.

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

12 Remove line 6 and insert:
 13 specified days, and in a specified manner; requiring displayed
 14 flags to be made in the United States; authorizing

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 1167 City of West Palm Beach, Palm Beach County
SPONSOR(S): Local Government Affairs Subcommittee; Kerner
TIED BILLS: IDEN./SIM. **BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|---------------------|------------|--|
| 1) Local Government Affairs Subcommittee | 12 Y, 0 N, As CS | Darden | Miller |
| 2) Government Operations Subcommittee | | Harrington | Williamson |
| 3) Local & Federal Affairs Committee | | | |

SUMMARY ANALYSIS

The West Palm Beach Firefighters Pension Fund (Fund) was created by special act of the Legislature in 1947. Each firefighter employed by West Palm Beach Fire Rescue is a pension fund participant.

The bill amends the definition of "actuarial equivalent value" to mean the stated determination using an interest rate of 8.00 percent, rather than 8.25 percent, and the RP-2000 Mortality Table, rather than the 1983 Group Annuity Mortality Table for males.

The bill amends the special act creating the Fund to define "Fire Chief" and to provide the chief with modified pension benefits. The bill authorizes in-service distributions when the Fire Chief is retained after reaching normal retirement age.

The bill reduces the expected employee contribution and modifies the use of premium tax proceeds to lower "actual employee contribution" rates. The bill also modifies the share of premium tax proceeds allocated to share accounts and the options available to plan members in managing their share accounts. The bill adds additional options for employees who choose to participate in the BackDROP program.

The bill is projected to decrease the City of West Palm Beach's contribution requirements to the Fund by \$2,163,589 in Fiscal Year 2015-2016 and \$800,000 in Fiscal Year 2016-2017. The changes made by this bill are the result of a collective bargaining agreement between the City of West Palm Beach and International Association of Firefighters Local 727.

This bill will take effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

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

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

Local firefighter pension plans created pursuant to the Clayton Act are funded by four sources:

- Net proceeds from an excise tax levied by a city upon property and casualty insurance companies (known as the premium tax);³
- Employee contributions;⁴
- Other revenue sources; and⁵
- Mandatory payments by the city of the normal cost of the plan.⁶

The premium tax is 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.⁷ It is payable by the insurers to the Department of Revenue, and the net proceeds are transferred to the appropriate fund at the Department of Management Services, Division of Retirement (Division). In 2013, premium tax distributions to municipalities and special fire control districts from the Firefighters' Pension Trust Fund amounted to \$74.7 million.⁸

To qualify for insurance premium tax dollars, plans must meet requirements found in ch. 175, 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.⁹ The board of trustees must invest and reinvest the assets of the fund according to s. 175.071, F.S., unless specifically authorized to vary from the law. If the Division deems that a firefighter pension plan created pursuant to ch. 175, F.S., is not in compliance, the sponsoring municipality could be denied its insurance premium tax revenues.¹⁰

The default employee contribution under the Clayton Act is five percent of salary, but may be adjusted.¹¹ A municipality or special fire control district may elect to make an employee's contributions,

¹ See Department of Management Services, *2014 Local Government Annual Report*, Appendix I, available at http://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/local_retirement_section/local_government_annual_reports (accessed 3/19/15) (chart showing retirement plans offered by municipalities in the state) (herein DMS Local Government Reports).

² S. 175.025, F.S.

³ S. 175.091(1)(a), F.S.

⁴ S. 175.091(1)(b), F.S.

⁵ S. 175.091(1)(c), (e)-(g), F.S.

⁶ S. 175.091(1)(d), F.S.

⁷ S. 175.101, F.S.

⁸ Department of Management Services, *Municipal Police and Fire Plans*, available at http://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/municipal_police_and_fire_plans (accessed 3/19/15).

⁹ See s. 175.071, F.S.

¹⁰ See s. 175.341(1), F.S.

¹¹ S. 175.091(1)(b), F.S.

but the employee must still contribute at least 0.5 percent of his or her salary.¹² Rates may also be increased above five percent, subject to the consent of members' collective bargaining representative or, if none, by a majority consent of the firefighter members of the fund.¹³

Florida Protection of Public Employee Retirement Benefits Act

The Florida Constitution prohibits any increase in retirement or pension benefits for a publicly funded plan, unless the increase has made or concurrently makes provision for funding the increase on an actuarially sound basis.¹⁴ The Florida Protection of Public Employee Retirement Benefits Act (Benefits Act), Part VII of ch. 112, F.S., implements the provisions of Art. X, s. 14, Florida Constitution.¹⁵ The Benefits Act applies to all retirement or pension plans for public employees that are funded in whole or in part by public funds.¹⁶

Local governments are prohibited from agreeing to a proposed change in retirement benefits if the plan administrator did not issue a statement of actuarial impact of the proposed change before both the adoption of the change by the governing body of the local government and the last public hearing about the proposed change.¹⁷ This statement must also be furnished to the Division before the local government can agree to the change.¹⁸ The statement must indicate whether the proposed change complies with Art. X, s. 14, Florida Constitution and with s. 112.64, F.S. (concerning the administration of pension funds and the amortization of any unfunded actuarial liability).¹⁹

West Palm Beach Firefighters Pension Fund

The Legislature created the West Palm Beach Firefighters Pension Fund (Fund or Plan) in 1947.²⁰ As of September 30, 2014, the Plan has 181 active and 188 retired members.²¹ As of September 30, 2013, the Plan had \$164,579,552 in total assets and \$76,292,316 in unfunded actuarial accrued liability.²² Plan members receive three percent of their final annual salary for each year of employment by the fire department.²³ Plan members are not entitled to benefits unless they have served for at least 10 years.²⁴ Normal retirement age under the Plan varies depending on the number of years of service:²⁵

- For 10 years of service, 55.
- For 15 years of service, 50.
- For 26 years of service, any age.

The Plan also provides disability benefits. Members injured in the line of duty are entitled to the greater of their accrued benefit or 65 percent of final annual salary.²⁶ Members disabled outside the line of duty are entitled to their accrued benefits if they have at least five years of service, with a minimum of 25 percent of the final annual salary if they have at least 10 years of service.²⁷ Members who die before normal retirement age also are entitled to benefits. Members who die in the line of duty are entitled to two-thirds of their highest 12-month salary of the top-step paygrade, while members who die outside the line of duty are entitled to two-thirds of their accrued benefit, if they have at least five years of service.²⁸

¹² S. 175.091(2)(a), F.S.

¹³ S. 175.091(2)(b), F.S.

¹⁴ Art. X, s. 14, Fla. Const.

¹⁵ S. 112.61, F.S.

¹⁶ S. 112.62, F.S.

¹⁷ S. 112.63(3), F.S.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Ch. 47-24981, Laws of Fla.

²¹ DMS Local Government Reports, p. 17 of Appendix F.

²² DMS Local Government Reports, p. 19 of Appendix A.

²³ DMS Local Government Reports, p. 67 of Appendix B.

²⁴ *Id.*

²⁵ *Id.*

²⁶ DMS Local Government Reports, p. 36 of Appendix B (con't) - Added Benefit Data.

²⁷ *Id.*

²⁸ *Id.*

The Plan currently assumes eight percent annual interest on its assets.²⁹ During the most recent fiscal year before the report, the Plan had actually seen 11.50 percent growth in the actuarial value of its assets and 19.30 percent growth in the market value of its assets.³⁰

Each member of the Plan is credited a pro rata share of the moneys received from the premium tax.³¹ Vested members may make an annual election of how to credit investment earnings for the upcoming year.³² Members may choose to receive:

- The percentage of profits or losses earned by the Fund as a whole;³³
- A fixed rate of 8.25 percent for members who reached normal retirement age on or before May 13, 2012, or have a calculated BackDROP date of on or before October 1, 2011, and a fixed rate of four percent after those dates;³⁴ or
- A mix of the above two options³⁵

The city funds the share accounts using the proceeds from the premium tax.³⁶ For specified years, however, the premium tax funds are instead directed to reducing employee contributions to the Fund to 13.1 percent.³⁷

Certain plan members are eligible to take part in the Backwards Deferred Retirement Option (BackDROP) plan.³⁸ Members are not able to receive BackDROP benefits that are greater than the accumulation of 60 months of the monthly retirement benefit.³⁹ Members must terminate employment to receive the BackDROP payment.⁴⁰

When a Plan member elects to receive the BackDROP benefit, the member's retirement benefits are calculated as if the member had chosen to retire at a date more than 36 months, but not less than 60 months, earlier.⁴¹ The BackDROP benefit is paid as a lump sum, including 8.25 percent less expenses for members who reached normal retirement age on or before May 13, 2012, or have a calculated BackDROP date of on or before October 1, 2011, and four percent less expenses for retirements after May 13, 2012.⁴²

The lump sum received under BackDROP must be paid within six months,⁴³ except that employees who reached normal retirement age on or before May 13, 2012, or have a calculated BackDROP date of on or before October 1, 2011, may elect to be paid in installments or with an annuity.⁴⁴ Any BackDROP funds held by the city receive credit for investment earnings like standard benefits.⁴⁵

Members are allowed to transfer accumulated sick leave, vacation leave, and other leave payable to their Plan account.⁴⁶ For members who reached normal retirement age on or before May 13, 2012, or

²⁹ DMS Local Government Reports, p. 20 of Appendix E.

³⁰ *Id.*

³¹ Ch. 47-24981, s. 18(5)(j), Laws of Fla., as amended.

³² Ch. 47-24981, s. 18(5)(j)3.c, Laws of Fla., as amended.

³³ Ch. 47-24981, s. 18(5)(j)3.c(I), Laws of Fla., as amended.

³⁴ Ch. 47-24981, s. 18(5)(j) 3.c (II), Laws of Fla., as amended.

³⁵ Ch. 47-24981, s. 18(5)(j) 3.c(III), Laws of Fla., as amended.

³⁶ Ch. 47-24981, s. 18(3)(a), Laws of Fla., as amended.

³⁷ *Id.* The current version of the act specifies calendar years 2012, 2013, and 2014.

³⁸ Ch. 47-24981, s. 18(5)(k)(1), Laws of Fla., as amended. Plan members who are at least 58 years of age with 13 or more years of service, 53 years of age with 18 or more years of service, or any age with 26 years or more of service.

³⁹ Ch. 47-24981, s. 18(5)(k)(1)1.b, Laws of Fla., as amended.

⁴⁰ Ch. 47-24981, s. 18(5)(k)(1)1.d, Laws of Fla., as amended.

⁴¹ Ch. 47-24981, s. 18(5)(k)(1)2.a, Laws of Fla., as amended.

⁴² *Id.*

⁴³ Ch. 47-24981, s. 18(5)(k)(1)2.c, Laws of Fla., as amended.

⁴⁴ Ch. 47-24981, s. 18(5)(k)(1)2.c(I), Laws of Fla., as amended.

⁴⁵ Ch. 47-24981, s. 18(5)(k)(1)3, Laws of Fla., as amended.

⁴⁶ Ch. 47-24981, s. 18(21), Laws of Fla., as amended.

have a calculated BackDROP date of on or before October 1, 2011, the proceeds must be invested in the Fund for at least a year.⁴⁷ All other members must take a lump sum payment within six months.⁴⁸

Effect of Proposed Changes

Definition of Actuarial Equivalent Value

The bill amends the definition of “actuarial equivalent value,” “actuarial equivalence,” or “single sum value” to mean the stated determination using an interest rate of 8.00 percent, rather than 8.25 percent, and the RP-2000 Mortality Table, rather than the 1983 Group Annuity Mortality Table for males.

Fire Chief

The bill defines “Fire Chief” as the executive officer for the City of West Palm Beach Fire Department. It also amends the definition of “firefighter” and “membership” to provide that the Fire Chief has the option to elect to participate, or not, in the Plan.

The bill provides that if the City decides to retain the Fire Chief, the Fire Chief must not be required to terminate employment to be eligible for BackDROP participation at normal retirement. The bill authorizes in-service distributions when the Fire Chief is retained after reaching normal retirement.⁴⁹

Use of Chapter 175 Premium Tax Proceeds

The bill provides that a portion of the chapter 175, F.S., premium taxes must be used to reduce the employee contributions and the remainder must be allocated to the member share accounts. Specifically, it allocates premium tax proceeds received by the city, starting with calendar year 2015, as follows:

- 2015: 85 percent to reduce employee contributions, 15 percent to share accounts.
- 2016: 65 percent to reduce employee contributions, 35 percent to share accounts.
- 2017: 35 percent to reduce employee contributions, 65 percent to share accounts.
- 2018 and after: 100 percent to share accounts.

Employee Contributions

The bill reduces the expected employee contributions as follows:

- Currently: 25 percent.
- Calendar year 2015: 22 percent.
- Calendar year 2016: 20 percent.
- Calendar year 2017: 17 percent.
- Starting October 1, 2018: 13.1 percent.

The actual employee contribution rate, after the city applies premium tax receipts, remains at the current rate of 13.1 percent.⁵⁰ If premium tax proceeds are not sufficient to reduce employee contributions to 13.1 percent, the bill provides for the city to contribute the difference.

Investment Share Crediting

⁴⁷ Ch. 47-24981, s. 18(21)(b)4, Laws of Fla., as amended

⁴⁸ *Id.*

⁴⁹ The bill provides for in-service distributions to the Fire Chief in specified circumstances. It provides that the in-service distributions are in accordance with s. 401(a)(36) of the Internal Revenue Code (Code). Section 401(a)(36) of the Code provides that a pension plan does not fail to qualify under s. 401(a) solely because the plan provides that a distribution may be made to an employee who has attained age 62 and who has not separated from employment at the time of distribution. However, the IRS and Department of Treasury recently issued Notice 2012-29 (Notice) to announce their intent to issue guidance on specific provisions in the Code. Plans may rely on the Notice until the regulations are amended. According to counsel for the Board of Trustees for the Fund, the Plan is relying on the Notice, which expands the age-50 safe harbor provisions to plans wherein substantially all of the participants in the plan are qualified public safety employees. The Notice can be found online at: <http://www.irs.gov/Retirement-Plans/Guidance-on-Normal-Retirement-Age-Rules-for-Governmental-Plans> (last visited March 20, 2015).

⁵⁰ Except for January 1, 2018, to September 30, 2018. See III.C Drafting Issues or Other Comments.

The bill removes the four percent fixed rate option effective October 1, 2015. After October 1, members will have the option to receive investment share credits equal to:

- The percentage of profits or losses earned by the Fund as a whole; or
- A percentage based on the profits and losses earned by the Fund as a whole, but with a ceiling of eight percent and a floor of zero percent.

BackDROP

Effective October 1, 2015, the bill allows:

- All Plan members to elect to take BackDROP payments as a lump sum, in installments, or as an annuity.
- Members who retire after October 1, 2015, and who do not have a calculated BackDROP date of October 1, 2011, can choose a BackDROP benefit ranging from one month to 60 months.

The bill maintains the parallel structure for BackDROP funds held by the city receiving credit for investment earnings like standard benefits, requiring Plan members utilizing this option to choose between the absolute percentage of profits or losses earned by the Fund as a whole, or subject to an eight percent ceiling and a zero percent floor.

The bill requires all members to leave transferred accumulated sick leave, vacation leave, and other leave in the Plan for at least a year.

B. SECTION DIRECTORY:

Section 1: Amends Ch. 47-24981, L.O.F., as amended, regarding the West Palm Beach Firefighters Pension Fund.

Section 2: Provides an effective date of upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 19, 2014.

WHERE? *The Palm Beach Post*, a daily newspaper published in Palm Beach County, Florida.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2015, the Local Government Affairs Subcommittee adopted a technical amendment and reported the bill favorably as a committee substitute. The amendment corrects section numbering, removes unnecessary text, and underlines new text inadvertently marked as part of the current version of the act.

This analysis is drawn to the bill as amended.

1 A bill to be entitled
2 An act relating to the City of West Palm Beach, Palm
3 Beach County; amending chapter 24981, Laws of Florida,
4 1947, as amended; revising definitions; defining the
5 term "Fire Chief"; authorizing the Fire Chief to opt
6 out of participation in the West Palm Beach
7 Firefighters Pension Fund; providing that chapter 175,
8 F.S., funds to be used to reduce member contributions
9 to the fund for specified calendar years; requiring
10 the city to make up certain shortfalls in member
11 contributions; providing for a reduction in member
12 contributions for 3 years; revising the crediting rate
13 for certain members in the share and BackDROP
14 accounts; removing a requirement for members to take a
15 lump sum distribution of their share and BackDROP
16 account balances within a specified time after their
17 termination of employment in certain circumstances;
18 authorizing members to choose BackDROP periods between
19 1 month and 60 months in duration; revising BackDROP
20 benefits; revising assumption for amortization of
21 gains and losses; authorizing an in-service pension
22 distribution for the Fire Chief; providing an
23 effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:
26

27 Section 1. Paragraphs (a) and (h) of subsection (1),
 28 paragraphs (a) and (b) of subsection (3), paragraphs (j) and (l)
 29 of subsection (5), paragraph (b) of subsection (21), and
 30 subsection (22) of section 17 of chapter 24981, Laws of Florida,
 31 1947, as amended, are amended, and subsection (25) is added to
 32 that section, to read:

33 Section 17. West Palm Beach Firefighters Pension Fund.—

34 (1) Creation of fund.—There is hereby created a special
 35 fund for the Fire Department of the City of West Palm Beach to
 36 be known as the West Palm Beach Firefighters Pension Fund. All
 37 assets of every description held in the name of the West Palm
 38 Beach Firemen's Relief and Pension Fund and in the name of the
 39 West Palm Beach Firefighters Pension Fund have been and shall
 40 continue to be combined.

41 (a) Definitions.—The following words or phrases, as used
 42 in this act, shall have the following meanings, unless a
 43 different meaning is clearly indicated by the context:

44 1. "Actuarial equivalent value," "actuarial equivalence,"
 45 or "single sum value" means the stated determination using an
 46 interest rate of 8.00 ~~8.25~~ percent per year and the RP-2000
 47 Mortality Table ~~1983 Group Annuity Mortality Table for males~~.

48 2. "Beneficiary" means any person who is not at retirement
 49 but who is entitled to receive a benefit from the West Palm
 50 Beach Firefighters Pension Fund or the West Palm Beach Firemen's
 51 Relief and Pension Fund, as applicable.

- 52 | 3. "Board of Trustees" or "Board" means the Board of
53 | Trustees provided for in this act.
- 54 | 4. "City" means the City of West Palm Beach, Florida.
- 55 | 5. "Department" means the Fire Department of the City.
- 56 | 6. "Enrolled actuary" means an actuary who is enrolled
57 | under Subtitle C of Title III of the Employee Retirement Income
58 | Security Act of 1974 and who is a member of the Society of
59 | Actuaries or the American Academy of Actuaries.
- 60 | 7. "Final average salary" means:
- 61 | a. The average monthly salary paid to a member in the 3
62 | best years of employment before retirement for all active
63 | members who retire on or after May 13, 2012, who are not
64 | eligible for normal retirement as of May 13, 2012, or do not
65 | have a calculated BackDROP date of October 1, 2011, or earlier.
- 66 | b. The average of the monthly salary paid a member in the
67 | 2 best years of employment, paid in and prior to the 23rd year
68 | of credited service for retirements before May 13, 2012, for
69 | members who are eligible for normal retirement as of May 13,
70 | 2012, or who have a calculated BackDROP date of October 1, 2011.
71 | No active nonDROP member shall have any salary amounts paid
72 | prior to October 1, 2000, used in the calculation of final
73 | average salary. Those members whose final average salary would
74 | include salary amounts paid prior to October 1, 2000, shall use
75 | salary paid during the period from October 1, 2000, through
76 | September 30, 2001, to replace any salary amounts paid prior to
77 | October 1, 2000. The replacement salary from October 1, 2000,

78 | through September 30, 2001, may range anywhere between 2 weeks
 79 | and 104 weeks, but shall only be enough salary as is sufficient
 80 | to replace the salary paid prior to October 1, 2000. The
 81 | replacement salary amounts from October 1, 2000, to September
 82 | 30, 2001, shall be prorated based upon an annual salary.

83 | 8. "Fire Chief" means the firefighter who is the executive
 84 | officer of the City of West Palm Beach Fire Department.

85 | 9.8. "Firefighter" means any person employed in the
 86 | Department who is certified as a firefighter as a condition of
 87 | employment in accordance with the provisions of section 633.35,
 88 | Florida Statutes, whose duty it is to extinguish fires and
 89 | protect life and property. The term includes all certified,
 90 | supervisory, and command personnel whose duties include, in
 91 | whole or in part, the supervision, training, guidance, and
 92 | management responsibilities of full-time firefighters, part-time
 93 | firefighters, or auxiliary firefighters but does not include
 94 | part-time firefighters or auxiliary firefighters whose duty it
 95 | is to extinguish fires and protect life and property. In
 96 | accordance with s. 175.032(8)(a), Florida Statutes, the Fire
 97 | Chief has the option to elect to participate, or not, in this
 98 | Plan.

99 | 10.9. "Fund" or "Pension Fund" means the West Palm Beach
 100 | Firefighters Pension Fund or the West Palm Beach Firemen's
 101 | Relief and Pension Fund, as applicable.

102 | 11.10. "Member" means any person who is included in the
 103 | membership of the Fund in accordance with paragraph (h).

104 ~~12.11.~~ "Pension" means a monthly amount payable from the
 105 Fund throughout the future life of a person, or for a limited
 106 period of time, as provided in this act.

107 ~~13.12.~~ "Qualified health professional" means a person duly
 108 and regularly engaged in the practice of his or her profession
 109 who holds a professional degree from a university or college and
 110 has had special professional training or skill regarding the
 111 physical or mental condition, disability, or lack thereof, upon
 112 which he or she is to present evidence to the Board.

113 ~~14.13.~~ "Qualified public depository" means any bank or
 114 savings association organized and existing under the laws of
 115 Florida and any bank or savings association organized under the
 116 laws of the United States that has its principal place of
 117 business in Florida, or has a branch office which is authorized
 118 under the laws of Florida or the United States to receive
 119 deposits in Florida, that meets all of the requirements of
 120 chapter 280, Florida Statutes, and that has been designated by
 121 the Treasurer of the State of Florida as a qualified public
 122 depository.

123 ~~15.14.~~ "Retirant" or "retiree" means any member who
 124 retires with a pension payable from the Fund.

125 ~~16.15.~~ "Retirement" means a member's withdrawal from City
 126 employment with a pension payable from the Fund.

127 ~~17.16.~~ "Salary" means: on and after January 1, 2007,
 128 "salary," for the purpose of pension contributions and benefit
 129 calculations, shall mean total cash remuneration paid by the

130 City to a firefighter for services rendered, excluding payments
131 for overtime and any lump-sum payments for accumulated leave
132 such as accrued vacation leave, accrued sick leave, and accrued
133 personal leave. Employees who are specifically excluded from
134 bargaining unit recognition as set forth in Article 2, but who
135 are members of the West Palm Beach Firefighters Pension Fund,
136 shall continue to make contributions on management incentive
137 benefits. This definition of compensation shall not include any
138 duty employment that is performed for other than the City of
139 West Palm Beach per Article 31, Salary Plan. Beginning with
140 salary paid after December 31, 2008, and pursuant to Internal
141 Revenue Code Section 414(u)(7), the definition of salary
142 includes amounts paid by the City as differential wages to
143 members who are absent from employment while in qualified
144 military service.

145 ~~18.17.~~ "Service," "credited service," or "service credit"
146 means the total number of years, and fractional parts of years,
147 of employment of any member in the employ of the Department,
148 omitting intervening years and fractional parts of years of
149 service when the member was not employed by the City. However,
150 no member shall receive credit for years, or fractional parts of
151 years, of service for which the member has withdrawn his or her
152 contributions to the Fund, unless the member repays into the
153 Fund the contributions withdrawn, with interest, within 60
154 months after reemployment. Further, a member may voluntarily
155 leave his or her contributions in the Fund for a period of 5

156 | years after leaving the employ of the Department, pending the
 157 | possibility of his or her being rehired by the Department and
 158 | remaining employed for a period of not less than 3 years,
 159 | without losing credit for the time he or she has participated
 160 | actively as a firefighter. If he or she does not remain employed
 161 | for a period of at least 3 years as a firefighter with the
 162 | Department upon reemployment, within 5 years his or her
 163 | contributions shall be returned without interest in accordance
 164 | with paragraph (5)(i). In determining the aggregate number of
 165 | years of service of any member, the time spent in the military
 166 | service of the United States or United States Merchant Marine by
 167 | the member on leave of absence from the Department for such
 168 | reason shall be added to the years of service, provided such
 169 | time shall not exceed 5 years. Further, to receive credit for
 170 | such service the member must return to employment as a
 171 | firefighter of the City within 1 year after the date of release
 172 | from such active service. Effective January 1, 2007, a member
 173 | who dies or becomes disabled while serving on active duty
 174 | military service which intervenes the member's employment shall
 175 | be entitled to the rights of this section even though such
 176 | member was not reemployed by the City. A member who dies or
 177 | becomes disabled while on active duty military service shall be
 178 | treated as though reemployed the day before the member became
 179 | disabled or died, was credited with the service the member would
 180 | have been entitled to under this section, and then either died a

181 nonduty death while employed or became disabled from a nonduty
 182 disability.

183 (h) Membership.—All firefighters and all who hold a
 184 position of firefighter in the employ of the Department shall be
 185 members in the Fund. In accordance with s. 175.032(8)(a),
 186 Florida Statutes, the Fire Chief has the option to elect to
 187 participate, or not, in this Plan. All firefighters, including
 188 the chief, who were in the employ of the Department as of April
 189 30, 1959, shall be given credit for service rendered in the
 190 employ of the Department prior to May 1, 1959. New members to
 191 the Fund are required to undergo a physical examination for
 192 purposes of determining preexisting conditions. This physical
 193 examination shall be conducted in conjunction with the City's
 194 postoffer, preemployment physical examination. The Board's
 195 medical director shall review the results of this physical
 196 examination and provide notice to the Board and the member of
 197 any abnormal findings of the examination. This physical
 198 examination will be used for the purposes of establishing a
 199 physical profile of the member for determining preexisting
 200 conditions and presumptive illnesses as provided for in
 201 subsection (6). After review, if further physical examination is
 202 required, such examination shall be conducted at Board expense.

203 (3) Sources of revenue.—The financing of the Fund shall
 204 consist of the following sources of revenue:

205 (a) Taxes of insurance companies.—The moneys returned to
 206 the City as provided by chapter 175, Florida Statutes, shall be

207 used to fund the share account benefit described in paragraph
 208 (5)(j). The chapter 175 funds received in calendar years 2012,
 209 2013, and 2014 shall be utilized to reduce the employee
 210 contributions to 13.1 percent. Effective beginning with the
 211 chapter 175 funds received in calendar year 2015, a portion of
 212 the chapter 175 funds will be used to reduce the employee
 213 contributions and the remainder will be allocated to the share
 214 accounts provided for in paragraph (5)(j), in accordance with
 215 the following schedule:

216 1. In 2015, 85 percent shall be allocated to reduce
 217 contributions and 15 percent shall be allocated to share
 218 accounts.

219 2. In 2016, 65 percent shall be allocated to reduce
 220 contributions and 35 percent shall be allocated to share
 221 accounts.

222 3. In 2017, 35 percent shall be allocated to reduce
 223 contributions and 65 percent shall be allocated to share
 224 accounts.

225
 226 No amount of the Chapter 175 money is to be considered employee
 227 contributions for purposes of a refund of contributions as
 228 provided for in paragraph (5)(i). Effective beginning calendar
 229 year 2018 ~~2015~~, the chapter 175 funds shall again be used in
 230 full to fund the share account benefits provided for in
 231 paragraph (5)(j). The City shall not opt out of participation in
 232 chapter 175, Florida Statutes, or any similar statutory

233 enactment unless exigent circumstances exist, such as the
 234 bankruptcy of the City or changes or amendments to the statute
 235 regarding extra benefits by the Legislature. If any statutory
 236 changes are made by the Legislature, the City and the Board may
 237 renegotiate the impact of such changes, if necessary.

238 (b) Member contributions.-

239 1. Effective May 13, 2012, the member shall contribute 25
 240 percent of his or her salary to the Fund. The full amount of the
 241 chapter 175 funds received in calendar years 2012, 2013, and
 242 2014 shall be used to reduce the employee contributions to 13.1
 243 percent.

244 2. Effective October 1, 2015, the employee contribution
 245 rate will be as set forth in the table and beginning with the
 246 chapter 175 funds received in calendar year 2015, a portion of
 247 the chapter 175 funds will be used to reduce the employee
 248 contributions and the remainder will be allocated to the share
 249 accounts provided for in paragraph (5)(j), in accordance with
 250 the following schedule:

251

| <u>Year</u> | <u>Employee</u> <u>Contribution</u> <u>Amount (%)</u> | <u>Allocation to</u> <u>Reduce</u> <u>Contributions</u> | <u>Actual</u> <u>Employee</u> <u>Contribution</u> <u>Rate</u> | <u>Allocation</u> <u>to Share</u> <u>Accounts(%)</u> |
|-------------|---|---|--|--|
| <u>2015</u> | <u>22%</u> | <u>85%</u> | <u>13.1%</u> | <u>15%</u> |

252

253

| | | | | | |
|-----|-------------|------------|------------|--------------|------------|
| 254 | <u>2016</u> | <u>20%</u> | <u>65%</u> | <u>13.1%</u> | <u>35%</u> |
| 255 | <u>2017</u> | <u>17%</u> | <u>35%</u> | <u>13.1%</u> | <u>65%</u> |

256 3. No amount of the Chapter 175 money is to be considered
 257 employee contributions for purposes of a refund of contributions
 258 as provided for in paragraph (5)(I).

259 4. Effective October 1, 2018 ~~October 1, 2014~~, the employee
 260 contributions shall be 13.1 percent, which shall be picked up
 261 ~~deducted~~ each pay period from the salary of each member in the
 262 Department, and the chapter 175 funds received in calendar year
 263 2018 ~~2015~~ and thereafter shall once again be allocated to the
 264 share accounts.

265 5. If for purposes of paragraphs 1. and 2., the chapter
 266 175 funds are insufficient to reduce the member's contributions
 267 to 13.1 percent, the city shall make up the difference. All
 268 amounts of member contributions that are picked up ~~deducted~~
 269 shall be immediately paid over to the Pension Fund.

270 6. For contributions made on or after May 13, 2012, any
 271 contribution amount over 11.1 percent is to be used to purchase
 272 eligibility in the postretirement health insurance, excluding
 273 the amounts of chapter 175 funds used to offset the member
 274 contribution rate.

275 (5) Service pension.—

276 (j) Chapter 175, Florida Statutes, share accounts.—

277 1. Individual member accounts.—A separate account shall be
 278 established and maintained in each member's name effective on or
 279 after October 1, 1988.

280 2. Share account funding.—

281 a. Each individual member account shall be credited with a
 282 pro rata share of all of the moneys received from chapter 175,
 283 Florida Statutes, tax revenues in June 1988 and thereafter.

284 I. For the chapter 175 funds received in calendar years
 285 2012, 2013, and 2014, the full amount of the chapter 175 funds
 286 shall be used to reduce the employee contributions to 13.1
 287 percent as provided for in subsection (3)(a).

288 II. Effective October 1, 2015, the employee contribution
 289 rate will be as set forth in the table and beginning with the
 290 chapter 175 funds received in calendar year 2015, a portion of
 291 the chapter 175 funds will be used to reduce the employee
 292 contributions and the remainder will be allocated to the share
 293 accounts provided for in paragraph (5)(j), in accordance with
 294 the following schedule:

295

| <u>Year</u> | <u>Employee</u> <u>Contribution</u> <u>Amount (%)</u> | <u>Allocation to</u> <u>Reduce</u> <u>Contributions</u> | <u>Actual</u> <u>Employee</u> <u>Contribution</u> <u>Rate</u> | <u>Allocation</u> <u>to Share</u> <u>Accounts(%)</u> |
|-------------|---|---|--|--|
| <u>2015</u> | <u>22%</u> | <u>85%</u> | <u>13.1%</u> | <u>15%</u> |

296

297

| | | | | | |
|-----|-------------|------------|------------|--------------|------------|
| 298 | <u>2016</u> | <u>20%</u> | <u>65%</u> | <u>13.1%</u> | <u>35%</u> |
| 299 | <u>2017</u> | <u>17%</u> | <u>35%</u> | <u>13.1%</u> | <u>65%</u> |

300 III. Effective October 1, 2018 ~~2014~~, the employee
 301 contributions shall be 13.1 percent and the chapter 175 money
 302 received in calendar year 2018 ~~2015~~ and thereafter shall be
 303 allocated to the share accounts.

304 b. In addition, any forfeitures as provided in
 305 subparagraph 5. shall be credited to the individual member
 306 accounts in accordance with the formula set forth in
 307 subparagraph 3.

308 3. Annual allocation of accounts.-

309 a. Moneys shall be credited to each individual member
 310 account in an amount directly proportionate to the number of pay
 311 periods for which the member was paid compared to the total
 312 number of pay periods for which all members were paid, counting
 313 the pay periods in the calendar year preceding the date for
 314 which chapter 175, Florida Statutes, tax revenues were received.
 315 Share account allocations made on and after October 1, 2004,
 316 shall be made to each individual share account.

317 b. At the end of each fiscal quarter, each individual
 318 account shall be adjusted to reflect the earnings or losses
 319 resulting from investment, as well as reflecting costs, fees,
 320 and expenses of administration.

321 c.(I) Effective for members who reached normal retirement
 322 age on or before May 13, 2012, or members who have a calculated
 323 BackDROP date of October 1, 2011, or earlier, vested
 324 participants have the option to select one of three methods to
 325 credit investment earnings to their account. The method may be
 326 changed each year effective October 1; however, the method must
 327 be elected prior to October 1. The methods are:

328 A.(I) The investment earnings or losses credited to the
 329 individual member accounts shall be in the same percentage as
 330 are earned or lost by the total investment earnings or losses of
 331 the Fund as a whole, unless the Board dedicates a separate
 332 investment portfolio for chapter 175, Florida Statutes, share
 333 accounts, in which case the investment earnings or losses shall
 334 be measured by the investment earnings or losses of the separate
 335 investment portfolio;

336 B.(II) A fixed annual rate of 8.25 percent for members who
 337 reached normal retirement age on or before May 13, 2012, or
 338 members that have a calculated BackDROP date of October 1, 2011,
 339 or earlier. Effective May 13, 2012, the fixed rate is 4 percent
 340 for members who retire on or after May 13, 2012, and before
 341 October 1, 2015; or

342 C.(III) A percentage of the share account assets to be
 343 credited with earnings or losses in accordance with sub-sub-sub-
 344 subparagraph A. ~~sub-sub-subparagraph (I)~~ and a corresponding
 345 percentage of the share account assets credited in accordance
 346 with sub-sub-sub-subparagraph B. ~~sub-sub-subparagraph (II)~~. The

347 combined total percentage invested under this sub-sub-sub-
 348 subparagraph ~~sub-sub-subparagraph~~ must equal 100 percent.

349 (II) Effective after October 1, 2015, vested participants
 350 have the option to select one of two methods to credit
 351 investment earnings to their account. The method may be changed
 352 each year effective October 1; however, the method must be
 353 elected prior to October 1. The methods are:

354 A. The investment earnings or losses credited to the
 355 individual member accounts shall be in the same percentage as
 356 are earned or lost by the total investment earnings or losses of
 357 the Fund as a whole, unless the Board dedicates a separate
 358 investment portfolio for chapter 175, Florida Statutes, share
 359 accounts, in which case the investment earnings or losses shall
 360 be measured by the investment earnings or losses of the separate
 361 investment portfolio; or

362 B. The rate of investment return earned on Pension Fund
 363 assets as reported by the Fund's investment monitor. The
 364 crediting rate maximum is 8 percent and the crediting rate floor
 365 is 0 percent. To accomplish this, the crediting rate will be
 366 compounded monthly at a rate between 0 percent and 2 percent
 367 quarterly. BackDROP assets are commingled with the Pension Fund
 368 assets for investment purposes unless the Board dedicates a
 369 separate investment portfolio for chapter 175, Florida Statutes,
 370 share accounts, in which case the investment earnings or losses
 371 shall be measured by the investment earnings or losses of the
 372 separate investment portfolio.

373 III. The Board has the authority to create rules to
 374 implement the provisions of this section in accordance with the
 375 law and the provisions of the Internal Revenue Code.

376 d. Costs, fees, and expenses of administration shall be
 377 debited from the individual member accounts on a proportionate
 378 basis, taking the cost, fees, and expenses of administration of
 379 the Fund as a whole, multiplied by a fraction, the numerator of
 380 which is the total assets in all individual member accounts and
 381 the denominator of which is the total assets of the Fund as a
 382 whole. The proportionate share of the costs, fees, and expenses
 383 shall be debited from each individual member account on a pro
 384 rata basis in the same manner as chapter 175, Florida Statutes,
 385 tax revenues are credited to each individual member account
 386 (i.e., based on pay periods).

387 4. Eligibility for benefits.—Any member who terminates
 388 employment with the City, upon the member's filing an
 389 application with the Board, shall be entitled to 100 percent of
 390 the value of his or her individual member account, provided the
 391 member meets any of the following criteria:

392 a. The member is eligible to receive, and is receiving, a
 393 service pension as provided in this subsection;

394 b. The member has 5 or more years of credited service and
 395 is eligible to receive, and is receiving, either:

396 (I) A nonduty disability pension as provided in paragraph
 397 (6) (a); or

398 (II) Beneficiary benefits for nonduty death as provided in
 399 paragraph (7)(a); or

400 c. The member has any credited service and is eligible to
 401 receive, and is receiving, either:

402 (I) A duty disability pension as provided in paragraph
 403 (6)(c); or

404 (II) Beneficiary benefits for death in the line of duty as
 405 provided in paragraph (7)(b).

406 5. Forfeitures.—Any member who has less than 10 years of
 407 credited service and who is not eligible for payment of benefits
 408 after termination of employment with the City shall forfeit his
 409 or her individual member account. The amounts credited to said
 410 individual member account shall be redistributed to the other
 411 individual member accounts in the same manner as chapter 175,
 412 Florida Statutes, tax revenues are credited (i.e., based on pay
 413 periods). However, the assets shall first be used to ensure that
 414 the former member's refund of contributions has not actuarially
 415 adversely impacted the payment for the extra benefits. If there
 416 has been an adverse impact, the shortfall shall be made up first
 417 before the amounts are reallocated to active members.

418 6. Payment of benefits.—The normal form of benefit payment
 419 shall be a lump sum payment of the entire balance of the
 420 individual member account. Effective October 1, 2015, each
 421 ~~member on or after May 13, 2012, members must take a lump sum~~
 422 ~~distribution of their entire share account balance within 6~~
 423 ~~months after their termination of employment. For members who~~

424 | ~~reached normal retirement age on or before May 13, 2012, or who~~
 425 | ~~had a calculated BackDROP date of October 1, 2011, or earlier,~~
 426 | ~~the member~~ may leave his or her money in the share account until
 427 | the latest day under subsection (18), choose a lump sum
 428 | distribution; or, upon the written election of the member, upon
 429 | a form prescribed by the Board, payment may be made either by:
 430 | a. Installments.—The account balance shall be paid out to
 431 | the member in three equal payments paid over 3 years, the first
 432 | payment to be made upon approval of the Board; or
 433 | b. Annuity.—The account balance shall be paid out in
 434 | monthly installments over the lifetime of the member or until
 435 | the entire balance is exhausted. The monthly amount paid shall
 436 | be determined by the Fund's actuary in accordance with
 437 | selections made by the member in a form provided by the Board.
 438 | 7. Death of a member.—If a member dies and is eligible for
 439 | benefits from the individual member account, the entire balance
 440 | of the individual member account shall be paid in a lump sum to
 441 | the beneficiaries designated in accordance with paragraph (h).
 442 | If a member fails to designate a beneficiary or, if the
 443 | beneficiary predeceases the member, the entire balance shall be
 444 | paid in a lump sum in the following order:
 445 | a. To the spouse;
 446 | b. If there is no spouse or the spouse is not alive, to
 447 | the member's surviving child or children on a pro rata basis;
 448 | c. If there are no children or no child is alive, to the
 449 | member's parent or parents; or

450 d. If no parent is alive, to the estate of the member.
 451 (1) Backwards Deferred Retirement Option Plan (BackDROP).-
 452 1. Eligibility to participate in the BackDROP.-
 453 a. Any member who has attained age 53 with 18 or more
 454 years of service, who has attained age 58 with 13 or more years
 455 of service, or who has acquired 26 years of service regardless
 456 of age may participate in the BackDROP. Members shall elect to
 457 participate by applying to the Board of Trustees on a form
 458 provided for that purpose. A member may not participate in both
 459 the DROP and the BackDROP.
 460 b. A member shall not be eligible to receive a BackDROP
 461 benefit that is greater than an accumulation of 60 months of the
 462 monthly retirement benefit. A member shall not be eligible to
 463 receive a benefit which is less than an accumulation of 36
 464 months of the monthly retirement benefit. Effective October 1,
 465 2015, a member who retires after October 1, 2015, who does not
 466 have a calculated BackDROP date of October 1, 2011, can choose a
 467 BackDROP benefit which is the accumulation of between 1 month
 468 and 60 months.
 469 c. Member contributions shall continue throughout the
 470 period of employment and are not refundable for the BackDROP
 471 period.
 472 d. Members who elect to participate in the BackDROP must
 473 retire and terminate employment to be eligible for payment of
 474 the benefit. In the event that the City determines to retain the
 475 Fire Chief, the Fire Chief shall not be required to terminate

476 employment to be eligible for BackDROP participation at normal
 477 retirement, including an in-service distribution in accordance
 478 with subsection (25).

479 e. Any member who terminates employment by any means,
 480 including death, prior to attaining age 53 with 18 or more years
 481 of service or age 58 with 13 or more years of service or by
 482 acquiring 26 years of service is not eligible to participate in
 483 the BackDROP.

484 2. Benefits payable upon election to participate in the
 485 BackDROP.—

486 a. Upon election to receive the BackDROP benefit, a
 487 member's retirement benefits will be calculated as if the member
 488 had chosen to retire and terminate employment at a date which is
 489 more than 36 months but less than 60 months earlier. The number
 490 of months to be applied is based upon the member's election. The
 491 monthly pension amount shall be multiplied by the number of
 492 months of BackDROP selected by the member, which shall be
 493 between 36 and 60 months, inclusive. The BackDROP benefit shall
 494 be calculated as a single sum, including interest at the rate of
 495 8.25 percent less expenses, compounded annually for the period
 496 of BackDROP for members who have reached normal retirement age
 497 on or before May 13, 2012, or who have a calculated BackDROP
 498 date of October 1, 2011, or earlier. Effective for retirements
 499 after May 13, 2012, the interest rate shall be 4 percent, less
 500 expenses, compounded annually for the period of BackDROP.

501 Effective October 1, 2015, a member who retires after October 1,

502 2015, who does not have a calculated BackDROP date of October 1,
 503 2011, can choose a BackDROP benefit which is the accumulation of
 504 between 1 month and 60 months.

505 b. No payments shall be made from the BackDROP until the
 506 member terminates employment with the Department.

507 c. (I) Effective for retirements after October 1, 2015 ~~Upon~~
 508 ~~termination of employment,~~ participants in the BackDROP ~~shall~~
 509 ~~receive lump sum the balance of the BackDROP account within 6~~
 510 ~~months after termination of employment.~~

511 ~~(I) Members who have reached normal retirement age on or~~
 512 ~~before May 13, 2012, or who have a calculated BackDROP date of~~
 513 ~~October 1, 2011, or earlier~~ may leave their money in the account
 514 until the latest day under subsection (18) or choose payments as
 515 follows:

516 (A) A lump sum.—The entire account balance shall be paid
 517 to the retirant upon approval of the Board of Trustees.

518 (B) Installments.—The account balance shall be paid out to
 519 the retirant in three equal payments paid over 3 years, the
 520 first payment to be made upon approval of the Board of Trustees.

521 (C) Annuity.—The account balance shall be paid out in
 522 monthly installments over the lifetime of the member or until
 523 the entire balance is exhausted. The monthly amount paid shall
 524 be determined by the Fund's actuary in accordance with
 525 selections made by the member in a form provided by the Board of
 526 Trustees.

527 (II) Any form of payment selected by a member must comply
 528 with the minimum distribution requirements of the IRC 401(a)(9),
 529 and are subject to the requirements of subsection (18).

530 (III) The beneficiary of the BackDROP member shall have
 531 the same right as the participant in accordance with subsection
 532 (7).

533 3. BackDROP earnings.—

534 a. Effective for members who reached normal retirement age
 535 on or before May 13, 2012, or members who have a calculated
 536 BackDROP date of October 1, 2011, or earlier, BackDROP members
 537 may select one of three methods to credit investment earnings to
 538 their accounts. Investment earnings shall be credited on a
 539 quarterly basis. The method may be changed each year effective
 540 October 1; however, the method must be elected prior to October
 541 1. The methods are:

542 (I) The BackDROP is credited with earnings and losses
 543 using the rate of investment return earned on Pension Fund
 544 assets as reported by the Fund's investment monitor. BackDROP
 545 assets are commingled with the Pension Fund assets for
 546 investment purposes;

547 (II) A fixed rate of 8.25 percent for members who reached
 548 normal retirement age on or before May 13, 2012, or members who
 549 have a calculated BackDROP date of October 1, 2011, or earlier.
 550 Effective May 13, 2012, the fixed rate is 4 percent for members
 551 who retire on or after May 13, 2012, but before October 1, 2015;
 552 or

553 (III) A percentage of the BackDROP account assets to be
 554 credited with earnings or losses in accordance with sub-sub-
 555 subparagraph (I) and a corresponding percentage of the BackDROP
 556 account assets credited in accordance with sub-sub-subparagraph
 557 (II). The combined total percentage invested under this sub-sub-
 558 subparagraph must equal 100 percent.

559 b. Effective for BackDROP participants electing the
 560 BackDROP on or after October 1, 2015, members who have elected
 561 the BackDROP and leave the assets in the Fund to be invested may
 562 select one of two methods to credit investment earnings to their
 563 accounts. Investment earnings shall be credited on a quarterly
 564 basis. The method may be changed each year effective October 1;
 565 however, the method must be elected prior to October 1. The
 566 methods are:

567 (I) The BackDROP is credited with earnings and losses
 568 using the rate of investment return earned on Pension Fund
 569 assets as reported by the Fund's investment monitor. BackDROP
 570 assets are commingled with the Pension Fund assets for
 571 investment purposes; or

572 (II) The BackDROP is credited with the rate of investment
 573 return earned on Pension Fund assets as reported by the Fund's
 574 investment monitor. The crediting rate maximum is 8 percent and
 575 the crediting rate floor is 0 percent. To accomplish this, the
 576 crediting rate will be compounded monthly at a rate between 0
 577 percent and 2 percent quarterly. BackDROP assets are commingled
 578 with the Pension Fund assets for investment purposes.

579 c. The Board has the authority to create rules to
 580 implement the provisions of this section in accordance with the
 581 law and the provisions of the Internal Revenue Code.

582 ~~d.b.~~ Costs, fees, and expenses of administration shall be
 583 debited from the individual member BackDROP accounts on a
 584 proportionate basis, taking the cost, fees, and expenses of
 585 administration of the Fund as a whole, multiplied by a fraction,
 586 the numerator of which is the total of assets in all individual
 587 member accounts and the denominator of which is the total of
 588 assets of the Fund as a whole.

589 (21) Rollovers from qualified plans.—

590 (b) Transfer of accumulated leave.—

591 1. Members eligible to receive accumulated sick leave,
 592 accumulated vacation leave, or any other accumulated leave
 593 payable upon separation shall have the leave transferred to the
 594 Fund up to the amount permitted by law. Any additional amounts
 595 shall be paid directly to the member. Members on whose behalf
 596 leave has been transferred shall maintain the entire amount of
 597 the transferred leave balance in the DROP or Share Account.

598 2. If a member on whose behalf the City makes a
 599 transferred leave balance to the Plan dies after retirement or
 600 other separation, then any person who would have received a
 601 death benefit had the member died in service immediately prior
 602 to the date of retirement or other separation shall be entitled
 603 to receive an amount equal to the transferred leave balance in a
 604 lump sum. In the case of a surviving spouse or former spouse, an

605 election may be made to transfer the leave balance to an
 606 eligible retirement plan in lieu of the lump sum payment.
 607 Failure to make such an election by the surviving spouse or
 608 former spouse within 60 days after the member's death shall be
 609 deemed an election to receive the lump sum payment.

610 3. The Board, by rule, shall prescribe the method for
 611 implementing the provisions of this paragraph.

612 4. ~~Effective on or after May 13, 2012, members must take a~~
 613 ~~lump sum distribution of the~~ Amounts transferred under this
 614 section ~~within 6 months after their termination of employment.~~
 615 ~~For members who reached normal retirement age on or before May~~
 616 ~~13, 2012, or who had a calculated BackDROP date of October 1,~~
 617 ~~2011, or earlier, the member's transferred leave must remain~~
 618 invested in the Pension Fund for a period of not less than at
 619 ~~least~~ 1 year.

620 (22) Actuarial assumptions.—The following actuarial
 621 assumptions shall be used for all purposes in connection with
 622 this Fund, effective October 1, 1998:

623 ~~(a) The period for amortizing current, future, and past~~
 624 ~~actuarial gains or losses shall be 20 years.~~

625 ~~(b)~~ The assumed investment rate of return shall be 8.25
 626 percent. Effective October 1, 2014, the assumed investment rate
 627 of return shall be 8 percent ~~8.0%~~. Due to the other assumption
 628 changes that were made at the same time as this reduction in the
 629 assumed rate of return, the City did not have an increase in
 630 City contributions as a result of the change of the assumed

631 investment rate of return. Therefore, there was no change
 632 necessary to the 3-percent accrual factor in subsection (5)(a)2.

633 (25) In-service distributions.—In accordance with Code
 634 Section 401(a)(36), an in-service pension distribution may be
 635 made in the limited circumstance where the Fire Chief is
 636 retained in service by the City after reaching normal retirement
 637 eligibility provided that occurs in or after the year in which
 638 the Fire Chief attains age 50 years. No other in-service
 639 distributions are permitted.

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

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1201 Ocean Highway and Port Authority, Nassau County
SPONSOR(S): Adkins
TIED BILLS: IDEN./SIM. **BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|-----------|-------------------|---------------------------------------|
| 1) Local Government Affairs Subcommittee | 10 Y, 3 N | Darden | Miller |
| 2) Government Operations Subcommittee | | Toliver <i>LT</i> | Williamson <i>RAW</i> |
| 3) Local & Federal Affairs Committee | | | |

SUMMARY ANALYSIS

The Ocean Highway and Port Authority (Authority) is an independent special district in Nassau County responsible for managing operations at the Port of Fernandina. The charter for the Authority currently authorizes the five members of its board of Port Commissioners to be elected by the qualified electors of Nassau County but does not specify whether the election is to be held on a partisan or nonpartisan basis. However, the Authority has held partisan elections since the creation of its charter in 1941. Section 189.04(2)(c), F.S., requires special districts to conduct nonpartisan elections unless specified elsewhere in that district's charter.

The bill authorizes the Authority to conduct partisan elections. The elections would be conducted by the Nassau County Supervisor of Elections using the procedures provided in the Florida Election Code.

This bill shall take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Ocean Highway and Port Authority

The Ocean Highway and Port Authority (Authority) is an independent special district¹ created by special act of the Florida Legislature in 1941.² The Authority operates the Port of Fernandina in Nassau County.³ The Authority's charter, including the initial 1941 charter and all subsequent special laws concerning the district, were codified in 2005.⁴ The Authority has a long-term contract with Nassau Terminals, LLC, a subsidiary of Kinder Morgan, to handle certain day-to-day operations of the port such as marketing, terminal handling, and stevedoring.⁵ Over 225 vessels a year are serviced by the port.⁶

To operate the port effectively, the Authority is authorized, in part, to:

- Purchase, construct, and maintain port facilities, including docks, warehouses, shipyards, and railways;⁷
- Improve and develop Fernandina Harbor and other waterways in Nassau County;⁸
- Fix rates for use of port facilities;⁹
- Construct and maintain infrastructure necessary to operate the port;¹⁰ and
- Issue bonds.¹¹

Authority operations are financed by a combination of port revenues, federal and state grants, port security revenue, rental income, and annual fees.¹²

Current Election Procedure

The Board of Port Commissioners of the Authority consists of five members.¹³ Commissioners are elected to four-year terms serving districts corresponding to the district boundaries for the Nassau County Board of County Commissioners.¹⁴ Each commissioner must reside in the boundaries of the district he or she represents.¹⁵

¹ Section 189.012(3), F.S. (defining independent special district as any special district that is not a dependent special district under s. 189.012(2), F.S.)

² Chapter 41-21418, Laws of Fla.

³ See ss. 3, 7(5), and 9, Charter of the Ocean Highway and Port Authority, as codified in s. 3, Ch. 2005-293, Laws of Fla. (hereinafter Port Authority Charter) (board members elected by voters, power to set rates for use of port facilities, and power to apply for loans and grants from federal and state governments, respectively).

⁴ Chapter 2005-293, Laws of Fla.

⁵ Ocean and Highway Port Authority, *The Port of Fernandina Beach*, <http://portoffernandina.org/about-us/> (last visited March 2, 2015).

⁶ *Id.*

⁷ Section 7(2), Port Authority Charter.

⁸ Section 7(3), Port Authority Charter.

⁹ Section 7(4), Port Authority Charter.

¹⁰ Section 7(6), Port Authority Charter.

¹¹ Section 7(9), Port Authority Charter.

¹² Ocean and Highway Port Authority, *Budget*, <http://portoffernandina.org/budget/> (last visited March 2, 2015).

¹³ Section 3, Port Authority Charter.

¹⁴ *Id.*

¹⁵ *Id.*

Chapter 189, F.S., the Uniform Special District Accountability Act, requires that members of the governing boards for single-county special districts be elected in nonpartisan elections unless the district's charter provides otherwise.¹⁶ While the current charter for the Authority does not provide for partisan elections,¹⁷ the Authority's board has traditionally been elected in partisan contests.¹⁸

Effect of Proposed Changes

The bill amends Section 3 of the Ocean Highway and Port Authority Charter, codified as Ch. 2005-293, L.O.F., to require partisan elections for members of the Board of Port Commissioners for the Authority. The elections would be conducted by the Nassau County Supervisor of Elections using the procedures provided in the Florida Election Code.¹⁹

B. SECTION DIRECTORY:

Section 1: Amends Ch. 2005-293, L.O.F., to allow for partisan elections for the Board of Port Commissioners for the Authority.

Section 2: Provides an effective date of upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 28, 2015

WHERE? Fernandina Beach News-Leader, a weekly newspaper published in Nassau County, Florida

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

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

¹⁶ Section 189.04(2)(c), F.S.

¹⁷ Section 3, Port Authority Charter

¹⁸ Resolution 2014-5, Ocean and Highway Port Authority, adopted Dec. 10, 2014.

¹⁹ See generally s. 97.011, F.S. ("Chapters 97-106 inclusive shall be known and may be cited as 'The Florida Election Code.'")

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to the Ocean Highway and Port Authority, Nassau County; amending chapter 2005-293, Laws of Florida; providing for the partisan election of members of the board of port commissioners; providing an effective date.

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

Section 1. Section 3 of section 3 of chapter 2005-293, Laws of Florida, is amended to read:

Section 3. Authority created; election of board; terms; vacancies; officers.—There is hereby created in the County of Nassau a port authority to be known as "Ocean Highway and Port Authority," an independent special district, to be governed by a board of port commissioners consisting of five members serving staggered terms of 4 years each. There shall be five port commissioners' districts, which shall be numbered one through five, inclusive, and shall be congruent with the Nassau County county commissioners' districts. The port commissioners' districts shall be numbered in such a fashion that port commissioner district one shall include the same geographical area as Nassau County county commissioners' district number one, port commissioner district two shall include the same geographical area as Nassau County county commissioners' district number two, port commissioner district three shall

27 | include the same geographical area as Nassau County county
28 | commissioners' district number three, port commissioner district
29 | four shall include the same geographical area as Nassau County
30 | county commissioners' district number four, and port
31 | commissioner district five shall include the same geographical
32 | area as Nassau County county commissioners' district number
33 | five. There shall be one port commissioner for each of such port
34 | commissioners' districts, who shall reside in each district and
35 | who shall be elected by the qualified electors of Nassau County.
36 | Such elections shall be conducted on a partisan basis by the
37 | Supervisor of Elections of Nassau County using the election
38 | procedures provided in the Florida Election Code. At each
39 | general election, successors to the members of the board whose
40 | terms are about to expire shall be elected for terms of 4 years
41 | each. Vacancies on the board resulting from resignation, death,
42 | removal, or otherwise shall be filled by appointment by the
43 | board, the appointee to hold office until the next following
44 | general election, when such vacancy shall be filled for the
45 | unexpired term by election in the manner herein prescribed. The
46 | members of the board shall qualify by taking an oath of office
47 | on the second Tuesday following their election in the manner
48 | required by county officers. The board shall reorganize by
49 | selection of one of its members to act as chair and one of its
50 | members to act as vice chair and shall also appoint a secretary
51 | and a treasurer, but the same member may be designated to act as
52 | secretary and treasurer. The treasurer shall give bond, the

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53 | amount, terms, and conditions of which shall be fixed and may be
54 | revised from time to time by the board.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1209 Public Records/High-pressure Well Stimulation Chemical Disclosure Registry
SPONSOR(S): Agriculture & Natural Resources Subcommittee and Rodrigues
TIED BILLS: HB 1205 **IDEN./SIM. BILLS:** SB 1582

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|-----------------|-----------------|--|
| 1) Agriculture & Natural Resources Subcommittee | 8 Y, 4 N, As CS | Moore | Blalock |
| 2) Government Operations Subcommittee | | Moore <i>AM</i> | Williamson <i>Raw</i> |
| 3) State Affairs Committee | | | |

SUMMARY ANALYSIS

HB 1205, this bill's companion, requires the Department of Environmental Protection (DEP) to designate the national chemical registry, known as FracFocus, as the state's registry for chemical disclosure for all wells on which high-pressure well stimulations are performed. A service provider, vendor, or well owner or operator is required to report specified information relating to high-pressure well stimulations to DEP, including each chemical ingredient and its concentration used in the high-pressure well stimulation fluid, within 60 days of initiating the well stimulation. The chemical disclosure requirements do not apply to an ingredient that is not intentionally added to the high-pressure well stimulation or that occurs incidentally or is otherwise unintentionally present in a high-pressure well stimulation.

This bill, which is linked to the passage of HB 1205 or similar legislation, creates a public records exemption for proprietary business information relating to high-pressure well stimulations held by DEP in connection with the online high-pressure well stimulation chemical disclosure registry.

The bill requires a person submitting proprietary business information to DEP who wishes to maintain confidentiality of that information to request that the information be kept confidential and exempt, provide a basis to DEP for claiming the information is proprietary business information, and clearly mark each page of a document containing information claimed to be proprietary business information as "proprietary business information." If DEP receives a public records request for information claimed as proprietary business information under this bill, DEP must promptly notify the person who submitted the information. That person then has 10 days to file a circuit court action to seek an order barring disclosure of the information. DEP may not release the information if any such action is pending. Failure to file an action within 10 days constitutes a waiver of any claim to confidentiality. The bill does not direct DEP to determine whether information constitutes proprietary business information.

The bill authorizes confidential and exempt proprietary business information to be disclosed to another governmental entity if the receiving entity agrees in writing to maintain the confidential and exempt status of the information and has verified in writing its legal authority to maintain such confidentiality. In addition, such proprietary business information may be disclosed when relevant in any proceeding relating to high-pressure well stimulations.

The bill provides that the public records 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. It also provides a statement of public necessity as required by the State Constitution.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Records Law

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

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- 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.

House Bill 1205, Regulation of Oil and Gas Resources

HB 1205, this bill's companion, requires the Department of Environmental Protection (DEP) to designate the national chemical registry, known as FracFocus, as the state's registry for chemical disclosure for all wells on which high-pressure well stimulations are performed. DEP must provide a link to FracFocus on its website. A service provider, vendor, or well owner or operator must report to DEP, at a minimum, the following information:

- The name of the service provider, vendor, or well owner or operator;
- The date of completion of the high-pressure well stimulation;
- The county in which the well is located;
- The American Petroleum Institute number for the well;
- The well name and number;
- The longitude and latitude of the wellhead;
- The total vertical depth of the well;
- The total volume of water used in the high-pressure well stimulation; and

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

² See s. 119.15, F.S.

- Each chemical ingredient that is subject to 29 C.F.R. s. 1910.1200(g)(2) and the ingredient concentration in the high-pressure well stimulation fluid by mass for each well on which a high-pressure well stimulation is performed.

If FracFocus cannot accept and make publicly available any of the required information, DEP must post the information on its website.

HB 1205 requires a service provider, vendor, or well owner or operator to report the required information to DEP within 60 days after the initiation of a high-pressure well stimulation for each well on which it is performed. The service provider, vendor, or well owner or operator is also required to notify DEP if any chemical ingredient not previously reported is intentionally included and used for the purpose of performing a high-pressure well stimulation.

The bill specifies that the chemical disclosure requirements do not apply to an ingredient that is not intentionally added to the high-pressure well stimulation or that occurs incidentally or is otherwise unintentionally present in a high-pressure well stimulation.

Effect of Proposed Changes

The bill defines “proprietary business information” as information that:

- Is owned or controlled by the applicant or a person affiliated with the applicant;
- Is intended to be private and is treated by the applicant as private because disclosure would harm the applicant or the applicant’s business operations;
- Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public; and
- Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as requested by DEP.

The bill specifies that proprietary business information includes:

- Trade secrets, as defined in s. 688.002, F.S.;³
- Leasing plans, real property acquisition plans, exploration budgets, or marketing studies, the disclosure of which would impair the efforts of the applicant or its affiliates to contract for goods or services or to acquire real property interests on favorable terms; and
- Competitive interests, which may include well design or completion plans, geological or engineering studies related to storage reservoir performance characteristics, or field utilization strategies or operating plans, the disclosure of which would impair the competitive business of the applicant providing the information.

³ Section 688.002, F.S., defines “trade secret” as information, including a formula, pattern, compilation, program, device, method, technique, or process that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The bill, which is linked to the passage of HB 1205 or similar legislation, creates a public records exemption for proprietary business information relating to high-pressure well stimulations held by DEP in connection with the online high-pressure well stimulation chemical disclosure registry. The bill provides that such proprietary business information is confidential and exempt⁴ from public records requirements if the person submitting the information:

- Requests that the proprietary business information be kept confidential and exempt;
- Informs DEP of the basis for claiming the information is proprietary business information; and
- Clearly marks each page of a document or specific portion of a document containing information claimed to be proprietary business information as “proprietary business information.”

If DEP receives a public records request for a document that is marked proprietary business information, DEP must promptly notify the person who submitted the information as proprietary business information. The notice must inform such person that the person has 10 days following receipt of the notice to file an action in circuit court seeking a determination whether the information in question contains proprietary business information and an order barring public disclosure of the information. If the person files an action within 10 days after receipt of the notice, DEP may not release the documents pending the outcome of the legal action. Failure to file an action within 10 days constitutes a waiver of any claim of confidentiality, and DEP must release the document as requested. The bill does not direct DEP to determine whether information constitutes proprietary business information.

The bill authorizes confidential and exempt proprietary business information to be disclosed to another governmental entity if the receiving entity agrees in writing to maintain the confidential and exempt status of the information and has verified in writing its legal authority to maintain such confidentiality. In addition, such proprietary business information may be disclosed when relevant in any proceeding relating to high-pressure well stimulations. Those involved in any proceeding relating to high-pressure well stimulations, including an administrative law judge, a hearing officer, or a judge or justice, must maintain the confidentiality of any proprietary business information released at such proceeding.

The bill specifies that the public records 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. It also provides a statement of public necessity as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1. amends s. 377.45, F.S, relating to disclosure of high-pressure well stimulation chemicals.

Section 2. provides a statement of public necessity.

Section 3. provides a contingent effective date to match the effective date of HB 1205 or similar legislation, if such legislation is adopted in the same legislative session and becomes law.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a minimal negative fiscal impact on DEP because staff responsible for complying with public records requests may require training related to creation of the public records exemption. In addition, DEP may incur costs associated with redacting the confidential and exempt information prior to releasing a record.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

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

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption limited to information submitted to DEP that is a trade secret. The

exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues: Technical Amendment

On line 56 of the bill, the word “are” should be changed to “is.”

Other Comments: Inter-Agency Transfer of a Document

In *Ragsdale v. State*,⁵ the Florida Supreme Court held that the applicability of a particular public records exemption is determined by the document being withheld, not by the identity of the agency possessing the record. The Court concluded that information that is exempt from public records disclosure due to confidentiality does not lose its exempt status when it is transferred from one state agency to another.⁶ Thus, the requirement in the bill that a governmental entity receiving proprietary business information from DEP must verify in writing its legal authority to maintain the confidentiality of the information may not be necessary.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 17, 2015, the Agriculture & Natural Resources Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Replaces the term “trade secret” with “proprietary business information” throughout the bill;
- Adds a definition of “proprietary business information”;
- Requires a governmental entity that receives proprietary business information to agree in writing to maintain the confidential and exempt status of the information and verify in writing its legal authority to maintain the confidentiality; and
- Reduces the number of days a person has to file an action in circuit court to determine whether a document is proprietary business information from 30 days to 10 days.

This analysis is drafted to the committee substitute as passed by the Agriculture & Natural Resources Subcommittee.

⁵ 720 So.2d 203 (Fla. 1998).

⁶ *Id.* at 206.

1 A bill to be entitled
 2 An act relating to public records; amending s. 377.45,
 3 F.S.; defining the term "proprietary business
 4 information"; providing an exemption from public
 5 records requirements for proprietary business
 6 information contained within information relating to
 7 high-pressure well stimulations obtained by the
 8 Department of Environmental Protection in connection
 9 with the department's online high-pressure well
 10 stimulation chemical disclosure registry; providing
 11 procedures and requirements with respect to the
 12 granting of confidential and exempt status; providing
 13 for disclosure under specified circumstances;
 14 providing for future legislative review and repeal of
 15 the exemption under the Open Government Sunset Review
 16 Act; providing a statement of public necessity;
 17 providing a contingent effective date.

18
 19 Be It Enacted by the Legislature of the State of Florida:

20
 21 Section 1. Subsection (4) of section 377.45, Florida
 22 Statutes, as created by HB 1205, 2015 Regular Session, is
 23 renumbered as subsection (5), and a new subsection (4) is added
 24 to that section to read:

25 377.45 High-pressure well stimulation chemical disclosure
 26 registry.—

27 (4) (a) As used in this subsection, the term "proprietary
 28 business information" means information that:
 29 1. Is owned or controlled by the applicant or a person
 30 affiliated with the applicant.
 31 2. Is intended to be private and is treated by the
 32 applicant as private because disclosure would harm the applicant
 33 or the applicant's business operations.
 34 3. Has not been disclosed except as required by law or a
 35 private agreement that provides that the information will not be
 36 released to the public.
 37 4. Is not publicly available or otherwise readily
 38 ascertainable through proper means from another source in the
 39 same configuration as requested by the department.
 40 5. Includes:
 41 a. Trade secrets, as defined in s. 688.002.
 42 b. Leasing plans, real property acquisition plans,
 43 exploration budgets, or marketing studies, the disclosure of
 44 which would impair the efforts of the applicant or its
 45 affiliates to contract for goods or services or to acquire real
 46 property interests on favorable terms.
 47 c. Competitive interests, which may include well design or
 48 completion plans, geological or engineering studies related to
 49 storage reservoir performance characteristics, or field
 50 utilization strategies or operating plans, the disclosure of
 51 which would impair the competitive business of the applicant
 52 providing the information.

53 (b) Proprietary business information relating to high-
 54 pressure well stimulations held by the department in connection
 55 with the online high-pressure well stimulation chemical
 56 disclosure registry, are confidential and exempt from s.
 57 119.07(1) and s. 24(a), Art. I of the State Constitution if the
 58 person submitting such information to the department:

59 1. Requests that the proprietary business information be
 60 kept confidential and exempt.

61 2. Informs the department of the basis for claiming that
 62 the information is proprietary business information.

63 3. Clearly marks each page of a document or specific
 64 portion of a document containing information claimed to be
 65 proprietary business information as "proprietary business
 66 information."

67 (c) If the department receives a public records request
 68 for a document that is marked proprietary business information
 69 under this section, the department must promptly notify the
 70 person who submitted the information as proprietary business
 71 information. The notice must inform such person that the person
 72 has 10 days following receipt of such notice to file an action
 73 in circuit court seeking a determination whether the document in
 74 question contains proprietary business information and an order
 75 barring public disclosure of the document. If the person files
 76 an action within 10 days after receipt of notice of the public
 77 records request, the department may not release the documents
 78 pending the outcome of the legal action. The failure to file an

79 action within 10 days constitutes a waiver of any claim of
 80 confidentiality, and the department shall release the document
 81 as requested.

82 (d) Confidential and exempt proprietary business
 83 information may be disclosed:

84 1. To another governmental entity if the receiving entity
 85 agrees in writing to maintain the confidential and exempt status
 86 of the information and has verified in writing its legal
 87 authority to maintain such confidentiality.

88 2. When relevant in any proceeding under this part. Those
 89 involved in any proceeding under this section, including, but
 90 not limited to, an administrative law judge, a hearing officer,
 91 or a judge or justice, must maintain the confidentiality of any
 92 proprietary business information revealed at such proceeding.

93 (e) This subsection is subject to the Open Government
 94 Sunset Review Act in accordance with s. 119.15 and shall stand
 95 repealed on October 2, 2020, unless reviewed and saved from
 96 repeal through reenactment by the Legislature.

97 Section 2. The Legislature finds that it is a public
 98 necessity that proprietary business information relating to
 99 high-pressure well stimulations held by the Department of
 100 Environmental Protection in connection with the online high-
 101 pressure well stimulation chemical disclosure registry be made
 102 confidential and exempt from s. 119.07(1), Florida Statutes, and
 103 s. 24(a), Article I of the State Constitution. Proprietary
 104 business information must be held confidential and exempt from

105 public records requirements because the disclosure of such
 106 information would create an unfair competitive advantage for
 107 persons receiving such information, which would adversely impact
 108 the service company, chemical supplier, or well owner or
 109 operator that provides chemical ingredients for a well or wells
 110 on which high-pressure well stimulations are performed. If such
 111 confidential and exempt information regarding proprietary
 112 business information were released pursuant to a public records
 113 request, others would be allowed to take the benefit of the
 114 proprietary business information without compensation or
 115 reimbursement to the service company, chemical supplier, or well
 116 owner or operator.

117 Section 3. This act shall take effect on the same date
 118 that CS/HB 1205 or similar legislation takes effect, if such
 119 legislation is adopted in the same legislative session or an
 120 extension thereof and becomes law.



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1209 (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 Rodrigues, R. offered the following:

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Amendment

Remove line 56 and insert:
disclosure registry, is confidential and exempt from s.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1217 Hillsborough River Technical Advisory Council, Hillsborough County
SPONSOR(S): Raulerson
TIED BILLS: **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|-----------|-------------------|--|
| 1) Local Government Affairs Subcommittee | 13 Y, 0 N | Darden | Miller |
| 2) Government Operations Subcommittee | | Toliver <i>LT</i> | Williamson <i>Raw</i> |
| 3) Local & Federal Affairs Committee | | | |

SUMMARY ANALYSIS

Chapter 86-335, Laws of Florida, creates the Hillsborough River Technical Advisory Council (Council), an advisory board to assist the Hillsborough River Interlocal Planning Board (Board) in the development of the coordinated master plan for the Hillsborough River Corridor. The Council currently has 11 members, eight appointed by various governmental entities and three community representatives appointed by local governments.

The bill reduces the size of the Council to 10 members, eliminating a representative from Hillsborough River Basin Board of the Southwest Florida Water Management District, which no longer exists. The bill creates additional flexibility in the selection of members by governmental entities, allowing entities to choose to enable their chairperson, director, or chief executive to select the member. The bill makes the community representatives subject to removal by the local government that appoints them and provides for the designation of alternates. The bill also reduces the quorum for the Council from six members to five members to reflect the Council's reduced membership.

This bill will take effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Hillsborough River Technical Advisory Council (Council) is an advisory panel that gives recommendations to the Hillsborough River Interlocal Planning Board (Board) regarding the development of the coordinated master plan for the Hillsborough River Corridor.¹

The Board is tasked with developing, updating, and monitoring the coordinated master plan,² which is then forwarded to cities, counties, special districts, regulatory agencies, and others involved for consideration and implementation.³ The coordinated master plan aims to:⁴

- As a matter of highest priority, ensure the portability of the water supply;
- Reverse the trend toward hardened shores and channelization;
- Control erosion and the propagation of undesirable vegetation;
- Improve water quality to a swimmable standard;
- Control boat traffic and mitigate public nuisances;
- Minimize use conflicts and promote the enforcement of water safety laws;
- Specify construction and placement standards for ramps, docks, and seawalls;
- Specify land-use design standards for development in the river corridor;
- Minimize urban encroachment upon the riverbank and establish a "green" river corridor plan;
- Improve public access to the river in appropriate areas;
- Preserve the water supply afforded by the river and conserve its use; and
- Preserve wildlife habitats and archaeological resources.

The Council consists of 11 members representing various governmental stakeholders and the public.⁵ Members of the council are subject to removal by the appointing governmental entity at any time, except for community representatives, who serve four-year terms.⁶ The community representatives are entitled to travel expenses pursuant to s. 112.061, F.S.⁷

The membership of the Council includes:

- A member of the City-County Planning Commission, appointed by that commission;
- A member or employee of the Hillsborough County Environmental Protection Commission, appointed by that commission;
- A member of the governing board of the Hillsborough River Basin Board of the Southwest Florida Water Management District, appointed by the basin board;
- An employee of the Southwest Florida Water Management District, appointed by the governing board of the district;
- A member or employee of the Tampa Port Authority, appointed by the authority;

¹ Ch. 86-335, s. 3(1), Laws of Fla. The Hillsborough River Corridor is defined as "that portion of the Hillsborough River beginning at the Platt Street Bridge and extending north to the county line and all land situated within 500 feet of either bank of that portion of the river." Ch. 86-335, s. 1, Laws of Fla.

² See Hillsborough River Interlocal Planning Board & Technical Advisory Council, Consolidated Hillsborough River Master Plan, available at: http://www.planhillsborough.org/wp-content/uploads/2014/07/Consolidated-Master-Plan-7_14.pdf (last visited 3/20/15).

³ Metropolitan Planning Organization for Transportation, *Who are the Hillsborough River Board & Technical Advisory Council*, available at: <http://www.planhillsborough.org/what-is-the-hillsborough-river-board-technical-advisory-council/> (last visited 3/13/15).

⁴ Ch. 86-335, s. 2(3), Laws of Fla.

⁵ Ch. 86-335, s. 3(1), Laws of Fla.

⁶ *Id.*

⁷ Ch. 86-335, s. 3(2), Laws of Fla.

- A member or employee of the Tampa Bay Regional Planning Council, appointed by that council;
- An employee of the Florida Department of Environmental Regulation, appointed by the department's local director;
- A member of the U.S. Army Corps of Engineers, appointed by the corps of engineers; and
- Three community representatives.⁸

On May 24, 2011, the Governing Board of the Southwest Florida Water Management District voted to merge all basins and consolidate them into the district, which had the effect of eliminating the basins and their attendant entities.⁹

Effect of Proposed Changes

The bill revises the membership of the Council and reduces its size to 10 members. The bill does so by removing the representative of the Hillsborough River Basin Board of the Southwest Florida Water Management District, which is no longer in existence.¹⁰ The bill authorizes each governmental entity that makes appointments to the Council to allow its chairperson, director, or chief executive to appoint the member.

The bill eliminates fixed terms of office for the community representatives. Instead, the representatives will serve at the pleasure of their appointing entity (like other members of the Council). The bill also authorizes the appointing entity to designate alternates.

The bill reduces the Council's quorum requirement from six members to five members, to reflect the reduced size of the Council.

The bill changes a reference to the defunct Florida Department of Environmental Regulation to the current Florida Department of Environmental Protection.

The bill deletes a reference to the initial development of the existing coordinated master plan by the Council.

B. SECTION DIRECTORY:

Section 1: Amends Chapter 86-335, Laws of Florida, to revise the membership of the Council, as well as revising appointing authorities, terms of office, and providing for the selection of alternates.

Section 2: Provides an effective date of upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 13, 2015

WHERE? The Tampa Tribune, a daily newspaper published in Hillsborough County, Florida.

⁸ Ch. 86-335, s. 3(1)(i) Laws of Fla. These members must have a demonstrated interest in the protection of the Hillsborough River and cannot be an officer or employee of any of the governmental entities who appoint members of the Council or Board. The Tampa City Council, Temple Terrace City Council, and Hillsborough County Board of County Commissioners are each responsible for selecting one community representative.

⁹ Governing Board, Southwest Florida Water Management District, Minutes of the Meeting, May 24, 2011, available at: http://www.swfwmd.state.fl.us/calendar/minutes/govboard_05-24-11_minutes_1646.pdf (last visited 3/20/2015).

¹⁰ *Id.*

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This bill does not provide authority or require executive branch rulemaking

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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A bill to be entitled
 An act relating to the Hillsborough River Technical
 Advisory Council, Hillsborough County; amending
 chapter 86-335, Laws of Florida; revising membership
 of the council; revising the appointing authorities
 and terms of council members; providing for the
 designation of alternates; providing an effective
 date.

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

Section 1. Section 3 of chapter 86-335, Laws of Florida,
 is amended to read:

Section 3. (1) The Hillsborough River Technical Advisory
 Council is hereby created to give advice and make
 recommendations to the Hillsborough River Interlocal Planning
 Board with respect to the ~~development of the~~ coordinated master
 plan for the Hillsborough River Corridor. The council shall be
 composed of ten ~~eleven~~ members, selected as follows:

(a) A ~~One~~ member of the City-County Planning Commission,
 appointed by that commission or its chairperson.

(b) A ~~One~~ member or employee of the Hillsborough County
 Environmental Protection Commission, appointed by that
 commission or its executive director.

25 ~~(c) One member of the governing board of the Hillsborough~~
 26 ~~River Basin Board of the Southwest Florida Water Management~~
 27 ~~District, appointed by the basin board.~~

28 (c)(d) An employee of the Southwest Florida Water
 29 Management District, appointed by the governing board of the
 30 district or its executive director.

31 (d)(e) A ~~One~~ member or employee of the Tampa Port
 32 Authority, appointed by the authority or its chief executive
 33 officer.

34 (e)(f) A ~~One~~ member or employee of the Tampa Bay Regional
 35 Planning Council, appointed by that council or its chief
 36 executive officer.

37 (f)(g) An employee of the Florida Department of
 38 Environmental Protection Regulation, appointed by the
 39 department's local director.

40 (g)(h) A member of the U.S. Army Corps of Engineers,
 41 appointed by the corps of engineers or its local director.

42 (h)(i) Three persons who have demonstrated an interest in
 43 the protection of the Hillsborough River and who are not
 44 officers or employees of any governmental entity referred to in
 45 paragraphs (a)-(g) ~~(a)-(h)~~ or in section 2(1)(a)-(c). One such
 46 person shall be appointed by the Hillsborough County Board of
 47 County Commissioners or its chairperson, one such person shall
 48 be appointed by the City Council of the City of Tampa or its
 49 chairperson, and one such person shall be appointed by the City
 50 Council of the City of Temple Terrace or its chairperson.

51
 52 Members ~~appointed under paragraphs (a)–(h)~~ shall serve at the
 53 pleasure of the appointing entity. ~~Members appointed under~~
 54 ~~paragraph (i) shall serve terms of 4 years.~~ Vacancies on the
 55 council board shall be filled in the same manner as the original
 56 appointment. Alternates may be designated by the appointing
 57 authorities.

58 (2) The council board shall elect from among its members a
 59 chairperson ~~chairman~~. The council board shall meet at the call
 60 of the chairperson ~~chairman~~. Five ~~Six~~ members constitute a
 61 quorum for the transaction of business. Members appointed under
 62 paragraph (1)(h) ~~(1)(i)~~ are entitled to traveling expenses
 63 pursuant to s. 112.061, Florida Statutes.

64 (3) The Hillsborough River Technical Advisory Council
 65 shall have standing to appeal, under the provisions of chapter
 66 75-390, Laws of Florida, as amended, local government action
 67 taken with respect to the Hillsborough River Corridor.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7065 PCB CRJS 15-03 Pub. Rec./Child Pornography
SPONSOR(S): Criminal Justice Subcommittee, Spano
TIED BILLS: HB 7063 **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|-----------|------------|--|
| Orig. Comm.: Criminal Justice Subcommittee | 13 Y, 0 N | Cunningham | Cunningham |
| 1) Government Operations Subcommittee | | Williamson | Williamson |
| 2) Judiciary Committee | | | |

SUMMARY ANALYSIS

Current law provides a public record exemption for the following criminal intelligence information and criminal investigative information:

- Information which may reveal the identity of a victim of any sexual offense, including an offense proscribed in ch. 794, 796, 800, 827, or 847, F.S.;
- Photographs, videotapes, or images of any part of the body of the victim of a sexual offenses prohibited by ch. 794, 796, 800, 827, or 847, F.S., and s. 810.145, F.S., regardless of whether it identifies the victim; and
- Information in a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct proscribed in ch. 800, F.S., or ss. 794.011, 827.071, 847.012, 847.0125, 847.013, 847.0133, or 847.0145, F.S.

House Bill 7063, which is tied to this bill, repeals s. 827.071, F.S., which relates to sexual performance by a child, and moves its provisions to ss. 847.003, and 847.0137, F.S.

This bill amends the above-described public records exemptions to remove references to s. 827.071, F.S., and add references to ss. 847.003 and 847.0137, F.S. These changes conform to the changes made by House Bill 7063.

This bill provides for repeal of the reenacted exemptions on October 2, 2020, unless they are reviewed and saved from repeal by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

The bill also reenacts sections of law pertaining to judicial proceedings, court records, and the unlawful disclosure of identifying information to incorporate the changes made by the bill.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, section 24(a) of the Florida Constitution.¹ The general law must state with specificity the public necessity justifying the exemption² and must be no more broad than necessary to accomplish its purpose.³

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act⁴ provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no more broad than necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect 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.
- Protect trade or business secrets.⁵

The Act also requires the automatic repeal of a public records exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.⁶ Specified questions must be considered by the Legislature during the review process.⁷

Public Records Exemptions for Certain Victim Information

Current law provides a public records exemption for the following criminal intelligence information⁸ and criminal investigative information:⁹

- Information which may reveal the identity of a victim of any sexual offense, including an offense proscribed in ch. 794,¹⁰ 796,¹¹ 800,¹² 827,¹³ or 847,¹⁴ F.S.;

¹ FLA. CONST. art. I, s. 24(c).

² This portion of a public records exemption is commonly referred to as a "public necessity statement."

³ FLA. CONST. art. I, s. 24(c).

⁴ s. 119.15, F.S.

⁵ s. 119.15(6)(b), F.S.

⁶ s. 119.15(3), F.S.

⁷ Section 119.15(6)(a), F.S. requires the Legislature to consider the following questions as part of the review process: 1) What specific records or meetings are affected by the exemption? 2) What specific parties does the exemption affect? 3) What is the public purpose of the exemption? 4) Can the information contained in the records or meetings be readily obtained by alternative means? If so, how? 5) Is the record or meeting protected by another exemption? 6) Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

⁸ Section 119.011(3)(a), F.S., defines "criminal intelligence information" as information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.

⁹ Section 119.011(3)(b), F.S., defines "criminal investigative information" means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

¹⁰ Chapter 794, F.S., relates to sexual battery.

¹¹ Chapter 796, F.S., relates to prostitution.

¹² Chapter 800, F.S., relates to lewdness and indecent exposure.

- Photographs, videotapes, or images of any part of the body of the victim of a sexual offenses prohibited by ch. 794, 796, 800, 827, or 847, F.S., and s. 810.145,¹⁵ F.S., regardless of whether it identifies the victim; and
- Information in a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct proscribed in ch. 800, F.S., or ss. 794.011,¹⁶ 827.071,¹⁷ 847.012,¹⁸ 847.0125,¹⁹ 847.013,²⁰ 847.0133,²¹ or 847.0145,²² F.S.²³

Current law also requires the confidential and exempt status of criminal investigative information and criminal intelligence information to be maintained in court records and in court proceedings. If a petition for access to such confidential and exempt information is filed with the trial court having jurisdiction over the alleged offense, the confidential and exempt status must be maintained by the court if the state or the victim demonstrates that certain criteria are met.²⁴

In addition, information or records that have been made part of a court file and that may reveal the identity of a person who is a victim of a sexual offense is exempt from public records requirements as provided in s. 119.071(2)(h), F.S.²⁵

House Bill 7063

House Bill 7063, which is tied to this bill, repeals s. 827.071, F.S., which relates to sexual performance by a child, and moves its provisions to ss. 847.003 and 847.0137, F.S.

Effect of the Bill

The bill amends the above-described public records exemptions to remove references to s. 827.071, F.S.,²⁶ and add references to ss. 847.003 and 847.0137, F.S. These changes conform to the changes made by House Bill 7063.

The bill provides for repeal of the reenacted exemptions on October 2, 2020, unless they are reviewed and saved from repeal by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

The bill also reenacts sections of law pertaining to judicial proceedings, court records, and the unlawful disclosure of identifying information to incorporate the changes made by the bill.

B. SECTION DIRECTORY:

Section 1. Amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2. Provides a public necessity statement.

¹³ Chapter 827, F.S., relates to abuse of children.

¹⁴ Chapter 847, F.S., relates to obscenity.

¹⁵ Section 810.145, F.S., relates to video voyeurism.

¹⁶ Section 794.011, F.S., relates to sexual battery.

¹⁷ Section 827.071, F.S., relates to sexual performance by a child.

¹⁸ Section 847.012, F.S., relates to harmful materials and sale of distribution to minors or using minors in production prohibited.

¹⁹ Section 847.0125, F.S., relates to retail display of materials harmful to minors prohibited.

²⁰ Section 847.013, F.S., relates to exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations.

²¹ Section 847.0133, F.S., relates to protection of minors and prohibition of certain acts in connection with obscenity.

²² Section 847.0145, F.S. relates to selling or buying of minors.

²³ s. 119.071(2)(h)2. And (j)2.a., F.S.

²⁴ s. 92.56, F.S.

²⁵ s. 119.0714(1)(h), F.S.

²⁶ Section 119.15(7), F.S., provides that records made before the date of a repeal of an exemption under this section may not be made public unless otherwise provided by law.

Section 3. Reenacts s. 92.56, F.S., relating to judicial proceedings and court records involving sexual offenses and human trafficking.

Section 4. Reenacts s. 119.0714, F.S., relating to court files; court records; official records.

Section 5. Reenacts s. 794.024, F.S., relating to unlawful to disclose identifying information.

Section 6. Provides an effective date to be the same as that of House Bill 7063 or similar legislation, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

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

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill's expanded public records exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; expanding the exemption from public
 4 records requirements for criminal intelligence
 5 information and criminal investigative information to
 6 include information, photographs, videotapes, or
 7 images of victims of specified offenses; providing for
 8 future review and repeal of the exemption; providing a
 9 statement of public necessity; reenacting s.
 10 92.56(1)(a), F.S., relating to judicial proceedings
 11 and court records involving sexual offenses, s.
 12 119.0714(1)(h), F.S., relating to court files and
 13 records, and s. 794.024(1), F.S., relating to the
 14 unlawful disclosure of identifying information, to
 15 incorporate the amendment made by the act to s.
 16 119.071, F.S., in references thereto; providing a
 17 contingent effective date.

18
 19 Be It Enacted by the Legislature of the State of Florida:

20
 21 Section 1. Paragraphs (h) and (j) of subsection (2) of
 22 section 119.071, Florida Statutes, are amended to read:

23 119.071 General exemptions from inspection or copying of
 24 public records.—

25 (2) AGENCY INVESTIGATIONS.—

26 (h)1. The following criminal intelligence information or

27 | criminal investigative information is confidential and exempt
 28 | from s. 119.07(1) and s. 24(a), Art. I of the State
 29 | Constitution:

30 | a. Any information, including the photograph, name,
 31 | address, or other fact, which reveals the identity of the victim
 32 | of the crime of child abuse as defined by chapter 827.

33 | b. Any information which may reveal the identity of a
 34 | person who is a victim of any sexual offense, including a sexual
 35 | offense proscribed in chapter 794, chapter 796, chapter 800,
 36 | ~~chapter 827,~~ or chapter 847.

37 | c. A photograph, videotape, or image of any part of the
 38 | body of the victim of a sexual offense prohibited under chapter
 39 | 794, chapter 796, chapter 800, s. 810.145, ~~chapter 827,~~ or
 40 | chapter 847, regardless of whether the photograph, videotape, or
 41 | image identifies the victim.

42 | 2. Criminal investigative information and criminal
 43 | intelligence information made confidential and exempt under this
 44 | paragraph may be disclosed by a law enforcement agency:

45 | a. In the furtherance of its official duties and
 46 | responsibilities.

47 | b. For print, publication, or broadcast if the law
 48 | enforcement agency determines that such release would assist in
 49 | locating or identifying a person that such agency believes to be
 50 | missing or endangered. The information provided should be
 51 | limited to that needed to identify or locate the victim and not
 52 | include the sexual nature of the offense committed against the

53 person.

54 c. To another governmental agency in the furtherance of
55 its official duties and responsibilities.

56 3. This exemption applies to such confidential and exempt
57 criminal intelligence information or criminal investigative
58 information held by a law enforcement agency before, on, or
59 after the effective date of the exemption.

60 4. This paragraph is subject to the Open Government Sunset
61 Review Act in accordance with s. 119.15~~7~~ and shall stand
62 repealed on October 2, 2020 ~~2016~~, unless reviewed and saved from
63 repeal through reenactment by the Legislature.

64 (j)1. Any document that reveals the identity, home or
65 employment telephone number, home or employment address, or
66 personal assets of the victim of a crime and identifies that
67 person as the victim of a crime, which document is received by
68 any agency that regularly receives information from or
69 concerning the victims of crime, is exempt from s. 119.07(1) and
70 s. 24(a), Art. I of the State Constitution. Any information not
71 otherwise held confidential or exempt from s. 119.07(1) which
72 reveals the home or employment telephone number, home or
73 employment address, or personal assets of a person who has been
74 the victim of sexual battery, aggravated child abuse, aggravated
75 stalking, harassment, aggravated battery, or domestic violence
76 is exempt from s. 119.07(1) and s. 24(a), Art. I of the State
77 Constitution, upon written request by the victim, which must
78 include official verification that an applicable crime has

79 | occurred. Such information shall cease to be exempt 5 years
 80 | after the receipt of the written request. Any state or federal
 81 | agency that is authorized to have access to such documents by
 82 | any provision of law shall be granted such access in the
 83 | furtherance of such agency's statutory duties, notwithstanding
 84 | this section.

85 | 2.a. Any information in a videotaped statement of a minor
 86 | who is alleged to be or who is a victim of sexual battery, lewd
 87 | acts, or other sexual misconduct proscribed in chapter 800 or in
 88 | s. 794.011, s. 847.003, former s. 827.071, s. 847.012, s.
 89 | 847.0125, s. 847.013, s. 847.0133, s. 847.0137, or s. 847.0145,
 90 | which reveals that minor's identity, including, but not limited
 91 | to, the minor's face; the minor's home, school, church, or
 92 | employment telephone number; the minor's home, school, church,
 93 | or employment address; the name of the minor's school, church,
 94 | or place of employment; or the personal assets of the minor; and
 95 | which identifies that minor as the victim of a crime described
 96 | in this subparagraph, held by a law enforcement agency, is
 97 | confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 98 | of the State Constitution. Any governmental agency that is
 99 | authorized to have access to such statements by any provision of
 100 | law shall be granted such access in the furtherance of the
 101 | agency's statutory duties, notwithstanding the provisions of
 102 | this section.

103 | b. A public employee or officer who has access to a
 104 | videotaped statement of a minor who is alleged to be or who is a

105 victim of sexual battery, lewd acts, or other sexual misconduct
106 proscribed in chapter 800 or in s. 794.011, s. 847.003, former
107 s. 827.071, s. 847.012, s. 847.0125, s. 847.013, s. 847.0133, s.
108 847.0137, or s. 847.0145 may not willfully and knowingly
109 disclose videotaped information that reveals the minor's
110 identity to a person who is not assisting in the investigation
111 or prosecution of the alleged offense or to any person other
112 than the defendant, the defendant's attorney, or a person
113 specified in an order entered by the court having jurisdiction
114 of the alleged offense. A person who violates this provision
115 commits a misdemeanor of the first degree, punishable as
116 provided in s. 775.082 or s. 775.083.

117 c. This subparagraph is subject to the Open Government
118 Sunset Review Act in accordance with s. 119.15 and shall stand
119 repealed on October 2, 2020, unless reviewed and saved from
120 repeal through reenactment by the Legislature.

121 Section 2. The Legislature finds that it is a public
122 necessity that criminal intelligence information or criminal
123 investigative information that may reveal the identity of a
124 person who is a victim of former s. 827.071, s. 847.003, or s.
125 847.0137, Florida Statutes, which is a photograph, videotape, or
126 image of any part of the body of the victim of those provisions
127 or which is information in a videotaped statement of a minor who
128 is alleged to be or who is a victim of those provisions, be made
129 confidential and exempt from s. 119.07(1), Florida Statutes, and
130 s. 24(a), Article I of the State Constitution. The Legislature

131 finds that such information, photographs, videotapes, or images
 132 often depict the victim in graphic fashion, frequently nude.
 133 Such highly sensitive photographs, videotapes, or images of a
 134 victim of these sexual offenses, if viewed, copied, or
 135 publicized, could result in trauma, sorrow, humiliation, or
 136 emotional injury to the victim and the victim's family.

137 Section 3. For the purpose of incorporating the amendment
 138 made by this act to section 119.071, Florida Statutes, in a
 139 reference thereto, paragraph (a) of subsection (1) of section
 140 92.56, Florida Statutes, is reenacted to read:

141 92.56 Judicial proceedings and court records involving
 142 sexual offenses and human trafficking.—

143 (1) (a) The confidential and exempt status of criminal
 144 intelligence information or criminal investigative information
 145 made confidential and exempt pursuant to s. 119.071(2)(h) must
 146 be maintained in court records pursuant to s. 119.0714(1)(h) and
 147 in court proceedings, including testimony from witnesses.

148 Section 4. For the purpose of incorporating the amendment
 149 made by this act to section 119.071, Florida Statutes, in a
 150 reference thereto, paragraph (h) of subsection (1) of section
 151 119.0714, Florida Statutes, is reenacted to read:

152 119.0714 Court files; court records; official records.—

153 (1) COURT FILES.—Nothing in this chapter shall be
 154 construed to exempt from s. 119.07(1) a public record that was
 155 made a part of a court file and that is not specifically closed
 156 by order of court, except:

157 (h) Criminal intelligence information or criminal
 158 investigative information that is confidential and exempt as
 159 provided in s. 119.071(2)(h).

160 Section 5. For the purpose of incorporating the amendment
 161 made by this act to section 119.071, Florida Statutes, in a
 162 reference thereto, subsection (1) of section 794.024, Florida
 163 Statutes, is reenacted to read:



164 794.024 Unlawful to disclose identifying information.—

165 (1) A public employee or officer who has access to the
 166 photograph, name, or address of a person who is alleged to be
 167 the victim of an offense described in this chapter, chapter 800,
 168 s. 827.03, s. 827.04, or s. 827.071 may not willfully and
 169 knowingly disclose it to a person who is not assisting in the
 170 investigation or prosecution of the alleged offense or to any
 171 person other than the defendant, the defendant's attorney, a
 172 person specified in an order entered by the court having
 173 jurisdiction of the alleged offense, or organizations authorized
 174 to receive such information made exempt by s. 119.071(2)(h), or
 175 to a rape crisis center or sexual assault counselor, as defined
 176 in s. 90.5035(1)(b), who will be offering services to the
 177 victim.

178 Section 6. This act shall take effect on the same date
 179 that HB 7063 or similar legislation takes effect, if such
 180 legislation is adopted in the same legislative session or an
 181 extension thereof and becomes a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 15-08 OGSR Child Abuse Death Review Committees
SPONSOR(S): Government Operations Subcommittee
TIED BILLS: IDEN./SIM. BILLS: SB 7032

| 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.

Current law establishes the State Child Abuse Death Review Committee and local child abuse death review committees within the Department of Health. The committees must review the facts and circumstances of all deaths of children from birth through 18 that occurred in the state and are reported to the central abuse hotline of the Department of Children and Families. The state committee must prepare an annual statistical report on the incidence and causes of death resulting from child abuse in the state.

Current law provides a public record exemption for the State Child Abuse Death Review Committee and local child abuse death review committees. The public record exemption protects any information held by the committees that reveals the identity of the surviving siblings, family members, or others living in the home of the deceased child. Information made confidential or exempt that is obtained by the committees must retain its confidential or exempt status. Current law also provides a public meeting exemption for the committees. Specifically, those portions of a meeting of a committee that discuss confidential and exempt information are exempt from the public meeting requirements. The closed meeting must be recorded, and the recording must be maintained by the committee. The recordings of a closed portion of a meeting are exempt from public record requirements.

The bill reenacts the public record and public meeting exemptions for the state and local committees. It expands the current exemptions to protect the name of the deceased child whose death has been reported to the central abuse hotline, but determined not to be the result of abuse or neglect, as well as the identity of the surviving siblings, family members, and others living in the home of the deceased child. The bill narrows the current exemption when the death has occurred as the result of verified abuse or neglect to only protect the identity of the surviving siblings. As a result, the bill extends the repeal date from October 2, 2015, to October 2, 2020. It also provides a public necessity statement as required by the State Constitution.

The bill appears to have a minimal fiscal impact on the state, but does not appear to have a fiscal impact on local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

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

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

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

Child Abuse Death Review Committees

Current law establishes the State Child Abuse Death Review Committee (state committee) and local child abuse death review committees (local committees) within the Department of Health (DOH).⁴ The state and local committees must review the facts and circumstances of all deaths of children, from birth through age 18, that occur in Florida and are reported to the central abuse hotline of the Department of Children and Families (DCF).⁵ Prior to 2014, the state and local committees reviewed the deaths of children that were the result of verified child abuse or neglect, rather than all child deaths that were reported to the hotline.⁶

The state committee must prepare an annual statistical report on the incidence and causes of death resulting from child abuse in the state during the prior calendar year. The report must include recommendations for state and local action, including specific policy, procedural, regulatory, or statutory changes, and any other recommended preventive action.⁷

¹ Section 119.15, F.S.

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

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

⁴ Section 383.402, F.S.

⁵ Section 383.402(1), F.S.

⁶ In 2014, the Legislature expanded the jurisdiction of the state and local committees. Rather than solely reviewing deaths that have resulted from verified abuse or neglect, the committees must now review all deaths that have been reported to the child abuse hotline. Chapter 2014-224, L.O.F.

⁷ Section 383.402(3)(c), F.S.

The state and local committees have broad access to any information related to the deceased child or the child's family that is necessary to carry out their duties, including:⁸

- Medical, dental, or mental health treatment records;
- Records in the possession of a state agency or political subdivision; and
- Records of law enforcement that are not part of an active investigation.

Records typically obtained by the state and local committees include, among others: death and birth certificates; medical examiner reports; law enforcement reports; criminal history reports; first responder reports; physician, hospital, or substance abuse and mental health records; and the DCF case file.⁹ In order to protect the rights of the child and the child's parents or other persons responsible for the child's welfare, all records held by DCF concerning reports of child abuse are confidential and exempt¹⁰ from public records requirements.¹¹ However, if the child's death was found to be the result of verified abuse or neglect, the case file is no longer protected in its entirety.¹²

Public Record and Public Meeting Exemptions under Review

Current law provides public record and public meeting exemptions for the state and local committees.¹³

Information that reveals the identity of the surviving siblings, family members, or others living in the home of a deceased child who is the subject of review by the state committee or a local committee is confidential and exempt from public records requirements.¹⁴ In addition, confidential and exempt information obtained by the state or a local committee retains its confidential or exempt status.¹⁵

Portions of meetings of the state or local committees where confidential or exempt information is discussed is exempt from public meetings requirements.¹⁶ The committee must record the closed portion of the meeting and maintain the recording.¹⁷ The recording of the closed portion of the meeting is exempt from public records requirements.¹⁸

The state and local committees may share with each other any relevant confidential or exempt information regarding case reviews.¹⁹ Any person who knowingly or willfully violates the public record exemption commits a misdemeanor of the first degree.²⁰

⁸ Section 383.402(8) & (9), F.S.

⁹ Email from Bryan Wendel, Office of Legislative Planning, Florida Dept. of Health, (August 25, 2014) (on file with the Government Operations Subcommittee).

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

¹¹ Section 39.202(1), F.S.

¹² Section 39.202(2)(o), F.S. If the death is the result of verified abuse or neglect, the information identifying the person reporting the abuse, abandonment, or neglect must not be released. In addition, any information otherwise made confidential or exempt by law must not be released.

¹³ The public record and public meeting exemptions for the state and local committees were first enacted in 1999. Chapter 1999-210, L.O.F.; codified as s. 383.410, F.S. The exemptions were repealed in 2004 as a result of the automatic repeal provisions in the Act. The exemptions were enacted again in 2005, and renewed in 2010 with changes. Chapters 2005-190 and 2010-40, L.O.F. In 2010, the Legislature amended the provisions to require the committees to record the closed meetings, and created a public record exemption for the recordings of those meetings. *Id.*

¹⁴ Section 383.412(2)(a), F.S.

¹⁵ Section 383.412(2)(b), F.S.

¹⁶ Section 383.412(3)(a), F.S.

¹⁷ *Id.*

¹⁸ Section 383.412(3)(b), F.S.

¹⁹ Section 383.412(4), F.S.

Pursuant to the Open Government Sunset Review Act, the public record and public meeting exemptions will repeal on October 2, 2015, unless reenacted by the Legislature.²¹

During the 2014 interim, subcommittee staff met multiple times with staff from DOH and DCF as part of the Open Government Sunset Review process. As part of the discussions with DOH and DCF, staff from the departments were asked if they recommended that the Legislature repeal the public record and public meeting exemptions under review, reenact the exemptions, or reenact the exemptions with changes. Both agencies recommended reenacting the exemptions with changes to ensure protection of information identifying a deceased child whose death has been reported to the central abuse hotline but determined not to be the result of abuse or neglect. This recommended change would align the public record exemption for the state and local committees with the public record exemption afforded DCF.

Effect of the Bill

The bill reenacts, with changes, the public record and public meeting exemptions for the state and local committees. The bill:

- Narrows the current public record exemption for identifying information related to cases of verified abuse and neglect to only protect information that identifies the surviving siblings of a deceased child whose death was the result of verified abuse or neglect.
- Expands the public record exemption to include information held by the state and local committees that reveals the identity of a deceased child whose death has been reported to the central abuse hotline but determined not to be the result of abuse or neglect, as well as the identity of the surviving siblings, family members, and others living in the home of the deceased child.
- Expands the public meeting exemption to include those portions of meetings of the state committee or local committee wherein confidential and exempt information is discussed regarding a deceased child whose death is reported to the central abuse hotline but determined not to be the result of abuse or neglect.

The bill authorizes the state and local committees to release the confidential and exempt information to a governmental agency in the furtherance of its official duties and responsibilities, or a person or entity authorized by DOH to use such information for bona fide research or statistical purposes. A person or entity who is authorized to obtain such information for research or statistical purposes must enter into a privacy and security agreement with DOH, comply with all laws and rules governing the use of the information, and treat any identifying information as confidential.

Because the bill expands the current exemptions to protect the name and other specified information relating to a deceased child whose death has been reported to the central abuse hotline but determined not to be the result of abuse or neglect, the bill extends the repeal date from October 2, 2015, to October 2, 2020. It also provides a public necessity statement as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1 amends s. 383.412, F.S., relating to public record and public meeting exemptions for child abuse death review committees.

Section 2 provides a public necessity statement.

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

²⁰ Section 383.412(5), F.S. A misdemeanor of the first degree is punishable by imprisonment not to exceed one year or a fine not to exceed \$1,000.

²¹ Section 383.412(6), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may create a minimal fiscal impact on DOH because staff responsible for complying with the public records requests could require training related to the expansion of the public record exemption. The costs, however, would be absorbed as they are part of the day-to-day responsibilities of the department. In addition, there may be minimal fiscal costs associated with the requirement to record the closed portion of a state committee or local committee meeting during which confidential and exempt information is discussed.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

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

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates public record exemption to protect information held by state and local committees that identifies the name of a deceased child and other specified information whose death has been reported to the central abuse hotline, but determined not to be the result of verified abuse or neglect. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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. 383.412, F.S., relating
 4 to an exemption from public record and public meeting
 5 requirements for child abuse death review committees;
 6 removing the public record exemption for information
 7 held by the State Child Abuse Death Review Committee
 8 or a local committee that reveals the identity of
 9 family members or others living in the home of a child
 10 whose death occurred as a result of a verified report
 11 of abuse or neglect; expanding the public record
 12 exemption to include information held by the State
 13 Child Abuse Death Review Committee or a local
 14 committee that identifies a deceased child whose death
 15 is not the result of abuse or neglect and to include
 16 the identity of the surviving siblings, family
 17 members, or others living in the home of such deceased
 18 child; reenacting the public meeting exemption to
 19 incorporate changes made to the public record
 20 exemption; authorizing release of the confidential and
 21 exempt information to specified persons under certain
 22 circumstances; providing for future legislative review
 23 and repeal of the public record and public meeting
 24 exemptions; providing a statement of public necessity;
 25 providing an effective date.
 26

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

28

29 Section 1. Section 383.412, Florida Statutes, is amended
30 to read:

31 383.412 Public records and public meetings exemptions.—

32 (1) For purposes of this section, the term "local
33 committee" means a local child abuse death review committee or a
34 panel or committee assembled by the State Child Abuse Death
35 Review Committee or a local child abuse death review committee
36 pursuant to s. 383.402.

37 (2)(a) Any information held by the State Child Abuse Death
38 Review Committee or a local committee that reveals the identity
39 of the surviving siblings of a deceased child whose death
40 occurred as the result of a verified report of abuse or neglect
41 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.
42 I of the State Constitution.

43 (b) Any information held by the State Child Abuse Death
44 Review Committee or a local committee that reveals the identity
45 of a deceased child whose death has been reported to the central
46 abuse hotline but determined not to be the result of abuse or
47 neglect, or the identity of the surviving siblings, family
48 members, or others living in the home of such a deceased child,
49 ~~who is the subject of review by and which information is held by~~
50 ~~the State Child Abuse Death Review Committee or a local~~
51 ~~committee~~ is confidential and exempt from s. 119.07(1) and s.
52 24(a), Art. I of the State Constitution.

53 (c)~~(b)~~ Information made confidential or exempt from s.
 54 119.07(1) and s. 24(a), Art. I of the State Constitution that is
 55 obtained by the State Child Abuse Death Review Committee or a
 56 local committee shall retain its confidential or exempt status.

57 (3) (a) Portions of meetings of the State Child Abuse Death
 58 Review Committee or a local committee at which information made
 59 confidential and exempt pursuant to subsection (2) is discussed
 60 are exempt from s. 286.011 and s. 24(b), Art. I of the State
 61 Constitution. The closed portion of a meeting must be recorded,
 62 and no portion of the closed meeting may be off the record. The
 63 recording shall be maintained by the State Child Abuse Death
 64 Review Committee or a local committee.

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

68 (4) The State Child Abuse Death Review Committee and local
 69 committees may share information made confidential and exempt by
 70 this section:

71 (a) With each other;

72 (b) With a governmental agency in the furtherance of its
 73 official duties and responsibilities; or

74 (c) With any person or entity authorized by the Department
 75 of Health to use such relevant information for bona fide
 76 research or statistical purposes. A person or entity who is
 77 authorized to obtain such relevant information for research or
 78 statistical purposes must enter into a privacy and security

79 agreement with the Department of Health and comply with all laws
 80 and rules governing the use of such records and information for
 81 research or statistical purposes. Anything identifying the
 82 subjects of such relevant information must be treated as
 83 confidential by the person or entity and may not be released in
 84 any form ~~any relevant information regarding case reviews~~
 85 ~~involving child death, which information is made confidential~~
 86 ~~and exempt by this section.~~

87 (5) Any person who knowingly or willfully makes public or
 88 discloses to any unauthorized person any information made
 89 confidential and exempt under this section commits a misdemeanor
 90 of the first degree, punishable as provided in s. 775.082 or s.
 91 775.083.

92 (6) This section is subject to the Open Government Sunset
 93 Review Act in accordance with s. 119.15, and shall stand
 94 repealed on October 2, 2020 ~~2015~~, unless reviewed and saved from
 95 repeal through reenactment by the Legislature.

96 Section 2. The Legislature finds that it is a public
 97 necessity that any information held by the State Child Abuse
 98 Death Review Committee or a local committee as defined in s.
 99 383.412, Florida Statutes, that reveals the identity of a
 100 deceased child whose death has been reported to the central
 101 abuse hotline but determined not to be the result of abuse or
 102 neglect, or the identity of the surviving siblings, family
 103 members, or others living in the home of such deceased child, be
 104 made confidential and exempt from public records requirements.

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105 The Legislature further finds that it is a public necessity that
106 these committees have the authority to maintain the confidential
107 or exempt status of records otherwise confidential or exempt
108 which are provided to them regarding such children. The
109 Legislature also finds that it is a public necessity that
110 portions of meetings of the State Child Abuse Death Review
111 Committee or a local committee wherein the confidential and
112 exempt information is discussed be made exempt from public
113 meeting requirements, and that the recordings of closed portions
114 of such meetings be made exempt from public records
115 requirements. In 1999, the Legislature authorized the creation
116 of the committees to review the facts and circumstances
117 surrounding the deaths of children in this state, which occur as
118 the result of reported child abuse or neglect, and to prepare an
119 annual statistical report on the incidence and causes of death
120 resulting from child abuse. Since 2004, cases analyzed by the
121 committees have been limited to reports of verified abuse or
122 neglect. The Legislature made identifying information of the
123 surviving siblings, family members, or others living in the home
124 of the child who died as a result of verified abuse or neglect
125 confidential and exempt from public records requirements to
126 ensure that cases could be vetted thoroughly through open
127 communication without risk of disclosure of the identifying
128 information. In 2014, the Legislature expanded the scope of
129 cases reviewed by the committees to include all deaths reported
130 to the child abuse hotline, regardless of whether the deaths

131 | were the result of verified abuse or neglect, and this bill
132 | expands the public record and public meeting exemptions
133 | accordingly. If the identifying information related to these
134 | reports were to be disclosed, it could result in emotional or
135 | reputational harm to the family and caregivers and an
136 | unnecessary invasion of their privacy and the privacy of the
137 | deceased child. In addition, the committees must be able to
138 | maintain the otherwise confidential or exempt status of records
139 | that are provided to them to ensure continued access to such
140 | records and the opportunity for a thorough and open review of
141 | cases. Therefore, the Legislature finds that the harm that may
142 | result from the release of such information through a public
143 | records request or a public meeting substantially outweighs any
144 | minimal public benefit that may be derived from its disclosure.

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