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# State Affairs Committee

**Monday, December 9, 2019  
1:00 PM – 3:00 PM  
Morris Hall (17 HOB)**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### State Affairs Committee

**Start Date and Time:** Monday, December 09, 2019 01:00 pm

**End Date and Time:** Monday, December 09, 2019 03:00 pm

**Location:** Morris Hall (17 HOB)

**Duration:** 2.00 hrs

**Consideration of the following bill(s):**

HB 195 Public Records by Rodrigues, R.

HJR 301 Repeal of Constitution Revision Commission by Drake

HB 303 Constitution Revision Commission by Drake

HB 7001 OGSR/E-mail Addresses/Department of Highway Safety and Motor Vehicles by Oversight,  
Transparency & Public Management Subcommittee, Plasencia

**NOTICE FINALIZED on 12/02/2019 4:04PM by Denson.Tori**



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 195 Public Records  
**SPONSOR(S):** Rodrigues, R. and others  
**TIED BILLS:** **IDEN./SIM. BILLS:**

<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR or BUDGET/POLICY CHIEF</b>
1) Oversight, Transparency & Public Management Subcommittee	12 Y, 0 N	Toliver	Smith
2) Civil Justice Subcommittee	11 Y, 0 N	Rochester	Luczynski
3) State Affairs Committee		Toliver	Williamson

**SUMMARY ANALYSIS**

Article I, s. 24(a) of the State Constitution sets forth the state’s public policy regarding access to government records. The State Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government, unless such record is specifically exempt. The Florida Statutes further provide that all state, county, and municipal records are open for personal inspection and copying by any person, and that it is the responsibility of each agency to provide access to public records. A custodian of public records is required to permit any person to inspect and copy records at any reasonable time, under reasonable conditions, and under supervision by the custodian.

The bill prohibits an agency that receives a public record request to inspect or copy a record from responding to such request by filing a civil action against the individual or entity making the request.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The State Constitution 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 119.01, F.S., provides that it is the policy of the state that all state, county, and municipal records are open for personal inspection and copying by any person, and that it is the responsibility of each agency<sup>1</sup> to provide access to public records.<sup>2</sup> Section 119.07(1), F.S., guarantees every person a right to inspect and copy any public record unless an exemption applies. The state's public records laws are construed liberally in favor of granting public access to public records.

##### Inspection and Copying of Public Records

Current law describes the duties and responsibilities of a custodian of public records<sup>3</sup> (records custodian). Section 119.07(1), F.S., requires a records custodian to permit records to be inspected and copied by any person, at any reasonable time,<sup>4</sup> under reasonable conditions, and under supervision by the records custodian. Generally, a records custodian may not require that a request for public records be submitted in a specific fashion.<sup>5</sup>

An agency is permitted to charge fees for inspection or copying of records. Those fees are prescribed by law and are based upon the nature or volume of the public records requested. Section 119.07(4), F.S., provides that if the nature or volume of the request requires extensive use of information technology or extensive clerical or supervisory assistance, the agency may charge, in addition to the actual cost of duplication, a reasonable service charge based on the cost incurred for the use of information technology and the labor cost that is actually incurred by the agency in responding to the request. The term "labor cost" includes the entire labor cost, including benefits in addition to wages or salary.<sup>6</sup> Such service charge may be assessed, and payment may be required, by an agency prior to providing a response to the request.<sup>7</sup>

##### Declaratory Judgments

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<sup>1</sup> 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.

<sup>2</sup> Section 119.011(12), F.S., defines the term "public records" 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.

<sup>3</sup> Section 119.011(5), F.S., defines the term "custodian of public records" to mean the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee.

<sup>4</sup> There is no specific time limit established for compliance with public records requests. A response must be prepared within a reasonable time of the request. *Tribune Co. v. Cannella*, 458 So. 2d 1075 (Fla. 1984). What constitutes a reasonable time for a response will depend on such factors as the volume of records that are responsive to a request, as well as the amount of confidential or exempt information contained within the request.

<sup>5</sup> See *Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So. 2d 302 (Fla. 3d DCA 2001) (holding that public records requests need not be made in writing).

<sup>6</sup> *Bd. of Cnty Comm'rs of Highlands Cnty., v. Colby*, 976 So. 2d 31 (Fla. 2d DCA 2008).

<sup>7</sup> Section 119.07(4), F.S.; see also *Wootton v. Cook*, 590 So. 2d 1039, 1040 (Fla. 1st DCA 1991) (stating that if a requestor identifies a record with sufficient specificity to permit an agency to identify it and forwards the appropriate fee, the agency must furnish by mail a copy of the record).

Florida courts have held that the agency claiming the benefit of a public record exemption bears the burden of proving its right to the exemption.<sup>8</sup> As such, when a person submits a public records request to an agency and the agency is uncertain if the document is a record that must be disclosed to the public or is otherwise protected from disclosure, the agency may seek a determination from a trial court by filing a complaint for declaratory judgment.<sup>9</sup> A declaratory judgment<sup>10</sup> is a binding adjudication in which the court establishes the rights of the parties without requiring enforcement of its decision. It is used to resolve legal uncertainties for the parties. Generally, each party bears its own attorney fees when declaratory relief is sought.<sup>11</sup> Therefore, if an agency seeks a declaratory judgment and names the requestor as a party, each side will be expected to pay its own attorney fees.

### **Effect of the Bill**

The bill prohibits an agency that receives a public record request to inspect or copy a record from responding to such request by filing a civil action against the individual or entity making the request. By prohibiting an agency from filing a civil action in response to a public records request, the bill appears to prohibit an agency from filing a declaratory judgment with a court to determine whether the disclosure requirements of the public records law apply or whether the requested material is confidential or exempt.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 119.07, F.S., relating to inspection and copying of records; photographing public records; fees; exemptions.

Section 2 provides an effective date of July 1, 2020.

## **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:**

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<sup>8</sup> *Cent. Fla Reg'l Transp. Auth. v. Post-Newsweek*, 157 So. 3d 401, 404 (Fla. 5th DCA 2015); *Barfield v. Sch. Bd. of Manatee Cnty.*, 135 So. 3d 560, 562 (Fla. 2d DCA 2014).

<sup>9</sup> *See Butler v. City of Hallandale Beach*, 68 So. 3d 278, 279 (Fla. 4th DCA 2011); *see also* Elyssa Cherney, DOJ Moves Pulse Public Records Case to Federal Court (June 28, 2016), <http://www.orlandosentinel.com/news/pulse-orlando-nightclub-shooting/os-pulse-records-preliminary-hearing-20160628-story.html> (last visited Oct. 1, 2019) (The City of Orlando asked for a declaratory judgment after the FBI instructed it to withhold information pending the ongoing investigation and that calls may depict the killing of people, an exemption in Florida's public records laws).

<sup>10</sup> BLACK'S LAW DICTIONARY (10th ed. 2014).

<sup>11</sup> Section 86.081, F.S., provides that a court may award attorney fees as are equitable. *See Price v. Tyler*, 890 So. 2d 246 (Fla. 2004) (holding that attorney fees are not recoverable in declaratory relief actions unless there is an independent statutory or contractual basis authorizing recovery of those fees).

The bill may have an indeterminate positive fiscal impact on the private sector because individuals and entities that request public records would not be required to pay the legal costs and fees associated with being sued by an agency.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a 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. 119.07,  
 3           F.S.; prohibiting an agency that receives a request to  
 4           inspect or copy a record from responding to such  
 5           request by filing a civil action against the  
 6           individual or entity making the request; providing an  
 7           effective date.

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

10  
 11           Section 1. Paragraph (j) is added to subsection (1) of  
 12           section 119.07, Florida Statutes, to read:

13           119.07 Inspection and copying of records; photographing  
 14           public records; fees; exemptions.—

15           (1)

16           (j) An agency that receives a request to inspect or copy a  
 17           record may not respond to such request by filing a civil action  
 18           against the individual or entity making the request.

19           Section 2. This act shall take effect July 1, 2020.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HJR 301    Repeal of Constitution Revision Commission

**SPONSOR(S):** Drake

**TIED BILLS:** HB 303    **IDEN./SIM. BILLS:** SJR 142

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	9 Y, 2 N	Jones	Luczynski
2) State Affairs Committee		Villa	Williamson
3) Judiciary Committee			

### SUMMARY ANALYSIS

Florida voters can amend the Florida Constitution by approving an amendment originating from one of five sources: the Legislature, the Constitution Revision Commission (CRC), the Taxation and Budget Reform Commission, a citizen initiative, or a constitutional convention. The Constitution requires that the CRC meet every 20 years. The CRC has authority to propose to voters a revision of all or any part of the Florida Constitution. In the 2018 general election, seven proposals from the CRC were placed on the ballot.

The joint resolution proposes an amendment to the Florida Constitution that, if approved by the voters, will abolish the CRC.

The joint resolution has a nonrecurring fiscal impact on the Department of State for the publication of the proposed constitutional amendment in newspapers of general circulation in each county and for publication of booklets or posters with the amendment language for the supervisors of elections.

The joint resolution, if passed by the Legislature, would be considered by the electorate at the next general election on November 3, 2020. If adopted at the 2020 general election, the resolution would take effect January 5, 2021.

**A joint resolution proposing an amendment to the Florida Constitution must be passed by three-fifths of the membership of each house of the Legislature to appear on the next general election ballot. If placed on the ballot, the Constitution requires at least 60 percent voter approval for passage.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

The Florida Constitution is the charter of the liberties of Floridians.<sup>1</sup> It may be amended only if the voters approve an amendment originating from the Legislature, the Constitution Revision Commission (CRC), the Taxation and Budget Reform Commission (TBRC), a citizen initiative, or a constitutional convention.<sup>2</sup>

#### Constitution Revision Commission

The Florida Constitution was revised extensively in 1968 by three joint resolutions proposed by the Legislature and approved by the voters. The revisions included establishing the CRC as a means of proposing constitutional revisions to the voters, and the requirement that it convene once every 20 years, beginning in 1977. Three CRCs have convened, in 1977-1978, 1997-1998, and 2017-2018.<sup>3</sup> The CRC has authority to propose to voters a revision of all or any part of the Florida Constitution.<sup>4</sup>

The CRC is composed of the following 37 members:

- The Attorney General.
- Fifteen members selected by the Governor.
- Nine members selected by the President of the Senate.
- Nine members selected by the Speaker of the House of Representatives.
- Three members selected by the Chief Justice of the Florida Supreme Court.<sup>5</sup>

The Governor must appoint a chair from among the 37 members.<sup>6</sup> The CRC's task is to examine the Constitution and decide which, if any, amendments to propose to the voters. The amendments must be submitted to the Secretary of State at least 180 days before the next general election.<sup>7</sup> In turn, the amendments must be submitted to the voters at the next general election held more than 90 days after submission to the Secretary of State.<sup>8</sup> To become effective, an amendment must be approved by at least 60 percent of the votes cast on the measure.<sup>9</sup> If an amendment's effective date is not specified, it is effective the first Tuesday after the first Monday in January following the general election.<sup>10</sup>

#### Bundling or "Logrolling"

The Florida Constitution requires each citizen initiative proposal to be limited to one subject.<sup>11</sup> This prevents bundling multiple issues into one proposal, also known as "logrolling." However, neither the CRC nor the TBRC is prohibited from bundling or logrolling.<sup>12</sup> Speaking specifically to the CRC, the Florida Supreme Court recently held:

Unlike proposed amendments that originate through initiative petitions, amendments proposed by the CRC are not bound by the single-subject rule limiting amendments to one subject. . . . the Florida Constitution expressly authorizes bundling, as it gives the CRC

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<sup>1</sup> *Browning v. Florida Hometown Democracy, Inc., PAC*, 29 So. 3d 1053, 1064 (Fla. 2010) (internal citations omitted).

<sup>2</sup> Art. XI, Fla. Const.

<sup>3</sup> CRC, History, <https://crc.law.fsu.edu/about/history.html> (last visited Nov. 4, 2019).

<sup>4</sup> Art. XI, s. 2(c), Fla. Const.

<sup>5</sup> Art. XI, s. 2(a), Fla. Const.

<sup>6</sup> Art. XI, s. 2(b), Fla. Const.

<sup>7</sup> Art. XI, s. 2(c), Fla. Const.

<sup>8</sup> Art. XI, s. 5(a), Fla. Const.

<sup>9</sup> Art. XI, s. 5(e), Fla. Const.

<sup>10</sup> *Id.*

<sup>11</sup> Art. XI, s. 3, Fla. Const.

<sup>12</sup> Art. XI, ss. 2 and 6, Fla. Const.

authority to revise the entire constitution or any part of it. The power to amend the whole constitution in one proposal necessarily includes the lesser power to amend parts of the constitution in one proposal.<sup>13</sup>

The most recent CRC convened in 2017-2018 and proposed eight amendments to the Florida Constitution, seven of which appeared on the 2018 general election ballot.<sup>14</sup> Some of the proposals contained multiple unrelated subjects,<sup>15</sup> potentially requiring voters to decide whether to vote for an amendment that combined changes they liked with unrelated changes they did not like. One proposal, for example, combined a proposal to ban drilling for oil with a ban on vaping in indoor workplaces.

### **Effect of Proposed Changes**

The joint resolution proposes amending the Florida Constitution to abolish the CRC. The joint resolution does not change the other methods to amend the Constitution: through a legislative joint resolution, the TBRC, a citizen initiative, or a constitutional convention.

The joint resolution must pass each chamber with a three-fifths vote before it may be placed on the ballot. Thereafter, it must be approved by at least 60 percent of the electors voting on the measure. If approved by the voters, the joint resolution will take effect January 5, 2021.

#### **B. SECTION DIRECTORY:**

Not applicable.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

Article XI, s. 5(d) of the Florida Constitution requires publication of a proposed amendment in a newspaper of general circulation in each county. The Division of Elections within the Department of State must advertise the full text of the amendment twice in a newspaper of general circulation in each county where the amendment will appear on the ballot. The Division must also provide each supervisor of elections with either booklets or posters displaying the full text of each proposed amendment.<sup>16</sup>

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

None.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

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<sup>13</sup> *Detzner v. Anstead*, 256 So. 3d 820, 823-24 (Fla. 2018) (internal citations omitted).

<sup>14</sup> CRC, CRC Office – Press Release, <https://crc.law.fsu.edu/Media/PressReleases/Show/1099.html> (last visited Nov. 4, 2019); *Detzner v. League of Women Voters of Florida*, 256 So. 3d 803 (Fla. 2018) (removing Revision 8 from the ballot).

<sup>15</sup> Fred Grimm, *Florida Ballot Proposals Bundled with Disparate Subjects, Deceptive Wording*, SUN SENTINEL (Apr. 27, 2018), <http://www.sun-sentinel.com/opinion/fl-op-column-fred-grimm-florida-ballot-proposals-20180426-story.html> (last visited Nov. 15, 2019).

<sup>16</sup> S. 101.171, F.S.

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The mandates provision applies only to general laws, not a joint resolution to amend the Constitution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

House Joint Resolution

A joint resolution proposing amendments to Section 5 of Article II and Section 5 of Article XI and the repeal of Section 2 of Article XI of the State Constitution to delete the establishment, membership selection and composition, and duties of the Constitution Revision Commission.

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

That the following amendments to Section 5 of Article II and Section 5 of Article XI and the repeal of Section 2 of Article XI of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE II

GENERAL PROVISIONS

SECTION 5. Public officers.—

(a) No person holding any office of emolument under any foreign government, or civil office of emolument under the United States or any other state, shall hold any office of honor or of emolument under the government of this state. No person shall hold at the same time more than one office under the government of the state and the counties and municipalities

26 | therein, except that a notary public or military officer may  
 27 | hold another office, and any officer may be a member of a  
 28 | ~~constitution revision commission,~~ taxation and budget reform  
 29 | commission, constitutional convention, or statutory body having  
 30 | only advisory powers.

31 | (b) Each state and county officer, before entering upon  
 32 | the duties of the office, shall give bond as required by law,  
 33 | and shall swear or affirm:

34 | "I do solemnly swear (or affirm) that I will support,  
 35 | protect, and defend the Constitution and Government of the  
 36 | United States and of the State of Florida; that I am duly  
 37 | qualified to hold office under the Constitution of the state;  
 38 | and that I will well and faithfully perform the duties of  
 39 | ...(title of office)... on which I am now about to enter. So  
 40 | help me God.",

41 | and thereafter shall devote personal attention to the duties of  
 42 | the office, and continue in office until a successor qualifies.

43 | (c) The powers, duties, compensation and method of payment  
 44 | of state and county officers shall be fixed by law.

45 | ARTICLE XI

46 | AMENDMENTS

47 | SECTION 5. Amendment or revision election.—

48 | (a) A proposed amendment to or revision of this  
 49 | constitution, or any part of it, shall be submitted to the  
 50 | electors at the next general election held more than ninety days

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51 after the joint resolution or ~~report of revision commission,~~  
52 constitutional convention or taxation and budget reform  
53 commission proposal ~~proposing it~~ is filed with the custodian of  
54 state records, unless, pursuant to law enacted by the  
55 affirmative vote of three-fourths of the membership of each  
56 house of the legislature and limited to a single amendment or  
57 revision, it is submitted at an earlier special election held  
58 more than ninety days after such filing.

59 (b) A proposed amendment or revision of this constitution,  
60 or any part of it, by initiative shall be submitted to the  
61 electors at the general election provided the initiative  
62 petition is filed with the custodian of state records no later  
63 than February 1 of the year in which the general election is  
64 held.

65 (c) The legislature shall provide by general law, prior to  
66 the holding of an election pursuant to this section, for the  
67 provision of a statement to the public regarding the probable  
68 financial impact of any amendment proposed by initiative  
69 pursuant to section 3.

70 (d) Once in the tenth week, and once in the sixth week  
71 immediately preceding the week in which the election is held,  
72 the proposed amendment or revision, with notice of the date of  
73 election at which it will be submitted to the electors, shall be  
74 published in one newspaper of general circulation in each county  
75 in which a newspaper is published.



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76 (e) Unless otherwise specifically provided for elsewhere  
77 in this constitution, if the proposed amendment or revision is  
78 approved by vote of at least sixty percent of the electors  
79 voting on the measure, it shall be effective as an amendment to  
80 or revision of the constitution of the state on the first  
81 Tuesday after the first Monday in January following the  
82 election, or on such other date as may be specified in the  
83 amendment or revision.

84 BE IT FURTHER RESOLVED that the following statement be  
85 placed on the ballot:

86 CONSTITUTIONAL AMENDMENTS

87 ARTICLE II, SECTION 5

88 ARTICLE XI, SECTION 2

89 ARTICLE XI, SECTION 5

90 REPEAL OF THE CONSTITUTION REVISION COMMISSION.—Proposing  
91 amendments to the State Constitution to repeal the  
92 establishment, membership selection and composition, and duties  
93 of the constitution revision commission.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 303 Constitution Revision Commission

**SPONSOR(S):** Drake

**TIED BILLS:** HJR 301 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	11 Y, 1 N	Jones	Luczynski
2) State Affairs Committee		Villa	Williamson
3) Judiciary Committee			

### SUMMARY ANALYSIS

Florida voters can amend the Florida Constitution by approving an amendment originating from one of five sources: the Legislature, the Constitution Revision Commission (CRC), the Taxation and Budget Reform Commission, a citizen initiative, or a constitutional convention. The Florida Constitution requires that a CRC be established every 20 years. The CRC has authority to propose to voters a revision of all or any part of the Florida Constitution.

HJR 301 (2020) proposes an amendment to the Florida Constitution to abolish the CRC.

This bill, which is linked to the passage of HJR 301 (2020), removes all references to the CRC in current law.

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

The bill is effective contingent upon HJR 301 (2020) or a substantially similar amendment being approved at the next general election, in which case the bill is effective when HJR 301 (2020) or the similar amendment is effective.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

Florida voters can amend the Florida Constitution by approving an amendment originating from one of five sources: the Legislature, the Constitution Revision Commission (CRC), the Taxation and Budget Reform Commission, a citizen initiative, or a constitutional convention.<sup>1</sup> The Constitution requires that a CRC be established every 20 years. The CRC has authority to propose to voters a revision of all or any part of the Florida Constitution.<sup>2</sup> In the 2018 general election, seven proposals from the CRC were placed on the ballot.<sup>3</sup>

Although the CRC is created in the Florida Constitution, various statutes refer to the CRC or establish CRC processes:

- Section 101.161, F.S., refers to the CRC in the context of requirements for constitutional measures and ballot summaries;
- Section 112.3215, F.S., includes within the definition of "agency" the CRC for lobbying purposes; and
- Section 286.035, F.S., authorizes the CRC chair to employ personnel and incur official expenses and directs state and local agencies to assist the CRC.

#### House Joint Resolution 301 (2020)

HJR 301 (2020) proposes an amendment to the Florida Constitution to abolish the CRC. The joint resolution must pass each chamber with a three-fifths vote before it may be placed on the ballot. Thereafter, it must be approved by at least 60 percent of the electors voting on the measure. If approved by the voters, the joint resolution will take effect January 5, 2021.

#### Effect of Proposed Changes

This bill, which is linked to the passage of HJR 301 (2020), implements the repeal of the CRC by repealing all references to the CRC in current law.

The bill is effective contingent upon HJR 301 (2020) or a substantially similar amendment being approved at the next general election, in which case the bill is effective when HJR 301 (2020) or the similar amendment is effective.

### B. SECTION DIRECTORY:

**Section 1:** Amends s. 101.161, F.S., relating to referenda; ballots.

**Section 2:** Amends s. 112.3215, F.S., relating to lobbying before the executive branch or the CRC; registration and reporting; investigation by commission.

**Section 3:** Repeals s. 286.035, F.S., relating to CRC; powers of chair; assistance by state and local agencies.

**Section 4:** Provides an effective date that is contingent upon HJR 301 or a substantially similar amendment being approved at the next general election.

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<sup>1</sup> Art. XI, Fla. Const.

<sup>2</sup> Art. XI, s. 2, Fla. Const.

<sup>3</sup> CRC, CRC Office – Press Release, <https://crc.law.fsu.edu/Media/PressRelease/Show/1099.html> (last visited Nov. 4, 2019); *Detzner v. League of Women Voters of Florida*, 256 So. 3d 803 (Fla. 2018) (removing Revision 8 from the ballot).

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

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The bill does not require agency rulemaking.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1                                   A bill to be entitled  
 2           An act relating to the Constitution Revision  
 3           Commission; repealing s. 286.035, F.S., relating to  
 4           the Constitution Revision Commission, the powers of  
 5           the chair, and assistance by state and local agencies;  
 6           amending ss. 101.161 and 112.3215, F.S.; conforming  
 7           provisions to changes made by the act; providing a  
 8           contingent effective date.

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

11  
 12           Section 1. Subsection (1) of section 101.161, Florida  
 13           Statutes, is amended to read:

14           101.161 Referenda; ballots.—

15           (1) Whenever a constitutional amendment or other public  
 16           measure is submitted to the vote of the people, a ballot summary  
 17           of such amendment or other public measure shall be printed in  
 18           clear and unambiguous language on the ballot after the list of  
 19           candidates, followed by the word "yes" and also by the word  
 20           "no," and shall be styled in such a manner that a "yes" vote  
 21           will indicate approval of the proposal and a "no" vote will  
 22           indicate rejection. The ballot summary of the amendment or other  
 23           public measure and the ballot title to appear on the ballot  
 24           shall be embodied in the ~~constitutional revision commission~~  
 25           ~~proposal~~, constitutional convention proposal, taxation and

26 budget reform commission proposal, or enabling resolution or  
 27 ordinance. The ballot summary of the amendment or other public  
 28 measure shall be an explanatory statement, not exceeding 75  
 29 words in length, of the chief purpose of the measure. In  
 30 addition, for every amendment proposed by initiative, the ballot  
 31 shall include, following the ballot summary, a separate  
 32 financial impact statement concerning the measure prepared by  
 33 the Financial Impact Estimating Conference in accordance with s.  
 34 100.371(5). The ballot title shall consist of a caption, not  
 35 exceeding 15 words in length, by which the measure is commonly  
 36 referred to or spoken of. This subsection does not apply to  
 37 constitutional amendments or revisions proposed by joint  
 38 resolution.

39 Section 2. Paragraphs (a) and (f) of subsection (1) of  
 40 section 112.3215, Florida Statutes, are amended to read:

41 112.3215 Lobbying before the executive branch ~~or the~~  
 42 ~~Constitution Revision Commission~~; registration and reporting;  
 43 investigation by commission.-

44 (1) For the purposes of this section:

45 (a) "Agency" means the Governor, Governor and Cabinet, or  
 46 any department, division, bureau, board, commission, or  
 47 authority of the executive branch. ~~In addition, "agency" shall~~  
 48 ~~mean the Constitution Revision Commission as provided by s. 2,~~  
 49 ~~Art. XI of the State Constitution.~~

50 (f) "Lobbies" means seeking, on behalf of another person,

51 to influence an agency with respect to a decision of the agency  
52 in the area of policy or procurement or an attempt to obtain the  
53 goodwill of an agency official or employee. ~~"Lobbies" also means~~  
54 ~~influencing or attempting to influence, on behalf of another,~~  
55 ~~the Constitution Revision Commission's action or nonaction~~  
56 ~~through oral or written communication or an attempt to obtain~~  
57 ~~the goodwill of a member or employee of the Constitution~~  
58 ~~Revision Commission.~~

59 Section 3. Section 286.035, Florida Statutes, is repealed.

60 Section 4. This act shall take effect on the effective  
61 date of the amendment to the State Constitution proposed by HJR  
62 301 or a similar joint resolution having substantially the same  
63 specific intent and purpose, if such amendment to the State  
64 Constitution is approved at the next general election or at an  
65 earlier special election specifically authorized by law for that  
66 purpose.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7001      PCB OTM 20-02      OGSR/E-mail Addresses/Department of Highway Safety and Motor Vehicles

**SPONSOR(S):** Oversight, Transparency & Public Management Subcommittee, Plasencia

**TIED BILLS:**                      **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Public Management Subcommittee	12 Y, 0 N	Villa	Smith
1) Transportation & Infrastructure Subcommittee	12 Y, 0 N	Roth	Vickers
2) State Affairs Committee		Villa	Williamson

### SUMMARY ANALYSIS

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

The Department of Highway Safety and Motor Vehicles (department) is the custodian of motor vehicle records, which contain personal information about drivers and motor vehicle owners. The department is authorized to collect and use e-mail addresses for the purpose of providing title certificate notifications, motor vehicle registration renewal notices, and driver license renewal notices. Current law provides a public record exemption for such e-mail addresses collected by the department.

The bill saves from repeal the public record exemption, which will repeal on October 2, 2020, if this bill does not become law.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)<sup>1</sup> 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.<sup>2</sup>

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:

- 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.<sup>3</sup>

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and two-thirds vote for passage are required.<sup>4</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created, then a public necessity statement and a two-thirds vote for passage are not required.

##### Department of Highway Safety and Motor Vehicles and E-mail Addresses

The Department of Highway Safety and Motor Vehicles (department) is the records custodian of motor vehicle records.<sup>5</sup> Florida's motor vehicle records contain personal information such as a driver's social security number, driver license number, name, address, telephone number, and medical or disability information. The department is authorized to collect e-mail addresses and use e-mail, in lieu of the United States Postal Service, as a method of providing title certificate notifications,<sup>6</sup> motor vehicle registration renewal notices,<sup>7</sup> and driver license renewal notices.<sup>8</sup>

##### Public Record Exemption under Review

In 2015, the Legislature created a public record exemption for e-mail addresses collected by the department for the purpose of providing notification regarding title certificates, motor vehicle registration renewals, or driver license renewals.<sup>9</sup> Such email addresses are exempt from public record requirements.<sup>10</sup>

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 119.15(3), F.S.

<sup>3</sup> Section 119.15(6)(b), F.S.

<sup>4</sup> Section 24(c), Art. I, FLA. CONST.

<sup>5</sup> Section 119.0712(2)(a), F.S., defines the term "motor vehicle record" to mean "any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card" issued by the department.

<sup>6</sup> Section 319.40(3), F.S.

<sup>7</sup> Section 320.95(2), F.S.

<sup>8</sup> Section 322.08(10), F.S.

<sup>9</sup> Chapter 2015-32, L.O.F.; codified as s. 119.0712(2)(c), F.S.

<sup>10</sup> 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

The 2015 public necessity statement<sup>11</sup> for the exemption provides that:

[E]-mail addresses are unique to each individual and, when combined with other personal identifying information, can be used for identity theft, consumer scams, unwanted solicitations, or other invasive contacts. The public availability of personal e-mail addresses puts department customers at increased risk of these problems. Such risk may be significantly limited by permitting the department to keep customer e-mail addresses exempt. The Legislature finds that the risks to consumers outweigh the state's public policy favoring open government.<sup>12</sup>

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2020, unless reenacted by the Legislature.<sup>13</sup>

During the 2019 interim, subcommittee staff met with staff from the department to discuss the exemption. The department has collected 13 million e-mail addresses for both active and inactive drivers. As of August 6, 2019, the department has not received a public records request for the exempt information; however, the department recommends that the public record exemption be reenacted without changes to ensure consumer protection is maintained.

### **Effect of the Bill**

The bill removes the scheduled repeal date of the public record exemption, thereby maintaining the public record exemption for e-mail addresses held by the department for the purpose of providing title certificate notifications, motor vehicle registration renewal notices, and driver license renewal notices. The bill also corrects a cross reference.<sup>14</sup>

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 119.0712, F.S., to save from repeal the public record exemption for certain e-mail addresses held by the department and correct a cross reference.

Section 2 provides an effective date of October 1, 2020.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

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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).

<sup>11</sup> Article I, s. 24(c), FLA. CONST., requires each public record exemption "state with specificity the public necessity justifying the exemption."

<sup>12</sup> Section 2, ch. 2015-32, L.O.F.

<sup>13</sup> Section 119.0712(2)(c), F.S.

<sup>14</sup> In 2016, the Legislature enacted ch. 2016-242, L.O.F., which amended s. 322.08, F. S., and moved s. 322.08(9), F.S., to s. 322.08(10), F.S.

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

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not provide a grant of rulemaking authority, nor does it require rulemaking.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

1                                   A bill to be entitled  
 2           An act relating to a review under the Open Government  
 3           Sunset Review Act; amending s. 119.0712, F.S., which  
 4           provides an exemption from public records requirements  
 5           for certain e-mail addresses collected by the  
 6           Department of Highway Safety and Motor Vehicles;  
 7           correcting a cross-reference; removing the scheduled  
 8           repeal of the exemption; providing an effective date.

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

11  
 12           Section 1. Paragraph (c) of subsection (2) of section  
 13           119.0712, Florida Statutes, is amended to read:

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

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

17           (c) E-mail addresses collected by the Department of  
 18           Highway Safety and Motor Vehicles pursuant to s. 319.40(3), s.  
 19           320.95(2), or s. 322.08(10) ~~s. 322.08(9)~~ are exempt from s.  
 20           119.07(1) and s. 24(a), Art. I of the State Constitution. This  
 21           exemption applies retroactively. ~~This paragraph is subject to~~  
 22           ~~the Open Government Sunset Review Act in accordance with s.~~  
 23           ~~119.15 and shall stand repealed on October 2, 2020, unless~~  
 24           ~~reviewed and saved from repeal through reenactment by the~~  
 25           ~~Legislature.~~

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2020

26 | Section 2. This act shall take effect October 1, 2020. |