

CS/SB 674 by MS, Evers; (Similar to CS/CS/H 0185) Public Records/Military Special Operations Unit Service Members							
858924	D	S	RCS	GO, Latvala	Delete everything after	03/31	11:43 AM
CS/SB 824 by CA, Evers; (Similar to CS/H 0063) Public-private Partnerships							
840186	A	S	RCS	GO, Latvala	Delete L.273 - 286:	03/31	11:43 AM
SB 826 by Evers; (Identical to CS/H 0065) Public Records and Public Meetings/Public-private Project Proposals							
112778	A	S	RCS	GO, Latvala	Delete L.25:	03/31	11:43 AM
CS/SB 782 by CA, Montford; (Compare to H 0423) County Officials							
136204	D	S	RCS	GO, Bullard	Delete everything after	03/31	11:43 AM
CS/SB 838 by JU, Bradley; Justices and Judges							
851236	A	S	RS	GO, Latvala	Delete L.68 - 304:	03/31	11:43 AM
233778	SA	S	RCS	GO, Latvala	Delete L.68 - 304:	03/31	11:43 AM
SB 1352 by Smith; Deferred Compensation							
357586	A	S	RCS	GO, Ring	Delete L.29 - 66.	03/31	11:43 AM
187538	A	S	RCS	GO, Hays	Delete L.92 - 100.	03/31	11:43 AM
CS/SB 716 by RI, Hays (CO-INTRODUCERS) Soto, Diaz de la Portilla; (Similar to CS/H 1287) Public Records/Animal Medical Records							
815610	A	S	RCS	GO, Hays	Delete L.38 - 75:	03/31	11:43 AM
SM 1422 by Abruzzo; (Similar to H 1285) Iran/Economic Sanctions							
SB 1108 by Flores; (Identical to H 0467) Public Records/Identity of a Victim/Human Trafficking Offenses							
359086	A	S	RCS	GO, Bullard	Delete L.135 - 138:	03/31	11:43 AM
SB 1110 by Flores; (Similar to H 0469) Public Records/Residential Facilities Serving Victims of Sexual Exploitation and Human Trafficking							
188706	A	S	RCS	GO, Bullard	Delete L.89 - 92:	03/31	11:43 AM
CS/SB 962 by CA, Legg; (Similar to H 0537) Public Records/Surveillance Recordings							
810702	A	S	RCS	GO, Legg	Delete L.27:	03/31	11:43 AM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY

Senator Ring, Chair
Senator Hays, Vice Chair

MEETING DATE: Tuesday, March 31, 2015

TIME: 10:30 a.m.—12:00 noon

PLACE: James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building

MEMBERS: Senator Ring, Chair; Senator Hays, Vice Chair; Senators Bullard, Latvala, and Legg

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
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Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointment to the office indicated.

Secretary of Management Services

1	Poppell, Patterson Chad ()	Pleasure of Governor	Recommend Confirm Yeas 4 Nays 0
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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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2	CS/SB 674 Military and Veterans Affairs, Space, and Domestic Security / Evers (Similar CS/CS/H 185)	Public Records/Military Special Operations Unit Service Members; Providing an exemption from public records requirements for certain personal identifying information of current or former servicemembers of a military special operations units and the spouses and children of such servicemembers; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. MS 03/04/2015 Fav/CS GO 03/17/2015 Not Considered GO 03/31/2015 Fav/CS RC	Fav/CS Yeas 5 Nays 0
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3	CS/SB 824 Community Affairs / Evers (Similar CS/H 63, Compare CS/H 65, Link S 826)	Public-private Partnerships; Deleting provisions creating the Public-Private Partnership Guidelines Task Force; deleting a provision that requires approval of the local governing body before a school board enters into a comprehensive agreement; requiring a responsible public entity to include a design criteria package in a solicitation; deleting provisions relating to notice to affected local jurisdictions, etc. CA 03/17/2015 Fav/CS GO 03/31/2015 Fav/CS FP	Fav/CS Yeas 5 Nays 0
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COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Tuesday, March 31, 2015, 10:30 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 826 Evers (Identical CS/H 65, Compare CS/H 63, Link CS/S 824)	Public Records and Public Meetings/Public-private Project Proposals; Transferring, renumbering, and amending provisions relating to qualifying public- private projects for public facilities and infrastructure; providing an exemption from public records requirements for unsolicited proposals received by a responsible public entity for a specified period; providing an exemption from public meeting requirements for any portion of a meeting of a responsible public entity during which exempt proposals are discussed; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. CA 03/17/2015 Favorable GO 03/31/2015 Fav/CS FP	Fav/CS Yeas 5 Nays 0
5	CS/SB 782 Community Affairs / Montford (Compare H 423)	County Officials; Requiring, beginning in a specified fiscal year, that a county official's adjusted salary rate be identical to the official's adjusted salary rate in the prior fiscal year if the official's adjusted salary rate would otherwise be less than the prior fiscal year's adjusted salary rate due to certain circumstances, etc. CA 03/10/2015 Temporarily Postponed CA 03/17/2015 Fav/CS GO 03/31/2015 Fav/CS FP	Fav/CS Yeas 5 Nays 0
6	CS/SB 838 Judiciary / Bradley	Justices and Judges; Providing that a retired justice or retired judge is not subject to certain restrictions on employment after retirement otherwise applicable to retired employees; providing that a retired justice or retired judge who returns to temporary employment as a senior judge in any court may continue to receive a distribution of his or her retirement account after providing proof of termination from his or her regularly established position; providing a directive to the Division of Law Revision and Information; providing findings of an important state interest, etc. JU 03/03/2015 Fav/CS GO 03/31/2015 Fav/CS AP	Fav/CS Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Tuesday, March 31, 2015, 10:30 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	SB 1352 Smith	Deferred Compensation; Prohibiting contracts with investment providers and recordkeepers for state or local deferred compensation programs from exceeding a 5-year term; specifying requirements for the competitive solicitation or bidding process for investment providers and recordkeepers; prohibiting specified persons from participating in the selection of an investment provider or recordkeeper under certain circumstances, etc. GO 03/31/2015 Fav/CS AGG AP	Fav/CS Yeas 4 Nays 0
8	CS/SB 716 Regulated Industries / Hays (Similar CS/H 1287)	Public Records/Animal Medical Records; Providing an exemption from public records requirements for certain animal medical records held by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. RI 03/18/2015 Fav/CS GO 03/31/2015 Fav/CS RC	Fav/CS Yeas 5 Nays 0
9	SM 1422 Abruzzo (Similar HM 1285)	Iran/Economic Sanctions; Urging Congress and the President of the United States to pass and enact new economic sanctions against Iran should that nation be found to be in violation of the Joint Plan of Action or fail to reach an acceptable agreement by the dates set forth in the November 2014 extension of the Joint Plan of Action, etc. MS 03/23/2015 Favorable GO 03/31/2015 Favorable RC	Favorable Yeas 5 Nays 0
10	SB 1108 Flores (Identical H 467, Compare CS/CS/H 465, Link S 1106)	Public Records/Identity of a Victim/Human Trafficking Offenses; Revising an exemption from public records requirements for certain criminal intelligence and investigative information to exempt information that reveals the identity of a victim of certain human trafficking offenses; providing an exemption from public records requirements for investigative information relating to criminal history records of human trafficking victims that have been ordered expunged; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CJ 03/23/2015 Favorable GO 03/31/2015 Fav/CS AP	Fav/CS Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Tuesday, March 31, 2015, 10:30 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	SB 1110 Flores (Similar H 469, Compare CS/CS/H 465, Link S 1106)	Public Records/Residential Facilities Serving Victims of Sexual Exploitation and Human Trafficking; Providing an exemption from public records requirements for information held by an agency about the location of safe houses, safe foster homes, and other residential facilities serving victims of sexual exploitation; providing an exemption from public records requirements for information held by an agency about the location of residential facilities serving adult victims of human trafficking involving commercial sexual activity; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CJ 03/23/2015 Favorable GO 03/31/2015 Fav/CS AP	Fav/CS Yeas 5 Nays 0
12	CS/SB 962 Community Affairs / Legg (Similar H 537)	Public Records/Surveillance Recordings ; Providing an exemption from public records requirements for certain surveillance recordings held by a community development district; providing exceptions; defining the term "resident" of a community development district; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CA 03/17/2015 Fav/CS GO 03/31/2015 Fav/CS RC	Fav/CS Yeas 5 Nays 0
Other Related Meeting Documents			

11/16/35

QUESTIONNAIRE FOR SENATE CONFIRMATION

The information from this questionnaire will be used by the Florida Senate in considering action on your confirmation. The questionnaire **MUST BE COMPLETED IN FULL**. Answer "none" or "not applicable" where appropriate. Please type or print in blue or black ink.

1/22/2015

RECEIVED
19 JAN 23 PM 2:48
OFFICE OF ELECTIONS
SECRETARY OF STATE

1. Name: Mr. Poppell Patterson Chad
Mr./Mrs./Ms. Last First Middle/Maiden

2. Business Address: 4050 Esplanade Way, Ste 285B Tallahassee
Street Office # City
Florida 32399 850-414-8941
Post Office Box State Zip Code Area Code/Phone Number

3. Residence Address: _____
Street City County
Post Office Box State Zip Code Area Code/Phone Number

Specify the preferred mailing address: Business ☐ Residence ☒ Fax # _____ (optional)

4. A. List all your places of residence for the last five (5) years.

Address	City & State	From	To

B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.

Address	City & State	From	To

5. Date of Birth: _____ Place of Birth: _____

6. Social Security Number: _____

7. Driver License Number: _____ Issuing State: Florida

8. Have you ever used or been known by any other legal name? Yes ☐ No ☒ If "Yes" Explain

9. Are you a United States citizen? Yes ☒ No ☐ If "No" explain:

If you are a naturalized citizen, date of naturalization:

10. Since what year have you been a continuous resident of Florida? 1986, left briefly for college, as shown below

11. Are you a registered Florida voter? Yes ☒ No ☐ If "Yes" list:

A. County of Registration: Leon

B. Current Party Affiliation: Republican

12. Education

A. High School: Robert E. Lee High School, Jacksonville, FL
(Name and Location)

Year Graduated: 1991

B. List all postsecondary educational institutions attended:

<u>Name & Location</u>	<u>Dates Attended</u>	<u>Certificates/Degrees Received</u>
Missouri Valley College, Marshall, MO	1991	Attended One Semester
Florida State College at Jacksonville, Jacksonville, FL	1992-1993	Core Classes Taken
Valdosta State University, Valdosta, GA	1993-1997	Bachelor of Science/Master of Science

13. Are you or have you ever been a member of the armed forces of the United States? Yes ☐ No ☒ If "Yes" list:

A. Dates of Service:

B. Branch or Component:

C. Date & type of discharge:

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of \$150 or less was paid.) Yes ☒ No ☐ If "Yes" give details:

<u>Date</u>	<u>Place</u>	<u>Nature</u>	<u>Disposition</u>
Although official records have been lawfully sealed, I am disclosing an arrest in 1992, at age 19,			
for trying to obtain a fraudulent i.d., in Duval County. There was no conviction (adjudication was withheld).			
There have been no other incidents during the ensuing 22 years.			
I do not recall any traffic violations over \$150.			

15. Concerning your current employer and for all of your employment during the last five years, list your employer's name, business address, type of business, occupation or job title, and period(s) of employment.

<u>Employer's Name & Address</u>	<u>Type of Business</u>	<u>Occupation/Job Title</u>	<u>Period of Employment</u>
Florida Department of Economic Opportunity, State Government		Chief of Staff	01/2013 - 12/2014
JEA	Utility Provider	Director of Employee Services	2011-2013
City of Jacksonville	City Government	Chief of HR & other roles	1999 - 2011

16. Have you ever been employed by any state, district, or local governmental agency in Florida? Yes ☒ No ☐
If "Yes", identify the position(s), the name(s) of the employing agency, and the period(s) of employment:

<u>Position</u>	<u>Employing Agency</u>	<u>Period of Employment</u>
Please see answer to question 15 above		

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.

Please see attached resume for information about my background and how it relates to the position of Secretary.

B. Have you received any degree(s), professional certification(s), or designations(s) related to the subject matter of this appointment? Yes ☒ No ☐ If "Yes", list:

-Master of Science in industrial and organizational psychology

-Senior Professional of Human Resources Certification (SPHR) from the Society for Human Resource Management

C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes ☒ No ☐ If "Yes", list:

Jacksonville Business Journal Ultimate HR Executives Award, 2011

D. Identify all association memberships and association offices held by you that relate to this appointment:

Society for Human Resource Management (SHRM)

18. Do you currently hold an office or position (appointive, civil service, or other) with the federal or any foreign government? Yes ☐ No ☒ If "Yes", list:

19. A. Have you ever been elected or appointed to any public office in this state? Yes ☐ No ☒ If "Yes", state the office title, date of election or appointment, term of office, and level of government (city, county, district, state, federal):

Office Title

Date of Election or Appointment

Term of Office

Level of Government

B. If your service was on an appointed board(s), committee(s), or council(s):

(1) How frequently were meetings scheduled: _____

(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

Meetings Attended

Meetings Missed

Reason for Absence

<u>Meetings Attended</u>	<u>Meetings Missed</u>	<u>Reason for Absence</u>

20. Has probable cause ever been found that you were in violation of Part III, Chapter 112, F.S., the Code of Ethics for Public Officers and Employees? Yes ☐ No ☒ If "Yes", give details:

Date

Nature of Violation

Disposition

<u>Date</u>	<u>Nature of Violation</u>	<u>Disposition</u>

21. Have you ever been suspended from any office by the Governor of the State of Florida? Yes ☐ No ☒ If "Yes", list:

A. Title of office: _____

C. Reason for suspension: _____

B. Date of suspension: _____

D. Result: Reinstated ☐ Removed ☐ Resigned ☐

22. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes ☐ No ☒ If "Yes", list:

A. Title of Office: _____

B. Term of Appointment: _____

C. Confirmation results: _____

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes ☐ No ☒ If "Yes", explain: _____

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes ☐ No ☒ If "Yes", provide the title and number, original issue date, and issuing authority. If any disciplinary action (fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

License/Certificate

Original

Title & Number

Issue Date

Issuing Authority

Disciplinary Action/Date

<u>License/Certificate Title & Number</u>	<u>Original Issue Date</u>	<u>Issuing Authority</u>	<u>Disciplinary Action/Date</u>

25. A. Have you, or businesses of which you have been and owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☐ No ☒ If "Yes", explain:

Name of Business

Your Relationship to Business

Business' Relationship to Agency

<u>Name of Business</u>	<u>Your Relationship to Business</u>	<u>Business' Relationship to Agency</u>

- B. Have members of your immediate family (spouse, child, parents(s), siblings(s)), or businesses of which members of your immediate family have been owners, officers, or employees, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☒ No ☐ If "Yes", explain:

<u>Name of Business</u>	<u>Family Member's Relationship to You</u>	<u>Family Member's Relationship to Business</u>	<u>Business' Relationship to Agency</u>
Staff confirmed both businesses below have no contractual relationship with DMS. However, due to the statewide presence of both entities and their potential involvement with other state and local agencies, I am disclosing the following:			
Keiser University	Sibling	Employee/Senior Accountant	none
Lennar Homes	Sibling	Employee/Construction Supervisor	none

26. Have you ever been a registered lobbyist or have you lobbied at any level of government at any time during the past five (5) years? Yes ☒ No ☐

A. Did you receive any compensation other than reimbursement for expenses? Yes ☒ No ☐

B. Name of agency or entity you lobbied and the principal(s) you represented:

<u>Agency Lobbied</u>	<u>Principal Represented</u>
As former Chief of Staff of the Department of Economic Opportunity and current Secretary of the Department of Management Services, I have conformed to the practice of Executive Branch officials registering as "lobbyist" of the Florida Legislature. I consult with legislative staff and members regarding the official public business of the Department. I am paid a salary from my agency for these official public duties.	

27. List three persons who have known you well within the past five (5) years. Include a current, complete address and telephone number. Exclude your relatives and members of the Florida Senate.

<u>Name</u>	<u>Mailing Address</u>	<u>Zip Code</u>	<u>Area Code/Phone Number</u>
Alan Mosley			
Jesse Panuccio			
Erik Dellenback			

28. Name any business, professional, occupational, civic, or fraternal organizations(s) of which you are now a member, or of which you have been a member during the past five (5) years, the organization address(es), and date(s) of your membership(s).

<u>Name</u>	<u>Mailing Address</u>	<u>Office(s) Held & Term</u>	<u>Date(s) of Membership</u>
Gator Bowl Association, 1 Gator Bowl Blvd, Jacksonville, FL 32202			2010
Society for Human Resource Management, 1800 Duke St., Alexandria VA 22314			12/1998 - 2/2012, 2015
Youth Sports Coach, Creeks Athletic Association, St. Johns, FL			2009-2013
Youth Sports Coach, City of Tallahassee Parks & Recreation Department			2013-Present

29. Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes ☐ No ☒ If "Yes", explain:

30. If required by law or administrative rule, will you file financial disclosure statements? Yes ☒ No ☐

Chad Poppell

I am an experienced, results-oriented leader with a background in human resources and public administration. I have a history of building strong working relationships and working through difficult circumstances to carry out complicated, multi-level strategic agendas.

Highlighted Experience

Chief of Staff, Department of Economic Opportunity (DEO), Tallahassee, Fla. (2013-2014)

Department of Economic Opportunity is the state agency charged with advancing economic development, growth management, community development, and workforce development activity across Florida.

Duties and Responsibilities

I was responsible for the operational, financial, legislative, and media-related activities of DEO, a large state agency with an annual budget of approximately \$1 billion and more than 1,600 employees. In addition to standard business support units, three divisions drive the core operations of the agency:

- The DEO Division of Community Development manages the state's land planning and community development responsibilities to ensure that new growth fosters economic development while protecting resources of statewide significance.
- The DEO Division of Strategic Business Development provides support for attracting out-of-state businesses to Florida, promoting the creation and expansion of Florida businesses, and facilitating Florida's economic development partnerships.
- The DEO Division of Workforce Services provides support to the CareerSource Florida Network with 24 Regional Workforce Boards and 100 Career Centers across the state. It also provides labor market statistics tracking for the state and administers the Reemployment Assistance program.

Director of Employee Services, JEA, Jacksonville, Fla. (2011-2013)

JEA is a municipally owned electric, water and sewer provider that serves the Jacksonville metropolitan area. The JEA electric system is the seventh largest public power provider in the United States, serving more than 417,000 electric customers in Jacksonville and parts of three adjacent counties. The JEA water system serves more than 305,000 water customers and 230,000 sewer customers in Northeast Florida.

Duties and Responsibilities

As Director, my responsibility was to support the CEO's strategic agenda by leading a team of professionals that manage the functional areas of labor and employee relations, collective bargaining, safety, compensation, employee benefits, retirement plans and payroll administration.

Chief of Human Resources, City of Jacksonville, Fla. (Appointed and confirmed as Chief in 2008. Served in this role 2008-2011. Hired by city in 1999.)

Jacksonville is a consolidated city and county government with a population of approximately one million, covering nearly 773 square miles.

Duties and Responsibilities

As Chief, I led a team of employees who met the HR needs of a billion-dollar, 9000+ member organization. During my tenure, the city experienced several years of budget deficits, position reductions, hiring freezes, and layoffs. This required the HR team to find creative ways to balance financial needs against needed human resources, and, at the same time, remain attentive to employees' needs.

My responsibilities included:

- Being the lead HR consultant for the city's management teams
- Administering civil service and appointed personnel systems, including basic tenets of human capital management, such as: talent acquisition and onboarding, employee relations, promotional systems, performance management, classification and compensation, discipline, and organizational design and development.
- Achieving the mayor's collective bargaining agenda with six bargaining agents, representing 11 bargaining units.
- Ensuring compliance with county, state and federal regulations and labor laws.
- Designing, procuring and administering group health, vision and dental plans with an annual budget of over \$80 million.
- As a responsibility of this position, by ordinance, I was selected as a member of the General Employee Pension Board for the city. This responsibility, as set forth in the ordinance, ceased upon leaving position.

I held various other professional human resources positions with the city, beginning in 1999.

Education

- 1995- Valdosta State University, Valdosta, Ga.
- 1997 Master of Science in industrial and organizational psychology.
- 1993- Valdosta State University, Valdosta, Ga.
- 1995 Bachelor of Science in psychology

MEMORANDUM

AS A GENERAL MATTER, APPLICATIONS FOR ALL POSITIONS WITHIN STATE GOVERNMENT ARE PUBLIC RECORDS WHICH MAY BE VIEWED BY ANYONE UPON REQUEST. HOWEVER, THERE ARE SOME EXEMPTIONS FROM THE PUBLIC RECORDS LAW FOR IDENTIFYING INFORMATION RELATING TO PAST AND PRESENT LAW ENFORCEMENT OFFICERS AND THEIR FAMILIES, VICTIMS OF CERTAIN CRIMES, ETC. IF YOU BELIEVE AN EXEMPTION FROM THE PUBLIC RECORDS LAW APPLIES TO YOUR SUBMISSION, PLEASE CHECK THIS BOX.

☒ Yes, I assert that identifying information provided in this application should be excluded from inspection under the Public Records Law.

Because: (please provide cite.) 119.071(4)(d)(2)(f), Florida Statutes

IF YOU NEED ADDITIONAL GUIDANCE AS TO THE APPLICABILITY OF ANY PUBLIC RECORDS LAW EXEMPTION TO YOUR SITUATION, PLEASE CONTACT THE OFFICE OF THE ATTORNEY GENERAL.

The Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399
(850) 245-0150

CERTIFICATION


STATE OF FLORIDA

COUNTY OF Leon

Before me, the undersigned Notary Public of Florida, personally appeared

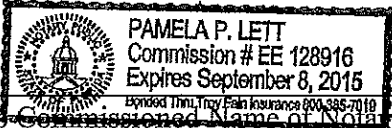
Patterson Chad Poppell

who, after being duly sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.


Signature of Applicant-Affiant

Sworn to and subscribed before me this 22nd day of January, 2015.


Signature of Notary Public-State of Florida

(Print, Type, or Stamp  Commissioned Name of Notary Public)

My commission expires: _____

Personally Known ☐ OR Produced Identification ☒

Type of Identification Produced

(seal)

Amended

7

A black and white copy of this document is not official

1425

STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections

I, Ken Detzner, Secretary of State,
do hereby certify that

Patterson Chad Poppell

is duly appointed

Secretary,

Department of Management Services

for a term beginning on the
Sixth day of January, A.D., 2015,
to serve at the pleasure of the Governor
and is subject to be confirmed by the Senate
during the next regular session of the Legislature



Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Twenty-Sixth day of February, A.D., 2015.

Ken Detzner

Secretary of State

DSDE 99 (3/13)

The original document has a reflective line mark in paper. Hold at an angle to view when checking.

Amended



RICK SCOTT
GOVERNOR

RECEIVED
15 FEB 25 PM 1:18

OFFICE OF COLLECTIONS
SECRETARY OF STATE

February 24, 2015

Secretary Kenneth W. Detzner
Department of State
State of Florida
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised I have made the following reappointment under the provisions of Section 20.22, Florida Statutes:

Mr. Chad Poppell

as Secretary of the Department of Management Services, subject to confirmation by the Senate. This appointment is effective January 6, 2015, for a term ending at the pleasure of the Governor.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott
Governor

RS/vh

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

STATE OF FLORIDA

County of Leon

15 JAN 23 PM 2:1

DEPARTMENT OF MANAGEMENT SERVICES
SECRETARY OF STATE

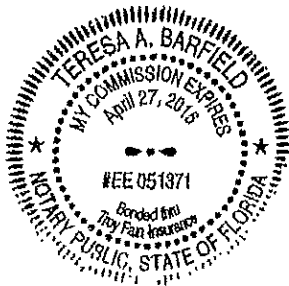
I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Secretary, Florida Department of Management Services

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]



Signature

Sworn to and subscribed before me this 9th day of January, 2015.

Teresa A. Barfield
Signature of Officer Administering Oath or of Notary Public

Teresa A. Barfield
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced _____

ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☐ Home ☒ Office

Street or Post Office Box _____

City, State, Zip Code _____

Patterson Chad Poppell

Print name as you desire commission issued

Signature

**The Florida Senate
Committee Notice Of Hearing**

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of
Patterson Chad Poppell
Secretary of Management Services

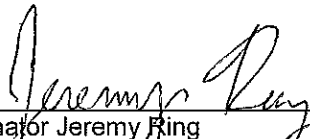
NOTICE OF HEARING

TO: Mr. Patterson Chad Poppell

YOU ARE HEREBY NOTIFIED that the Committee on Governmental Oversight and Accountability of the Florida Senate will conduct a hearing on your executive appointment on Tuesday, March 31, 2015, in the Pat Thomas Committee Room, 412 Knott Building, commencing at 10:00 a.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.
DATED this the 26th day of March, 2015

Committee on Governmental Oversight and
Accountability



Senator Jeremy Ring
As Chair and by authority of the committee

cc: Members, Committee on Governmental Oversight and Accountability
Office of the Sergeant at Arms

THE FLORIDA SENATE

COMMITTEE WITNESS OATH

CHAIR:

Please raise your right hand and be sworn in as a witness.

Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?

WITNESS'S NAME: Chad Poppell

ANSWER: "I DO"

Pursuant to §90.605(1), *Florida Statutes*: "The witness's answer shall be noted in the record."

COMMITTEE NAME: Government Oversight

DATE: 3/31/15

THE FLORIDA SENATE

3/31/2015

Bill Number (if applicable)

Amendment Barcode (if applicable)

Address 4050 Esplanade Way

Phone 850-414-1159

Tallahassee

FL

32399

Email chad.poppell@dms.myflorida.com

State

Zip

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing The Florida Department of Management Services

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/CS/SB 674

INTRODUCER: Governmental Oversight and Accountability Committee; Military and Veterans Affairs, Space, and Domestic Security Committee; and Senator Evers

SUBJECT: Public Records/Military Special Operations Unit Service Members

DATE: April 1, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sanders</u>	<u>Ryon</u>	<u>MS</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 674 creates a public records exemption for certain identification and location information of current and former service members of U.S. Armed Forces, a reserve component of the Armed Forces and the National Guard who have served since September 11, 2001. The exemption includes the spouses and other dependents of those servicemembers.

The public records exemption established in the bill is subject to the Open Government Sunset Review Act and will repeal on October 2, 2020, unless reviewed and saved from repeal by the Legislature.

The bill contains a statement of public necessity as required by the State Constitution.

Because this bill creates a public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for passage.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. The public may 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 of persons acting on their behalf.¹ The public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.² The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.³

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁴ guarantees every person's right to inspect and copy any state or local government public record.⁵ The Sunshine Law⁶ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.⁷

The Legislature may create an exemption to public records or open meetings requirements.⁸ An exemption must specifically state the public necessity justifying the exemption⁹ and must be tailored to accomplish the stated purpose of the law.¹⁰

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records or open

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(b).

³ *Id.*

⁴ Chapter 119, F.S.

⁵ 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." Section 119.011(2), F.S., defines "agency" to mean as "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 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.

⁶ Section 286.011, F.S.

⁷ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provides that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

⁸ 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 the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

meetings exemptions.¹¹ The OGSR 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.¹²

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than necessary.¹³ An exemption serves an identifiable purpose if it meets one of the following purposes and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁴
- 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;¹⁵ or
- It protects trade or business secrets.¹⁶

In addition, the Legislature must find that the purpose of the exemption overrides the Florida's public policy strongly favoring open government.

The OGSR also requires specified questions to be considered during the review process.¹⁷ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.¹⁸ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.¹⁹

¹¹ 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 OGSR 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.

¹² Section 119.15(3), F.S.

¹³ Section 119.15(6)(b), F.S.

¹⁴ Section 119.15(6)(b)1., F.S.

¹⁵ Section 119.15(6)(b)2., F.S.

¹⁶ Section 119.15(6)(b)3., F.S.

¹⁷ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?
If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

¹⁸ FLA. CONST., art. I, s. 24(c).

¹⁹ Section 119.15(7), F.S.

Current Exemptions from Public Records Requirements in s. 119.071, F.S.

Section 119.071(4), F.S., exempts personal identification and location information for specified current or former state or local government personnel, their spouses and children. Information such as home addresses, telephone numbers, a spouse's employer, and children's school or day care facility for current and former agency personnel are exempt from public disclosure. The employee must submit a written request for the exemption to be effective.²⁰

Additionally, s. 119.071(5), F.S., authorizes a public records exemption for certain identification and location information for the following federal personnel, their spouses and children:²¹

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

The identification and location information protected under this exemption includes:²²

- Home address, telephone number, and photograph of such attorney, judge, or magistrate and their spouse and child;
- Places of employment of a spouse and child, and
- Name and location of the school or day care facility attended by a child.

In order for the exemption to apply, a current or former federal attorney, judge, or magistrate must submit to an agency that has custody of the protected information a written request to exempt the information from public disclosure. In addition, the individual must submit a written statement that he or she has made a reasonable effort to protect such information from being accessible through other means available to the public.

Threats to Servicemembers and their Families

The Federal Bureau of Investigation (FBI) and the Department of Homeland Security (DHS) issued a Joint Intelligence Bulletin warning servicemembers that the Islamic State of Iraq and Levant (ISIL) has made "repeated calls for supporters in the United States to pledge an oath of obedience to ISIL and to attack military, law enforcement, security, and intelligence personnel in the Homeland."²³ A group claiming to be sympathizers of the Islamic State of Iraq and Syria (ISIS)²⁴ hacked into the U.S. military's Central Command's Twitter account and stated that they

²⁰ Section 119.071(4)(d)(3), F.S.

²¹ Section 119.071(5)(i), F.S.

²² Section 119.071(5)(i)1., F.S.

²³ Joint Intelligence Bulletin titled *Islamic State of Iraq and the Levant and Its Supporters Encourage Attacks Against Military Personnel* dated November 30, 2014, on file with the Committee on Governmental Oversight and Accountability. See also: *ISIS Threat at Home: FBI Warns US Military About Social Media Vulnerabilities*. (December 1, 2014), <http://abcnews.go.com/International/isis-threat-home-fbi-warns-us-military-social/story?id=27270662> (last viewed March 10, 2015)

²⁴ ISIL and ISIS are the same terrorist group but have been referred to in differently over time by the media and the government. See *ISIS, ISIL Or Islamic State: What's In a Name?* National Public Radio September 12, 2014. <http://www.npr.org/blogs/parallels/2014/09/12/347711170/isis-isil-or-islamic-state-whats-in-a-name> (last viewed March 26, 2015.)

were watching American soldiers, their wives and children.²⁵ Because of those threats, spouses of a Special Forces service members are reducing the information they place on social media.²⁶ On March 21, 2015, the media reported that ISIL posted on the internet the names, photographs, and addresses of approximately 100 servicemembers that it wanted killed.²⁷ The posted information appeared to have come from public records, the internet and Department of Defense reports.²⁸ Federal and military law enforcement agencies are investigating the matter, and the Department of Defense has been contacting the named servicemembers.²⁹

III. Effect of Proposed Changes:

The bill amends s. 119.071(5), F.S., to create an exemption from the public records requirements in s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution for current or former servicemembers of United States Armed Forces, a reserve component of the Armed Forces and the National Guard who have served since September 11, 2001, as well as the for the servicemember's spouses and other dependents.

Specifically, the following identification and location information held by an agency is exempt from public record requirements:

- Home address, telephone number, and date of birth of a servicemember; and the telephone number associated with a servicemember's personal communication device.
- Home address, telephone number, date of birth, and place of employment of the spouse or dependent of a servicemember; and the telephone number associated with such spouse's or dependent's personal communication device.
- Name and location of the school attended by the spouse, or the school or day care facility attended by a dependent, of a servicemember.

The exemption only applies if the current or former servicemember submits a written request for the exemption and provides a written statement that the servicemember has made reasonable efforts to protect the identification and location information from being accessible through other means available to the public. The servicemember must submit these statements to each agency which holds his or her information, and the servicemember must assert the exemption on behalf of his or her spouse or other dependent. The Department of Military Affairs estimates that this exemption will cover approximately 190,000 service members and 70,000 dependents.³⁰

²⁵ *U.S. Central Command Twitter Account suspended After Apparent ISIS Hack*. U.S. News and World Report (January 12, 2015) <http://www.usnews.com/news/articles/2015/01/12/us-central-command-twitter-account-suspended-after-apparent-isis-hack> (last visited March 10, 2015.)

²⁶ *After ISIS Twitter threat, military families rethink online lives*. <http://www.cnn.com/2015/01/14/us/social-media-military-isis/> (last visited March 10, 2015).

²⁷ *ISIS Urges Sympathizers to Kill U.S. Service Members It Identifies on Website*, New York Times (March 21, 2015) http://www.nytimes.com/2015/03/22/world/middleeast/isis-urges-sympathizers-to-kill-us-service-members-it-identifies-on-website.html?_r=0 (last view March 24, 2015.)

²⁸ *Id.*

²⁹ "Purported ISIS Group Posts Personal Details of 100 U.S. Military Service Members" ABC News (March 21, 2015). <http://abcnews.go.com/Politics/purported-isis-group-posts-personal-details-100-us/story?id=29811503> (last viewed March 24, 2015.)

³⁰ Email from Glen Sutphin, Department of Military Affairs, on file with the Senate Committee on Governmental Oversight and Accountability Dated March 24, 2015..

This bill provides for retroactive application of this exemption.

The bill provides a statement of public necessity as required by the State Constitution. The public necessity statement provides that allowing the identification and location information of current or former servicemembers and their families can endanger the servicemembers, their spouses, and their dependents.

This exemption is subject to the Open Government Sunset Review Act and will stand repealed on October, 2, 2020, unless reviewed and reenacted by the Legislature.

This bill will be effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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 record exemption for the identification and location information of current or former servicemembers their spouses, and other dependents; 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 public necessity statement provides that servicemembers perform critical and dangerous operations and that public access to identifying and location information endangers servicemembers and their families.

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 the identification and location information named in the bill for current or former servicemembers their spouses, and dependents of such servicemembers. The exemption is no broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have a minimal fiscal impact on state and local agencies, as staff may require training related to this new public record exemption. The costs, however, would likely be absorbed as part of the day-to-day responsibilities of the staff of the agency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Governmental Oversight and Accountability on March 31, 2015:

The committee substitute makes the following changes:

- Changes the definition of identification and locations information to include telephone numbers associated with a personal communication device and birthdays and by removing photographs. The schools attended by spouses was also added to the exemption.
- Changes “child” to “dependents.”
- Broadens the exemption to servicemembers who are current or former members of the Armed Forces, the Reserves, or the National Guard after September 11, 2001.
- Provides for retroactive application of the exemption.
- Modifies the public necessity statement to reflect recent news events and to conform to the CS.

CS by Military and Veterans Affairs, Space, and Domestic Security on March 4, 2015:

The committee substitute:

- 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; and
- Requires a person to request the exemption in writing and state in writing that he or she has made reasonable efforts to protect the information for the exemption to apply.

B. Amendments:

None.



858924

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/31/2015	.	
	.	
	.	
	.	

The Committee on Governmental Oversight and Accountability
(Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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:



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11 a. "Identification and location information" means the:
12 (I) Home address, telephone number, and date of birth of a
13 servicemember; and the telephone number associated with a
14 servicemember's personal communication device.

15 (II) Home address, telephone number, date of birth, and
16 place of employment of the spouse or dependent of a
17 servicemember; and the telephone number associated with such
18 spouse's or dependent's personal communication device.

19 (III) Name and location of the school attended by the
20 spouse, or the school or day care facility attended by a
21 dependent, of a servicemember.

22 b. "Servicemember" means a current or former member of the
23 Armed Forces of the United States, a reserve component of the
24 Armed Forces of the United States, or the National Guard who
25 served after September 11, 2001.

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

31 a. A written request to exempt the identification and
32 location information from public disclosure; and

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

37 3. This exemption applies to identification and location
38 information held by an agency before, on, or after the effective
39 date of this exemption.



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

44 Section 2. The Legislature finds that it is a public
45 necessity that the identification and location information held
46 by an agency of current or former members of the Armed Forces of
47 the United States, a reserve component of the Armed Forces of
48 the United States, or the National Guard who served after
49 September 11, 2001; their spouses; and their dependents be made
50 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
51 Article I of the State Constitution. Servicemembers perform
52 among the most critical, most effective, and most dangerous
53 operations in defense of our nation's freedom. Terrorist groups
54 have threatened servicemembers and their families and have
55 encouraged their sympathizers to harm servicemembers and their
56 families within the United States. One terrorist group has
57 allegedly gathered the photographs and home addresses of
58 servicemembers from public sources to create and publish a list
59 of servicemembers in order to make such persons vulnerable to an
60 act of terrorism. The Legislature finds that allowing continued
61 public access to the identification and location information of
62 current or former servicemembers and their families jeopardizes
63 the safety of servicemembers, their spouses, and their
64 dependents. The Legislature finds that protecting the safety and
65 security of current or former members of the Armed Forces of the
66 United States, a reserve component of the Armed Forces of the
67 United States, or the National Guard who served after September
68 11, 2001; their spouses; and their dependents outweighs any



858924

public benefit that may be derived from the public disclosure of
the identification and location information.

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

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to public records; amending s.
119.071, F.S.; defining the terms "identification and
location information" and "servicemember"; providing
an exemption from public records requirements for
certain identification and location information of
servicemembers and the spouses and dependents of
servicemembers; providing for retroactive application;
providing for future legislative review and repeal of
the exemption; providing a statement of public
necessity; providing an effective date.

By the Committee on Military and Veterans Affairs, Space, and Domestic Security; and Senator Evers

583-01920-15

2015674c1

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 attended by the child of such servicemember.

2. Identification and location information held by an agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the

Page 1 of 3

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

583-01920-15

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State Constitution if such servicemember submits to an agency that has custody of the identification and location information:

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

b. 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.

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

Section 2. The Legislature finds that it is a public necessity that the identification and location information held by an agency of a current or former servicemember of a United States military special operations unit; the spouse and children of such servicemember; and the schools and day care facilities attended by the children of such servicemember be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. United States military special operations units perform among the most critical, most effective, and most dangerous operations in defense of our nation's freedom. The unique missions undertaken by special operations units render these servicemembers and their families among the most critical assets worthy of protection in our state and country. The Legislature finds that allowing public access to the name, addresses, and identifying information of a current or former servicemember of a United States military special operations unit and his or her family may jeopardize the safety

Page 2 of 3

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

583-01920-15

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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.

THE FLORIDA SENATE

APPEARANCE RECORD

3/31/15

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 674

Bill Number (if applicable)

Topic Military / Vets Affairs

Amendment Barcode (if applicable)

Name Col. Mike Prendergast

Job Title Executive Director

Address The Capitol, Suite 2105

Phone (850) 487-1533

Tallahassee FL 32399

City State Zip

Email exdir@fdva.state.fl.us

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing The Florida Dept. of Veterans Affairs

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/CS/SB 824

INTRODUCER: Governmental Oversight and Accountability; Community Affairs Committee; and
Senator Evers

SUBJECT: Public-private Partnerships

DATE: April 1, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stearns	Yeatman	CA	Fav/CS
2.	Peacock	McVaney	GO	Fav/CS
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 824 implements many of the recommendations of the statutorily created Partnership for Public Facilities and Infrastructure Act Guidelines Task Force (Task Force) to create a uniform, improved process for engaging in public-private partnerships (P3s) across the state. The bill deletes the provisions creating the Task Force.

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

The bill expands the list of entities authorized to conduct P3s, by amending the term “responsible public entity,” to include state universities, special districts, school districts rather than school boards, and Florida College System institutions.

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

The bill provides that an unsolicited proposal must be submitted concurrently with an initial application fee, which may be established by the responsible public entity.

The bill requires a solicitation to include a specified design criteria package. The bill deletes the requirement that a responsible public entity provide each affected local jurisdiction with a copy of the unsolicited proposal.

The bill authorizes the Department of Management Services to accept and maintain copies of comprehensive agreements received from responsible public entities.

II. Present Situation:

Background

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

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

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

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

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

¹ See, the Federal Highway Administration, United State Department of Transportation, Innovative Program Delivery website, available at: <http://www.fhwa.dot.gov/ipd/p3/defined/index.htm> (last visited on March 12, 2015).

² *Id.*

³ Section 287.05712(4)(d)1., F.S.

or operated by a municipal electric utility, only those projects that the governing board designates as qualifying projects.

Procurement Procedures

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

Unsolicited proposals from private entities must be accompanied by the following material and information, unless waived by the responsible public entity:⁶

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

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

After the notification period has expired, the responsible public entity must rank the proposals received in order of preference.⁹ If negotiations with the first ranked firm are unsuccessful, the

⁴ Section 287.05712(4), F.S.

⁵ Section 287.05712(4)(a), F.S.

⁶ Section 287.05712(5), F.S.

⁷ Section 287.05712(4)(b), F.S.

⁸ *Id.*

⁹ Section 287.05712(6)(c), F.S.

responsible public entity may begin negotiations with the second ranked firm.¹⁰ The responsible public entity may reject all proposals at any point in the process.¹¹

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

The responsible public entity may approve a qualifying project if:¹³

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

Notice to Affected Local Jurisdictions

A responsible public entity must notify each affected local jurisdiction when considering a qualifying project by furnishing a copy of the proposal to each affected local jurisdiction.¹⁴ The affected local jurisdictions may, within 60 days, submit written comments to the responsible public entity. The responsible public entity is required to consider the comments submitted by the affected local jurisdiction. In addition, a responsible public entity must mail a copy of the notice that is published in the FAR to each local government in the affected area.¹⁵

Agreements

Interim Agreement

Before entering into a comprehensive agreement, the responsible public entity may enter into an interim agreement with the private entity, which does not obligate the responsible public entity to enter into a comprehensive agreement.¹⁶ Interim agreements must be limited to provisions that:

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

¹⁰ *Id.*

¹¹ *Id.*

¹² Section 287.05712(6)(f), F.S.

¹³ Section 287.05712(6)(e), F.S.

¹⁴ Section 287.05712(7), F.S.

¹⁵ Section 287.05712(4)(b), F.S.

¹⁶ Section 287.05712(8), F.S.

Comprehensive Agreement

The responsible public entity and private entity must enter into a comprehensive agreement prior to developing or operating a qualifying project.¹⁷ The comprehensive agreement must provide for:¹⁸

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

The comprehensive agreement may include the following:¹⁹

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

Fees

The comprehensive agreement may authorize the private entity to impose fees to the public for use of the facility.²⁰

Financing

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

¹⁷ Section 287.05712(9)(a), F.S.

¹⁸ *Id.*

¹⁹ Section 287.05712(9)(b), F.S.

²⁰ Section 287.05712(10), F.S.

Powers and Duties of the Private Entity

The private entity must develop, operate, and maintain the qualifying project in accordance with the comprehensive agreement.²¹ The private entity must cooperate with the responsible public entity in making best efforts to establish interconnection between the qualifying project and other facilities and infrastructure. The private entity must comply with the terms of the comprehensive agreement and any other lease or contract.

Expiration or Termination of Agreements

Upon the expiration or termination of a comprehensive agreement, the responsible public entity may use revenues from the qualifying project to pay the current operation and maintenance costs of the qualifying project.²² If the private entity materially defaults, the compensation that is otherwise due to the private entity is payable to satisfy all financial obligations to investors and lenders on the qualifying project in the same way that is provided in the comprehensive agreement or any other agreement involving the qualifying project, if the costs of operating and maintaining the project are paid in the normal course. The full faith and credit of the responsible public entity may not be pledged to secure the financing of the private entity.

Partnership for Public Facilities and Infrastructure Act Guidelines Task Force

Section 287.05712(3), F.S., creates the Partnership for Public Facilities and Infrastructure Act Guidelines Task Force (task force). The task force was created to recommend guidelines for the Legislature to consider for purposes of creating a uniform P3 process across the state.²³ The seven-member task force was comprised of the Secretary of the Department of Management Services (DMS) or designee and six members appointed by the Governor comprised of one county government official, one municipal government official, one district school board member, and three representatives from the business community. DMS provided administrative and technical support to the task force.

In July 2014, the task force completed its duties and submitted a final report of its recommendations.²⁴ The task force was disbanded on December 31, 2014.²⁵

III. Effect of Proposed Changes:

Section 1 transfers s. 287.05712, F.S., and renumbers it as s. 255.065, F.S., to incorporate many of the recommendations contained in the task force report, which include best practice recommendations as well as recommendations relating to needed clarification of s. 287.05712, F.S., which may facilitate the implementation of P3s.

²¹ Section 287.05712(12), F.S.

²² Section 287.05712(13), F.S.

²³ Section 287.05712(3)(a), F.S.

²⁴ Partnership for Public Facilities and Infrastructure Act Guidelines Task Force, *Final Report and Recommendations* (July 2014). The Task Force Report can be found online at: http://www.dms.myflorida.com/agency_administration/communications/partnership_for_public_facilities_infrastructure_act (last visited March 12, 2015).

²⁵ Section 287.05712(3)(f), F.S.

Definitions

The bill expands the definition of “responsible public entity” to include state universities,²⁶ and clarifies that it includes special districts, school districts rather than school boards, and Florida College System institutions.²⁷

The bill also amends the definition of the term “service contract” to reference a responsible public entity.

Public Facilities and Infrastructure Act Guidelines Task Force

The bill deletes the Public Facilities and Infrastructure Act Guidelines Task Force provisions, as the Task Force was disbanded on December 31, 2014.

Application Fees

The bill provides that when a private entity submits an unsolicited proposal, the private entity must concurrently submit the initial application fee.²⁸ The application fee must be paid by cash, cashier’s check, or other noncancelable instrument. The bill provides that if the initial fee, as determined by the responsible public entity, is not sufficient to cover the costs associated with evaluating the unsolicited proposal, the responsible public entity must request in writing the additional amount required. If the private entity fails to pay the additional amount requested within 30 days of the notice, the responsible public entity may stop reviewing the proposal. The bill requires the responsible public entity to return the application fee if the responsible public entity does not evaluate the unsolicited proposal.

Solicitation Timeframes

The bill provides flexibility to the responsible public entity for accepting proposals if an alternative timeframe is approved by majority vote of the entity’s governing body.²⁹ It also removes the provision that required a school board to obtain the approval of the local governing body.³⁰

Contents of Solicitation – Design Criteria Package

The bill requires a solicitation to include a design criteria package prepared by an architect, engineer, or landscape architect licensed in Florida that is sufficient to allow private entities to

²⁶ Task Force Report at 16. The Task Force recommended adding state universities to the list of entities that are included in the definition of “responsible public entity.”

²⁷ *Id.* at 18. The Task Force recommended amending the definition of “responsible public entity” to reference school district, rather than board, as the district is the unit that provides public primary education. It also recommended clarifying that the definition includes both special districts and the Florida College System.

²⁸ *Id.* at 9. The Task Force recommended amending the fee provisions to ensure that the fees were related to actual, reasonable costs associated with reviewing an unsolicited proposal and not revenue generation.

²⁹ *Id.* at 7. The Task Force discussed that increased flexibility may be necessary when dealing with complex proposals to ensure sufficient time is allowed for the receipt of competing proposals.

³⁰ *Id.* at 18. The Task Force recommended striking this provision because school boards are not subject to governance by a local governing body.

prepare a bid or a response to the solicitation. The design criteria package must specify performance-based criteria for the project, including:

- The legal description of the site, with survey information;
- Interior space requirements;
- Material quality standards;
- Schematic layouts and conceptual design criteria for the project, with budget estimates;
- Design and construction schedules; and
- Site and utility requirements.

Ownership by the Responsible Public Entity

The bill clarifies that the project must be owned by the responsible public entity upon expiration of the comprehensive agreement, rather than solely upon completion or termination of the agreement.³¹

Material and Information Required for Unsolicited Proposal

The bill clarifies that any pricing or financial terms included in an unsolicited proposal must be specific as to when the pricing or terms expire.³²

Project Qualification

The bill alters the parties that must meet the minimum standards contained in the responsible public entity's guidelines for qualifying professional services and contracts for traditional procurement projects to allow the applicable party (or parties) of the private entity's team to be a qualifying entity, rather than just the private entity itself.³³

The bill deletes a requirement that a responsible public entity ensure that provision is made for the transfer of a private entity's obligations if the comprehensive agreement is terminated and replaces it with a requirement that the responsible public entity ensure that the comprehensive agreement addresses termination upon a material default.³⁴

Notice to Affected Local Jurisdictions

The bill deletes the requirement that a responsible public entity notify each affected local jurisdiction of an unsolicited proposal by furnishing a copy of the proposal to each affected local jurisdiction when considering it.³⁵ The responsible public entity must still provide each affected local jurisdiction a copy of the notice published in the FAR concerning solicitations for a qualifying project in accordance with s. 287.05712(4)(b), F.S.

³¹ *Id.* at 14.

³² *Id.* at 7.

³³ *Id.* at 21.

³⁴ *Id.* at 14.

³⁵ *Id.* at 12-13. The report provided a discussion on the notice that is already provided to affected local jurisdictions through the permitting process and stated a mandatory P3 notice process could delay project timelines.

Fees

The bill clarifies that fees imposed by a private entity must be applied as set forth in the comprehensive agreement.³⁶

Financing

The bill clarifies that a financing agreement may not require the responsible public entity to secure financing by a mortgage on, or security interest in, the real or tangible personal property of the responsible public entity in a manner that could result in the loss of the fee ownership of the property by the responsible public entity.³⁷

The bill also deletes a provision that provides for the responsible public entity to appropriate on a priority basis a contractual payment obligation from the government fund from which the qualifying project will be funded.³⁸ Current law raised concerns regarding infringement upon a responsible public entity's appropriation powers. Additionally, had the provision remained in current law, it is unclear how this provision would apply to state universities or Florida College System institutions.

Department of Management Services

The bill provides that DMS may accept and maintain copies of comprehensive agreements received from responsible public entities for the purpose of sharing the comprehensive agreements with other responsible public entities.³⁹ Responsible public entities are not required to provide copies to DMS; however, if a responsible public entity provides a copy, the responsible public entity must first redact any confidential or exempt information from the comprehensive agreement.

Construction

The bill clarifies that the P3 process must be construed as cumulative and supplemental to any other authority or power vested in the governing body of a county, municipality, special district, or municipal hospital or health care system. The bill provides that the P3 process is an alternative method that may be used, but that it does not limit a county, municipality, special district, or other political subdivision of the state in the procurement or operation of a qualifying project pursuant to other statutory or constitutional authority.⁴⁰

³⁶ *Id.* at 17.

³⁷ *Id.* at 20.

³⁸ *Id.* at 15.

³⁹ *Id.* at 11. The report recommended authorizing a state agency to provide assistance to responsible public entities concerning P3s.

⁴⁰ *Id.* at 19. The report discussed the need for flexibility in the creation of P3s and noted that clarification is needed to ensure that the process is considered supplemental and alternative to any other applicable statutory authority.

Miscellaneous

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

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

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

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

This bill may provide more opportunities for the private sector to enter into contracts for construction services with state universities and local governments.

C. Government Sector Impact:

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 287.05712, F.S., transfers and renumbers it as section 255.065, F.S.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Governmental Oversight and Accountability on March 31, 2015:

A landscape architect licensed in Florida is added to the list of professionals who can prepare the design criteria package that is required for inclusion with the solicitation to the responsible public entity.

CS by Community Affairs on March 17, 2015:

Requires a solicitation to include a design criteria package prepared by an architect or engineer licensed in Florida that is sufficient to allow private entities to prepare a bid or a response to the solicitation. The bill provides a number of performance-based criteria that must be included in the design criteria package.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/31/2015	.	
	.	
	.	
	.	

The Committee on Governmental Oversight and Accountability
(Latvala) recommended the following:

Senate Amendment

Delete lines 273 - 286
and insert:

(c) If the responsible public entity solicits proposals under this section, the solicitation must include a design criteria package prepared by an architect, engineer, or landscape architect licensed in this state which is sufficient to allow private entities to prepare a bid or a response. The design criteria package must specify performance-based criteria



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11 for the project, including the legal description of the site,
12 with survey information; interior space requirements; material
13 quality standards; schematic layouts and conceptual design
14 criteria for the project; cost or budget estimates; design and
15 construction schedules; and site development and utility
16 requirements ~~A responsible public entity that is a school board~~
17 ~~may enter into a comprehensive agreement only with the approval~~
18 ~~of the local governing body.~~

By the Committee on Community Affairs; and Senator Evers

578-02390-15

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1 A bill to be entitled
 2 An act relating to public-private partnerships;
 3 transferring, renumbering, and amending s. 287.05712,
 4 F.S.; revising definitions; deleting provisions
 5 creating the Public-Private Partnership Guidelines
 6 Task Force; requiring a private entity that submits an
 7 unsolicited proposal to pay an initial application fee
 8 and additional amounts if the fee does not cover
 9 certain costs; specifying payment methods; authorizing
 10 a responsible public entity to alter the statutory
 11 timeframe for accepting proposals for a qualifying
 12 project under certain circumstances; deleting a
 13 provision that requires approval of the local
 14 governing body before a school board enters into a
 15 comprehensive agreement; requiring a responsible
 16 public entity to include a design criteria package in
 17 a solicitation; specifying requirements for the design
 18 criteria package; revising the conditions necessary
 19 for a responsible public entity to approve a
 20 comprehensive agreement; deleting provisions relating
 21 to notice to affected local jurisdictions; providing
 22 that fees imposed by a private entity must be applied
 23 as set forth in the comprehensive agreement;
 24 restricting provisions in financing agreements that
 25 could result in a responsible public entity's losing
 26 ownership of real or tangible personal property;
 27 deleting a provision that required a responsible
 28 public entity to comply with specific financial
 29 obligations; providing duties of the Department of

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

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30 Management Services; revising provisions relating to
 31 construction of the act; providing an effective date.
 32
 33 Be It Enacted by the Legislature of the State of Florida:
 34
 35 Section 1. Section 287.05712, Florida Statutes, is
 36 transferred, renumbered as section 255.065, Florida Statutes,
 37 and amended to read:
 38 255.065 ~~287.05712~~ Public-private partnerships.—
 39 (1) DEFINITIONS.—As used in this section, the term:
 40 (a) "Affected local jurisdiction" means a county,
 41 municipality, or special district in which all or a portion of a
 42 qualifying project is located.
 43 (b) "Develop" means to plan, design, finance, lease,
 44 acquire, install, construct, or expand.
 45 (c) "Fees" means charges imposed by the private entity of a
 46 qualifying project for use of all or a portion of such
 47 qualifying project pursuant to a comprehensive agreement.
 48 (d) "Lease payment" means any form of payment, including a
 49 land lease, by a public entity to the private entity of a
 50 qualifying project for the use of the project.
 51 (e) "Material default" means a nonperformance of its duties
 52 by the private entity of a qualifying project which jeopardizes
 53 adequate service to the public from the project.
 54 (f) "Operate" means to finance, maintain, improve, equip,
 55 modify, or repair.
 56 (g) "Private entity" means any natural person, corporation,
 57 general partnership, limited liability company, limited
 58 partnership, joint venture, business trust, public benefit

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corporation, nonprofit entity, or other private business entity.

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

(i) "Qualifying project" means:

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

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

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

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

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

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

(l) "Service contract" means a contract between a responsible public entity and the private entity which defines the terms of the services to be provided with respect to a qualifying project.

(2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that there is a public need for the construction or upgrade of facilities that are used predominantly for public purposes and that it is in the public's interest to provide for the construction or upgrade of such facilities.

(a) The Legislature also finds that:

1. There is a public need for timely and cost-effective acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of projects serving a public purpose, including educational facilities, transportation facilities, water or wastewater management facilities and infrastructure, technology infrastructure, roads, highways, bridges, and other public

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117 infrastructure and government facilities within the state which
 118 serve a public need and purpose, and that such public need may
 119 not be wholly satisfied by existing procurement methods.

120 2. There are inadequate resources to develop new
 121 educational facilities, transportation facilities, water or
 122 wastewater management facilities and infrastructure, technology
 123 infrastructure, roads, highways, bridges, and other public
 124 infrastructure and government facilities for the benefit of
 125 residents of this state, and that a public-private partnership
 126 has demonstrated that it can meet the needs by improving the
 127 schedule for delivery, lowering the cost, and providing other
 128 benefits to the public.

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

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

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

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

144 ~~(a) There is created the Partnership for Public Facilities~~
 145 ~~and Infrastructure Act Guidelines Task Force for the purpose of~~

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146 ~~recommending guidelines for the Legislature to consider for~~
 147 ~~purposes of creating a uniform process for establishing public-~~
 148 ~~private partnerships, including the types of factors responsible~~
 149 ~~public entities should review and consider when processing~~
 150 ~~requests for public-private partnership projects pursuant to~~
 151 ~~this section.~~

152 ~~(b) The task force shall be composed of seven members, as~~
 153 ~~follows:~~

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

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

157 ~~a. One county government official.~~

158 ~~b. One municipal government official.~~

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

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

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

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

~~1. Opportunities for competition through public notice and the availability of representatives of the responsible public entity to meet with private entities considering a proposal.~~

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

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

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

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

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

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

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

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

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

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

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

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

2. A private entity that submits an unsolicited proposal to a responsible public entity must concurrently pay an initial application fee, as determined by the responsible public entity.

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Payment must be made by cash, cashier's check, or other noncancelable instrument. Personal checks may not be accepted.

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

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

(b) The responsible public entity may request a proposal from private entities for a qualifying public-private project or, if the responsible public entity receives an unsolicited proposal for a qualifying public-private project and the responsible public entity intends to enter into a comprehensive agreement for the project described in the such unsolicited proposal, the responsible public entity shall publish notice in the Florida Administrative Register and a newspaper of general circulation at least once a week for 2 weeks stating that the responsible public entity has received a proposal and will accept other proposals for the same project. The timeframe within which the responsible public entity may accept other proposals shall be determined by the responsible public entity

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

(c) If the responsible public entity solicits proposals under this section, the solicitation must include a design criteria package prepared by an architect or engineer licensed in this state which is sufficient to allow private entities to prepare a bid or a response. The design criteria package must specify performance-based criteria for the project, including the legal description of the site, with survey information; interior space requirements; material quality standards; schematic layouts and conceptual design criteria for the project, with budget estimates; design and construction schedules; and site and utility requirements. A responsible public entity that is a school board may enter into a comprehensive agreement only with the approval of the local governing body.

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

1. Is in the public's best interest.

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

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

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

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

(e) Before signing a comprehensive agreement, the responsible public entity must consider a reasonable finance plan that is consistent with subsection (9) ~~(11)~~; the qualifying project cost; revenues by source; available financing; major assumptions; internal rate of return on private investments, if governmental funds are assumed in order to deliver a cost-feasible project; and a total cash-flow analysis beginning with the implementation of the project and extending for the term of the comprehensive agreement.

(f) In considering an unsolicited proposal, the responsible public entity may require from the private entity a technical study prepared by a nationally recognized expert with experience in preparing analysis for bond rating agencies. In evaluating the technical study, the responsible public entity may rely upon internal staff reports prepared by personnel familiar with the

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operation of similar facilities or the advice of external advisors or consultants who have relevant experience.

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

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

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

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

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

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

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

Any pricing or financial terms included in an unsolicited

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proposal must be specific as to when the pricing or terms expire.

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

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

(b) The responsible public entity must:

1. Ensure that provision is made for the private entity's performance and payment of subcontractors, including, but not limited to, surety bonds, letters of credit, parent company guarantees, and lender and equity partner guarantees. For the components of the qualifying project which involve construction performance and payment, bonds are required and are subject to the recordation, notice, suit limitation, and other requirements of s. 255.05.

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

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

(c) After the public notification period has expired in the case of an unsolicited proposal, the responsible public entity shall rank the proposals received in order of preference. In ranking the proposals, the responsible public entity may consider factors that include, but are not limited to,

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professional qualifications, general business terms, innovative design techniques or cost-reduction terms, and finance plans. The responsible public entity may then begin negotiations for a comprehensive agreement with the highest-ranked firm. If the responsible public entity is not satisfied with the results of the negotiations, the responsible public entity may terminate negotiations with the proposer and negotiate with the second-ranked or subsequent-ranked firms, in the order consistent with this procedure. If only one proposal is received, the responsible public entity may negotiate in good faith, and if the responsible public entity is not satisfied with the results of the negotiations, the responsible public entity may terminate negotiations with the proposer. Notwithstanding this paragraph, the responsible public entity may reject all proposals at any point in the process until a contract with the proposer is executed.

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

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

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

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

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

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

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

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

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

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

~~(b) Each affected local jurisdiction that is not a responsible public entity for the respective qualifying project may, within 60 days after receiving the notice, submit in~~

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

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

(a) Authorize the private entity to commence activities for which it may be compensated related to the proposed qualifying project, including, but not limited to, project planning and

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development, design, environmental analysis and mitigation, survey, other activities concerning any part of the proposed qualifying project, and ascertaining the availability of financing for the proposed facility or facilities.

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

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

(7)(9) COMPREHENSIVE AGREEMENT.—

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

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

2. Review of the design for the qualifying project by the responsible public entity and, if the design conforms to standards acceptable to the responsible public entity, the approval of the responsible public entity. This subparagraph does not require the private entity to complete the design of the qualifying project before the execution of the comprehensive agreement.

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

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

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

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

7. Procedures that govern the rights and responsibilities of the responsible public entity and the private entity in the course of the construction and operation of the qualifying project and in the event of the termination of the comprehensive agreement or a material default by the private entity. The procedures must include conditions that govern the assumption of the duties and responsibilities of the private entity by an entity that funded, in whole or part, the qualifying project or by the responsible public entity, and must provide for the transfer or purchase of property or other interests of the private entity by the responsible public entity.

8. Fees, lease payments, or service payments. In negotiating user fees, the fees must be the same for persons

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523 using the facility under like conditions and must not materially
 524 discourage use of the qualifying project. The execution of the
 525 comprehensive agreement or a subsequent amendment is conclusive
 526 evidence that the fees, lease payments, or service payments
 527 provided for in the comprehensive agreement comply with this
 528 section. Fees or lease payments established in the comprehensive
 529 agreement as a source of revenue may be in addition to, or in
 530 lieu of, service payments.

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

534 (b) The comprehensive agreement may include:

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

539 2. A provision under which each entity agrees to provide
 540 notice of default and cure rights for the benefit of the other
 541 entity, including, but not limited to, a provision regarding
 542 unavoidable delays.

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

548 ~~(8)(10)~~ FEES.—A comprehensive ~~an~~ agreement entered into
 549 pursuant to this section may authorize the private entity to
 550 impose fees to members of the public for the use of the
 551 facility. The following provisions apply to the comprehensive

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552 agreement:

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

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

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

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

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

570 ~~(9)(11)~~ FINANCING.—

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

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

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581 (c) The responsible public entity may use innovative
 582 finance techniques associated with a public-private partnership
 583 under this section, including, but not limited to, federal loans
 584 as provided in Titles 23 and 49 C.F.R., commercial bank loans,
 585 and hedges against inflation from commercial banks or other
 586 private sources. In addition, the responsible public entity may
 587 provide its own capital or operating budget to support a
 588 qualifying project. The budget may be from any legally
 589 permissible funding sources of the responsible public entity,
 590 including the proceeds of debt issuances. A responsible public
 591 entity may use the model financing agreement provided in s.
 592 489.145(6) for its financing of a facility owned by a
 593 responsible public entity. A financing agreement may not require
 594 the responsible public entity to indemnify the financing source,
 595 subject the responsible public entity's facility to liens in
 596 violation of s. 11.066(5), or secure financing of ~~by~~ the
 597 responsible public entity by a mortgage on, or security interest
 598 in, the real or tangible personal property of the responsible
 599 public entity in a manner that could result in the loss of the
 600 fee ownership of the property by the responsible public entity
 601 ~~with a pledge of security interest~~, and any such provision is
 602 void.

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

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610 (10)-(12) POWERS AND DUTIES OF THE PRIVATE ENTITY.-

611 (a) The private entity shall:

612 1. Develop or operate the qualifying project in a manner
 613 that is acceptable to the responsible public entity in
 614 accordance with the provisions of the comprehensive agreement.
 615 2. Maintain, or provide by contract for the maintenance or
 616 improvement of, the qualifying project if required by the
 617 comprehensive agreement.

618 3. Cooperate with the responsible public entity in making
 619 best efforts to establish interconnection between the qualifying
 620 project and any other facility or infrastructure as requested by
 621 the responsible public entity in accordance with the provisions
 622 of the comprehensive agreement.

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

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

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

637 (d) A private entity of a qualifying project may provide
 638 additional services for the qualifying project to the public or

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to other private entities if the provision of additional services does not impair the private entity's ability to meet its commitments to the responsible public entity pursuant to the comprehensive agreement.

~~(11)-(13)~~ EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the expiration or termination of a comprehensive agreement, the responsible public entity may use revenues from the qualifying project to pay current operation and maintenance costs of the qualifying project. If the private entity materially defaults under the comprehensive agreement, the compensation that is otherwise due to the private entity is payable to satisfy all financial obligations to investors and lenders on the qualifying project in the same way that is provided in the comprehensive agreement or any other agreement involving the qualifying project, if the costs of operating and maintaining the qualifying project are paid in the normal course. Revenues in excess of the costs for operation and maintenance costs may be paid to the investors and lenders to satisfy payment obligations under their respective agreements. A responsible public entity may terminate with cause and without prejudice a comprehensive agreement and may exercise any other rights or remedies that may be available to it in accordance with the provisions of the comprehensive agreement. The full faith and credit of the responsible public entity may not be pledged to secure the financing of the private entity. The assumption of the development or operation of the qualifying project does not obligate the responsible public entity to pay any obligation of the private entity from sources other than revenues from the qualifying project unless stated otherwise in the comprehensive

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agreement.

~~(12)-(14)~~ SOVEREIGN IMMUNITY.—This section does not waive the sovereign immunity of a responsible public entity, an affected local jurisdiction, or an officer or employee thereof with respect to participation in, or approval of, any part of a qualifying project or its operation, including, but not limited to, interconnection of the qualifying project with any other infrastructure or project. A county or municipality in which a qualifying project is located possesses sovereign immunity with respect to the project, including, but not limited to, its design, construction, and operation.

(13) DEPARTMENT OF MANAGEMENT SERVICES.—

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

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

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

~~(14)-(15)~~ CONSTRUCTION.—

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

(b) This section shall be construed as cumulative and

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supplemental to any other authority or power vested in or exercised by the governing body ~~board~~ of a county, municipality, special district, or municipal hospital or health care system including those contained in acts of the Legislature ~~establishing such public hospital boards or s. 155.40.~~

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

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

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/31/15
Meeting Date

SB 824
Bill Number (if applicable)

Topic Public - Private Partnership

Amendment Barcode (if applicable)

Name David Cruz

Job Title Assistant General Counsel

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/31/15
824

Meeting Date

824

Bill Number (if applicable)

Topic Public Private Partnership

Amendment Barcode (if applicable)

Name Richard Watson

Job Title Legislative Counsel

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City State Zip

Email rick@rwatermanassociates.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Associated Builders and Contractors of FL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/SB 826

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Evers

SUBJECT: Public Records and Public Meetings/Public-private Project Proposals

DATE: April 1, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stearns	Yeatman	CA	Favorable
2. Peacock	McVaney	GO	Fav/CS
3. _____	_____	FP	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 826, which is linked to the passage of CS/SB 824, creates an exemption from public record and public meeting requirements for unsolicited proposals for public-private partnership (P3) projects for public facilities and infrastructure.

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

Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. The public may 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 of persons acting on their behalf.¹ The public also has a right to be afforded notice and access to meetings of any

¹ FLA. CONST., art. I, s. 24(a).

collegial public body of the executive branch of state government or of any local government.² The Legislature's meetings must also be open and noticed to the public, unless there is an exemption provided for by the Constitution.³

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁴ guarantees every person's right to inspect and copy any state or local government public record.⁵ The Sunshine Law⁶ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.⁷

The Legislature may create an exemption to public records or open meetings requirements.⁸ An exemption must specifically state the public necessity justifying the exemption⁹ and must be tailored to accomplish the stated purpose of the law.¹⁰

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹¹ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after

² FLA. CONST., art. I, s. 24(b).

³ *Id.*

⁴ Chapter 119, F.S.

⁵ 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." Section 119.011(2), F.S., defines "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 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 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.

⁶ Section 286.011, F.S.

⁷ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provides that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

⁸ 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 the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ 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 OGSR 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.

creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹²

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹³ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁴
- 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;¹⁵ or
- It protects trade or business secrets.¹⁶

The OGSR also requires specified questions to be considered during the review process.¹⁷ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.¹⁸ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.¹⁹

Public-Private Partnerships

Section 287.05712, F.S., governs the procurement process for public-private partnerships (P3s) for public purpose projects. It authorizes a responsible public entity²⁰ to enter into a P3 for

¹² Section 119.15(3), F.S.

¹³ Section 119.15(6)(b), F.S.

¹⁴ Section 119.15(6)(b)1., F.S.

¹⁵ Section 119.15(6)(b)2., F.S.

¹⁶ Section 119.15(6)(b)3., F.S.

¹⁷ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

¹⁸ FLA. CONST., art. I, s. 24(c).

¹⁹ Section 119.15(7), F.S.

²⁰ Section 287.05712(1)(j), F.S., defines “responsible public entity” as a county, municipality, school board, or any other political subdivision of the state; a public body corporate and politic; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project.

specified qualifying projects²¹ if the responsible public entity determines the project is in the public's best interest.²²

Responsible public entities may receive unsolicited proposals or may solicit proposals for qualifying projects and may, thereafter, enter into an agreement with a private entity for the building, upgrading, operation, ownership, or financing of facilities. Unsolicited proposals from private entities must be accompanied by the following material and information, unless waived by the responsible public entity:²³

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

If the responsible public entity receives an unsolicited proposal and intends to enter into a P3 agreement for the project, the responsible public entity must publish a notice in the Florida Administrative Register and a newspaper of general circulation at least once a week for two weeks stating the entity has received a proposal and will accept other proposals.²⁴ The responsible public entity must establish a timeframe in which to accept other proposals.²⁵ The responsible public entity must establish a timeframe in which to accept other proposals; however, the timeframe for allowing other proposals must be at least 21 days, but not more than 120 days after the initial date of publication.²⁶

²¹ Section 287.05712(1)(i), F.S., defines the term "qualifying project" as a facility or project that serves a public purpose, including, but not limited to, any ferry or mass transit facility, vehicle parking facility, airport or seaport facility, rail facility or project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, or educational facility or other building or facility that is used or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity; an improvement, including equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector; a water, wastewater, or surface water management facility or other related infrastructure; or for projects that involve a facility owned or operated by the governing board of a county, district, or municipal hospital or health care system, or projects that involve a facility owned or operated by a municipal electric utility, only those projects that the governing board designates as qualifying projects.

²² Section 287.05712(4)(d)1., F.S.

²³ Section 287.05712(5), F.S.

²⁴ Section 287.05712(4)(b), F.S.

²⁵ *Id.*

²⁶ *Id.*

After the notification period has expired, the responsible public entity must rank the proposals received in order of preference.²⁷ If negotiations with the first ranked firm are unsuccessful, the responsible public entity may begin negotiations with the second ranked firm.²⁸ The responsible public entity may reject all proposals at any point in the process.²⁹

Public Record and Public Meeting Exemptions

Current law does not provide a public record exemption for unsolicited proposals. However, sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation are exempt³⁰ from public record requirements until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier.³¹ If an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt until the agency provides notice of its intended decision or withdraws the reissued competitive solicitation.³² A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.³³

Current law does not provide a public meeting exemption for meetings during which an unsolicited proposal is discussed. However, public meetings in which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation are exempt from public meeting requirements.³⁴ A complete recording of the closed meeting must be made and no portion of the exempt meeting may be held off the record.³⁵

The recording of, and any records presented at, the exempt meeting are exempt from public record requirements until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever occurs earlier.³⁶ If the agency rejects all bids, proposals, or replies and concurrently provides notice of its intent to reissue a competitive solicitation, the recording and any records presented at the exempt meeting remain exempt from public record requirements until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation.³⁷ A recording and any records presented at an exempt meeting are not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.³⁸

²⁷ Section 287.05712(6)(c), F.S.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Section 119.071(1)(b)1., F.S.

³¹ *Id.*

³² Section 119.071(1)(b)3., F.S.

³³ *Id.*

³⁴ Section 286.0113(2)(b)1., F.S.

³⁵ Section 286.0113(2)(c)1., F.S.

³⁶ Section 286.0113(2)(c)2., F.S.

³⁷ Section 286.0113(2)(c)3., F.S.

³⁸ *Id.*

III. Effect of Proposed Changes:

Section 1 amends s. 287.05712(15), F.S., and transfers and renumbers it as s. 255.065(15), F.S., to create an exemption from public record and public meeting requirements for unsolicited proposals for P3 projects for public facilities and infrastructure.

The bill provides that the term “competitive solicitation” has the same meaning as provided in s. 119.071(1), F.S.

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

If the responsible public entity does not issue a competitive solicitation, the unsolicited proposal ceases to be exempt 180 days after it is received by the responsible public entity.

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

The public record and public meeting exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution for both the public record and public meeting exemptions.

Section 2 states the bill becomes effective on the same date that SB 824 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill creates new public record and public meeting exemptions. Therefore the following constitutional requirements apply.

Vote Requirement

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

Public Necessity Statement

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

Breadth of Exemption

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

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 287.05712(15) of the Florida Statutes and transfers and renumbers it as section 255.065(15) of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on March 31, 2015:

Corrects technical deficiency by including reference to linked bill, SB 824, in sections 1 and 3 of legislation.

B. Amendments:

None.



112778

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/31/2015	.	
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	.	
	.	

The Committee on Governmental Oversight and Accountability
(Latvala) recommended the following:

Senate Amendment

Delete line 25
and insert:
824, to read:
Delete line 130
and insert:
SB 824 or similar legislation takes effect, if such legislation

By Senator Evers

2-00510A-15

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A bill to be entitled

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

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

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

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

(15) PUBLIC RECORDS AND PUBLIC MEETINGS EXEMPTIONS.-

(a) As used in this subsection, the term "competitive

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solicitation" has the same meaning as provided in s. 119.071(1).

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

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

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

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

(d)1. Any portion of a meeting of a responsible public entity during which an unsolicited proposal that is exempt is discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

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

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

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

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

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

Section 2. (1) The Legislature finds that it is a public necessity that an unsolicited proposal received by a responsible public entity pursuant to s. 287.05712, Florida Statutes, be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution until a time certain. Prohibiting the public release of unsolicited proposals until a

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time certain ensures the effective and efficient administration of the public-private partnership process established in s. 287.05712, Florida Statutes. Temporarily protecting unsolicited proposals protects the public-private partnership process by encouraging private entities to submit such proposals, which will facilitate the timely development and operation of a qualifying project. Protecting such information ensures that other private entities do not gain an unfair competitive advantage. The public records exemption preserves public oversight of the public-private partnership process by providing for disclosure of the unsolicited proposal when the responsible public entity provides notice of an intended decision; no longer than 90 days after the responsible public entity rejects all proposals received in a competitive solicitation for a qualifying project; or 180 days after receipt of an unsolicited solicitation if such entity does not issue a competitive solicitation for a qualifying project related to the proposal.

(2) The Legislature further finds that it is a public necessity that any portion of a meeting of the responsible public entity during which an unsolicited proposal that is exempt from public records requirements is discussed be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. The Legislature also finds that it is a public necessity that the recording of, and any records generated during, a closed meeting be made temporarily exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Failure to close any portion of a meeting during which such unsolicited proposal is discussed, and failure to protect the release of the recording and records

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117 generated during that closed meeting, would defeat the purpose
118 of the public records exemption. In addition, the Legislature
119 finds that public oversight is maintained because the public
120 records exemption for the recording and records generated during
121 any closed portion of a meeting of the responsible public entity
122 are subject to public disclosure when such entity provides
123 notice of an intended decision; no longer than 90 days after the
124 responsible public entity rejects all proposals received in a
125 competitive solicitation for a qualifying project; or 180 days
126 after receipt of an unsolicited proposal if the responsible
127 public entity does not issue a competitive solicitation for a
128 qualifying project related to the proposal.

129 Section 3. This act shall take effect on the same date that
130 SB ____ or similar legislation takes effect, if such legislation
131 is adopted in the same legislative session or an extension
132 thereof and becomes a law.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/31/15
Meeting Date

826
Bill Number (if applicable)

Topic Public Records Exemption Amendment Amendment Barcode (if applicable)

Name Richard Watson

Job Title Legislative Counsel

Address P.O. Box 10038
Street
Tallahassee, FL 32302
City State Zip

Phone 850 222 0000

Email rick.watson@senate.fl.gov

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Associated Builders and Contractors of FL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/CS/SB 782

INTRODUCER: Governmental Oversight and Accountability Committee; Community Affairs Committee; and Senator Montford

SUBJECT: County Officials

DATE: April 1, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Yeatman	CA	Fav/CS
2.	McVaney	McVaney	GO	Fav/CS
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 782 provides that the salaries of county constitutional officers and school district officials will not decrease in certain instances based solely upon the county moving from one population group to a higher population group used for the calculation of official annual salaries. If a county's population increases and that increase causes a county to move into a new population group for officer annual salary calculations, the bill prevents the officers' salaries for the next four fiscal years from being reduced below the salary applicable for the prior year. In subsequent years, the salary adjustment will be calculated under the current methodology and may increase or decrease the official salary.

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

II. Present Situation:

Salaries of Elected County Constitutional Officers and School District Officials

From the time of the State Constitution of 1885 until 1973, the compensation of Florida's county constitutional officers were determined by a host of local laws, special laws, and general laws of local application. After decades of frequent and sporadic legislative action, the Legislature deemed necessary the enactment of a uniform salary law to replace the previous local law

method of determining compensation.¹ Thus, the Legislature repealed all local or special laws, or general laws of local application that related to compensation of county officials;² provided that any such laws are prohibited;³ and authorized a salary compensation formula for determining compensation.⁴ In doing so, the Legislature created a uniform system of compensation for county officers having substantially equal duties and responsibilities with salary schedules based on countywide populations.

The current methodology for calculating compensation for elected county officers and school district officials, while based on population, also involves five other components. County governments and school district officials are tasked with making their own calculations of these salaries, and the Florida Legislature's Office of Economic and Demographic Research (EDR) also reports its computations.⁵ Pursuant to s. 145.19(2), F.S., elected county and school officers' salaries are adjusted annually, but no effective date of these annual changes is specified in general law. Florida's county governments operate on a fiscal year that ranges from October 1 to September 30, while Florida's school districts operate on the July 1 to June 30 state fiscal year. Florida's Attorney General opined that salary increases are effective October 1 for the elected county officers and July 1 for the elected school district officials.⁶

Compensation calculated pursuant to ch. 145, F.S., is the sole and exclusive compensation for elected county officials. The acceptance of any other compensation for official duties is a misdemeanor of the first degree.⁷ If, after paying office personnel and expenses, a county officer has insufficient revenue from the income of his or her office to pay his or her total annual salary, the board of county commissioners is obligated to pay any deficiency from the county's general fund.⁸

Components of the Salary Formula

The current salary formula methodology specifies six components used for the salary computation:

- Population figures, based on the latest official population census counts, or intercensal estimates for the years between decennial censuses;
- Base salary and group rate components for the separate officers;⁹
- An initial factor component that is currently set in law as a constant numerical value;¹⁰ and

¹ The original method was described as "haphazard, preferential, inequitable, and probably unconstitutional." See s. 145.011(2), F.S.

² Sections 145.131 and 145.132, F.S.

³ Section 145.16, F.S.

⁴ Ch. 73-173, Laws of Fla.

⁵ The Florida Legislature's Office of Economic and Demographic Research, *Salaries of Elected County Constitutional Officers and School District Officials for Fiscal Year 2014-15* (Sep. 2014).

⁶ Op. Att'y Gen. Fla. 79-87 (1979).

⁷ Section 145.17, F.S.

⁸ Section 145.141, F.S.

⁹ Sections 145.031, 145.051, 145.071, 145.09, 145.10, and 145.11, F.S., for elected county officers. Sections 1001.395, and 1001.47, F.S., for elected school district officials.

¹⁰ Section 145.19(1)(c), F.S.

- The annual factor and cumulative annual factor, which are certified by The Florida Department of Management Services (DMS).¹¹

“Population” as used for the salary determination means the latest annual determination of population of local governments produced by the EDR. The EDR provides the population determination to the Governor’s Office in accordance with s. 186.901, F.S.¹² For the years between decennial censuses, the University of Florida’s Bureau of Economic and Business Research generates annual population estimates for local governments, in accordance with a contract administered by the EDR.

“Salary” means the total annual compensation, payable under the schedules set forth in ch. 145, F.S., to be paid to an officer as personal income.¹³

“Initial Factor” means a factor of 1.292. This numerical value is the product, rounded to the nearest thousandth, of an earlier cost-of-living increase factor authorized by ch. 73-173, Laws of Florida, and intended by the Legislature to be preserved in adjustments to salaries made prior to the enactment of ch. 76-80, Laws of Florida, multiplied by the annual increase factor authorized by ch. 79-327, Laws of Florida.¹⁴

“Annual Factor” means 1 plus the lesser of either:¹⁵

- the average percentage increase in the salaries of state career service employees for the current fiscal year as determined by the DMS or as provided in the General Appropriations Act; or
- 7 percent.

“Cumulative Annual Factor” means the product of all annual factors certified under this act prior to the fiscal year for which salaries are being calculated.¹⁶

Salary Computation Methodology

The salary computation to obtain “the adjusted salary rate” involves three steps.¹⁷ In step one, county government and school district officials determine the relevant population group number for the elected officer based on the countywide population.¹⁸ Two sets of countywide population ranges are used to determine the salaries of the elected officers. One set applies to the clerk of circuit court, county comptroller, tax collector, property appraiser, supervisor of elections, sheriff, and school superintendent. The second set applies only to county commissioners and school board members. Each population range has an assigned population group number. In step two, the salary computation involves the determination of the relevant base salary and group rate that corresponds to the population group number determined in the first step. In step three,

¹¹ Section 145.19(2), F.S.

¹² Section 145.021(1), F.S.

¹³ Section 145.021(2), F.S.

¹⁴ See section 145.19(1)(c), F.S.

¹⁵ Section 145.19(1)(a), F.S.

¹⁶ Section 145.19(1)(b), F.S.

¹⁷ EDR, *Salaries of Elected County Constitutional Officers and School District Officials for Fiscal Year 2014-15* (Sep. 2014).

¹⁸ *Id.* at 8.

county government and school district officials calculate the salaries of elected county officers using the following formula:

Salary = [Base Salary + (Population Above Group Minimum x Group Rate)] x Initial Factor x Certified Annual Factor x Certified Cumulative Annual Factor.

Relationship Between County Population, Group Rate, and Adjusted Salary Rate

As indicated in the table below, when a county grows in population such that it would enter into a higher population group number, the base salary number increases and the group rate multiplier decreases. The use of the new, smaller group rate creates the peculiar possibility for a county officer of a county that has just barely crossed the threshold of a new population group to receive a smaller salary than if the population of the county had not grown. For example, in 2013, the population of Jackson County was estimated at 50,166, just over the 50,000 threshold, placing it within population Group II.¹⁹ As a result, for fiscal year 2014-2015, the salaries of the Clerk of Circuit Court, the Property Appraiser, and the Tax Collector declined by \$2,966 to \$103,915, a change of -2.8 percent.²⁰ For that same year, the salary of the Supervisor of Elections declined by \$2,860 to \$86,152; the salary of the Sheriff declined by \$2,942 to \$112,854; and the salary of the School Superintendent declined by \$2,966 to \$103,915. If the population of a county decreases, such that the county falls into a new smaller population group with a higher group rate, the salaries of county officers and school district officials might still increase significantly, as happened in Jackson County for fiscal year 2011-2012.

Population Groups for Clerks of Court, Property Appraisers, and Tax Collectors²¹

Pop. Group	Min. Pop.	Max. Pop.	Base Salary	Group Rate
I	0	49,999	\$21,250	0.07875
II	50,000	99,999	\$24,400	0.06300
III	100,000	199,999	\$27,550	0.02625
IV	200,000	399,999	\$30,175	0.01575
V	400,000	999,999	\$33,325	0.00525
VI	1,000,000	-	\$36,475	0.00400

Additional Compensation Tied to Completion of Certificate Programs

Upon successful completion of a certification program, certain county constitutional officers are eligible to receive a special qualification salary of up to \$2,000 added to their formula-based salary.²² Relevant state agencies offer certification programs for clerks of circuit court, sheriffs, supervisors of elections, property appraisers, tax collectors, and elected school superintendents.²³ The officer is required to complete a course of continuing education to remain certified.²⁴ An

¹⁹ *Id.* at 7.

²⁰ EDR, *Salaries of Elected County Constitutional Officers and School District Officials by County*, available at <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/countysalaryhistory.pdf> (last visited Mar. 3, 2015).

²¹ Reproduced from ss. 145.051(1), 145.10(1), and 145.11(1), F.S.

²² Section 145.19(2), F.S.

²³ Sections 145.051(2), 145.071(2), 145.09(3), 145.10(2), 145.11(2), and 1001.47(4), F.S.

²⁴ *Id.* The following state agencies prescribe the courses of continuing education: the Supreme Court for clerks of circuit court; the Department of Law Enforcement for sheriffs; the Department of State's Division of Elections for supervisors of

officer who becomes certified receives a pro rata share of the special qualification salary based on the remaining period of the year. Any special qualification salary is added after the calculation of the formula-based salary.

In addition to the special qualification salary for elected school superintendents, the Department of Education (DOE) provides a leadership development and performance compensation program, which consists of two phases.²⁵ Upon successful completion of both phases and demonstrated successful performance, the DOE issues the school superintendent a Chief Executive Officer Leadership Development Certificate and pays an annual performance salary incentive in an amount between \$3,000 and \$7,500, based upon the performance evaluation.²⁶ For elected school superintendents, current law also provides that a district school board may approve, by majority vote, a salary in excess of the formula-based amount.²⁷

Applicability of Salary Computation Method

Notwithstanding the Legislature's stated intent for uniformity, county officers may voluntarily reduce their salary below that established by law.²⁸ Additionally, the formula-based salaries of supervisors of elections are based upon a five-day workweek; however, if a supervisor does not keep his or her office open five days per week then the salary is prorated accordingly.²⁹

Furthermore, the adoption of a county home rule charter provides the county's electors with a mechanism to alter the status of constitutional officers, such that their salaries are not subject to being set by the Legislature. Specifically, the statutory salary provisions do not apply to officials whose salaries are not subject to being set by the Legislature due to the provisions of a county home rule charter, as well as officials of counties that have a chartered consolidated form of government as provided in ch. 67-1320, L.O.F.³⁰

III. Effect of Proposed Changes:

Section 1 amends s. 145.19, F.S., to prevent the salaries of elected county officers and school district officials from decreasing in a given year solely as a result of the county population increasing to a level that shifts the county into a new population group for the calculation of official salaries. The adjusted salary rate of county officials for the next four fiscal years will not be less than the salary paid in the fiscal year immediately preceding the county's shift into a new population group. This salary protection extends to county commissioners, school board members, clerks of the circuit court, sheriffs, supervisors of elections, property appraisers, tax collectors, and school superintendents.

elections; the Department of Revenue for property appraisers and tax collectors; and the Department of Education for elected school superintendents.

²⁵ Section 1001.47(5)(a), F.S.

²⁶ Section 1001.47(5)(b), F.S.

²⁷ Section 1001.47(1), F.S.

²⁸ See Chapters 2009-3 and 2009-59, Laws of Fla. (district school board members and elected school superintendents); Chapter 2011-158, Laws of Fla. (county commissioners, clerks of circuit court, county comptrollers, sheriffs, supervisors of elections, property appraisers, and tax collectors).

²⁹ Section 145.09(2), F.S.

³⁰ Section 145.012, F.S.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent this bill requires a local government to expend funds to comply with its terms (higher salaries for elected officers in limited instances), the provisions of Art. VII, s. 18(a) of the Florida Constitution, may apply. If those constitutional provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest, and one of the following relevant exceptions must be met:

- Funds estimated at the time of enactment sufficient to fund such expenditures are appropriated;
- Counties and cities are authorized to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;
- The expenditure is required to comply with a law that applies to all persons similarly situated; or
- The law must be approved by two-thirds of the membership of each house of the Legislature.

However, based on the limited fiscal impact that is likely be incurred, the bill may be exempt from those provisions based on the anticipated insignificant annual fiscal impact on counties.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. **Government Sector Impact:**

Beginning in the 2015-2016 fiscal year, elected county officers and school district officials will not experience salary decreases due to any population growth that puts a county into a new population group.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

It should be noted that if the population of a county decreases, such that the county falls into a new lower population group with a higher group rate, the salaries of county officers and school district officials may increase as happened in Jackson County for fiscal year 2011-2012.

It should also be noted that this modification only impacts the salary calculation in the first four fiscal years in which the county moved to a higher population group.

VIII. **Statutes Affected:**

This bill substantially amends section 145.19 of the Florida Statutes.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Governmental Oversight and Accountability on March 31, 2015:

Extends the application of the salary freeze to the first four fiscal years after a county shifts to a higher population group.

CS by Community Affairs on March 17, 2015:

Clarifies that, in the event that an increase to county population would cause a decrease to county officials' salaries, the county officials would receive the same salary as the previous fiscal year. This salary safeguard is extended to county commissioners and school board members, in addition to clerks of the circuit court, sheriffs, supervisors of elections, property appraisers, tax collectors, and school superintendents.

B. **Amendments:**

None.



136204

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/31/2015	.	
	.	
	.	
	.	

The Committee on Governmental Oversight and Accountability
(Bullard) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (3) is added to section 145.19,
Florida Statutes, to read:

145.19 Annual percentage increases based on increase for
state career service employees; limitation.—

(3) Notwithstanding subsection (2), s. 1001.395, s.
1001.47, or any other provision of this chapter to the contrary,



136204

11 if a county's population increases and results in that county
12 shifting to a new population group based on population reported
13 on or after April 1, 2014, pursuant to s. 186.901, a county
14 official's adjusted salary rate for the next 4 fiscal years may
15 not be less than the official's adjusted salary rate for the
16 fiscal year immediately preceding the county's shift to a new
17 population group.

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

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

22 And the title is amended as follows:

23 Delete everything before the enacting clause
24 and insert:

25 A bill to be entitled

26 An act relating to county officials; amending s.
27 145.19, F.S.; prohibiting a county official's adjusted
28 salary rate for a specified period from being less
29 than that for the fiscal year immediately preceding
30 the county's shift to a new population group under
31 certain circumstances; providing an effective date.

By the Committee on Community Affairs; and Senator Montford

578-02381-15

2015782c1

A bill to be entitled

An act relating to county officials; amending s. 145.19, F.S.; requiring, beginning in a specified fiscal year, that a county official's adjusted salary rate be identical to the official's adjusted salary rate in the prior fiscal year if the official's adjusted salary rate would otherwise be less than the prior fiscal year's adjusted salary rate due to certain circumstances; providing an effective date.

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

Section 1. Subsection (3) is added to section 145.19, Florida Statutes, to read:

145.19 Annual percentage increases based on increase for state career service employees; limitation.—

(3) Notwithstanding subsection (2), s. 1001.395, s. 1001.47, or any other provision of this chapter to the contrary, beginning in the 2015-2016 fiscal year and continuing each fiscal year thereafter, a county official's adjusted salary rate shall be identical to the official's adjusted salary rate in the prior fiscal year if the official's adjusted salary rate would otherwise be less than the prior fiscal year's adjusted salary rate due to the county's shift to a new population group as a result of a population increase.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Agriculture, *Chair*
Appropriations Subcommittee on Education, *Vice Chair*
Appropriations
Banking and Insurance
Education Pre-K - 12
Rules

SENATOR BILL MONTFORD

3rd District

March 19, 2015

Senator Jeremy Ring,
Chair
Senate Committee on Government Oversight &
Accountability
525 Knott Building
Tallahassee, Florida 32399-1100

Dear Senator Ring:

I respectfully request that SB 782, a bill relating to County Officials, be scheduled for a hearing before the Senate Governmental Oversight & Accountability Committee.

Your assistance and favorable consideration of my request is greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Bill Montford".

William "Bill" Montford
Senate District 3

WM/md

Cc: Joe McVaney, Staff Director

REPLY TO:

- ☐ 214 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
- ☐ 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/CS/SB 838

INTRODUCER: Governmental Oversight and Accountability Committee; Judiciary Committee; and
Senator Bradley

SUBJECT: Justices and Judges

DATE: April 1, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Fav/CS
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 838 modifies the timeframe required for retired judges and justices to “sit out” between retirement from the Florida Retirement System (FRS) and subsequent reemployment as a senior judge for compensation. This bill reduces the required termination period from six calendar months to three calendar months to be eligible to return to employment as a senior judge. In addition, as a senior judge, the retiree will be permitted to receive retirement benefits and the compensation paid as a senior judge during the first twelve months of retirement.

Under current law, the ability to engage in reemployment without jeopardizing retirement benefits is based on the concept of “termination.” To be considered a lawful termination period, a retiree who is reemployed must “sit out” for a full six calendar months. If the retiree returns to employment at the workplace of an employer who participates in the FRS within the six calendar months, the termination is voided, and the retiree must refund any distributions already made. CS/CS/SB 838 reduces from six calendar months to three calendar months the required termination period for retired justices and judges to return to work as a senior judge while maintaining retirement benefits.

Current law also suspends the payment of retirement benefits under the FRS pension plan if the retiree is reemployed by an FRS-participating employer during the seventh through twelfth month of retirement. Beginning in the thirteenth month after retirement, retirement benefits would again be payable to the reemployed retiree. CS/CS/SB 838 permits retired justices and

judges serving as senior judges to receive both retirement benefits and salary from an employer participating the Florida Retirement System during the fourth through twelfth months of retirement.

The fiscal impact on state and local governments is indeterminate at this time. A special actuarial study must be completed to determine the adjustments necessary to the employer-paid contribution rates to offset the costs to the Florida Retirement System.

The bill takes effect July 1, 2015.

II. Present Situation:

The Florida Retirement System

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the FRS, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group.¹ The FRS is a contributory system, with most members contributing three percent of their salaries.²

The FRS is a multi-employer, contributory plan, governed by the Florida Retirement System Act in Chapter 121, F.S. As of June 30, 2014, the FRS had 622,089 active members, 363,034 annuitants, 16,137 disabled retirees, and 38,058 active participants of the Deferred Retirement Option Program (DROP).³ As of June 30, 2014, the FRS consisted of 1,014 total employers; it is the primary retirement plan for employees of state and county government agencies, district school boards, Florida College institutions, and state universities, and also includes the 186 cities and 262 special districts that have elected to join the system.⁴

The membership of the FRS is divided into five membership classes:

- The Regular Class⁵ consists of 537,993 active members, plus 5,402 in renewed membership;
- The Special Risk Class⁶ includes 68,593 active members;
- The Special Risk Administrative Support Class⁷ has 84 active members;

¹ The Florida Retirement System Pension Plan and Other State Administered Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2014, at p. 29. Available online at: https://www.rol.frs.state.fl.us/forms/2013-14_CAFR.pdf.

² Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class employees or 6 percent for Special Risk Class members. Employees were again required to contribute to the system after July 1, 2011. Members in the Deferred Retirement Option Program do not contribute to the system.

³ Florida Retirement System Annual Financial Report Fiscal Year Ended June 30, 2014, at 112.

⁴ *Id.*, at 146.

⁵ The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

⁶ The Special Risk Class is for members employed as law enforcement officers, firefighters, correctional officers, probation officers, paramedics and emergency technicians, among others. Section 121.0515, F.S.

⁷ The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the Florida Retirement System. Section 121.0515(8), F.S.

- The Elected Officers' Class⁸ has 2,040 active members, plus 147 in renewed membership; and
- The Senior Management Service Class⁹ has 7,607 members, plus 184 in renewed membership.¹⁰

Investment Plan

In 2000, the Legislature created the Public Employee Optional Retirement Program (investment plan), a defined contribution plan offered to eligible employees as an alternative to the FRS Pension Plan.

Benefits under the investment plan accrue in individual member accounts funded by both employee and employer contributions and earnings. Benefits are provided through employee-directed investments offered by approved investment providers.

A member vests immediately in all employee contributions paid to the investment plan.¹¹ With respect to the employer contributions, a member vests after completing one work year of employment with an FRS employer.¹² Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.¹³ The investment plan also provides disability coverage for both inline-of-duty and regular disability retirement benefits.¹⁴ An FRS member who qualifies for disability while enrolled in the investment plan must apply for benefits as if the employee were a member of the pension plan. If approved for retirement disability benefits, the member is transferred to the pension plan.¹⁵

The State Board of Administration (SBA) is primarily responsible for administering the investment plan.¹⁶ The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.¹⁷

⁸ The Elected Officers' Class is for elected state and county officers, and for those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.

⁹ The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. Section 121.055, F.S.

¹⁰ All figures from Florida Retirement System Annual Financial Report Fiscal Year Ended June 30, 2014, at 115.

¹¹ Section 121.4501(6)(a), F.S.

¹² If a member terminates employment before vesting in the investment plan, the nonvested money is transferred from the member's account to the SBA for deposit and investment by the SBA in its suspense account for up to five years. If the member is not reemployed as an eligible employee within five years, then any nonvested accumulations transferred from a member's account to the SBA's suspense account are forfeited. Section 121.4501(6)(b) – (d), F.S.

¹³ Section 121.591, F.S.

¹⁴ See s. 121.4501(16), F.S.

¹⁵ Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability, compensate an in-line-of-duty disabled member up to 65 percent of the average monthly compensation as of the disability retirement date for special risk class members. Other members may receive up to 42 percent of the member's average monthly compensation for disability retirement benefits. If the disability occurs other than in the line of duty, the monthly benefit may not be less than 25 percent of the average monthly compensation as of the disability retirement date. Section 121.091(4)(f), F.S.

¹⁶ Section 121.4501(8), F.S.

¹⁷ Section 4, Art. IV, Fla. Const.

Pension Plan

The pension plan is administered by the secretary of the Department of Management Services through the Division of Retirement.¹⁸ Investment management is handled by the SBA.

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing six years of service with an FRS employer.¹⁹ For members enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.²⁰ Benefits payable under the pension plan are calculated based on the member's years of creditable service multiplied by the service accrual rate multiplied by the member's average final compensation.²¹ For most members of the pension plan, normal retirement occurs at the earliest attainment of 30 years of service or age 62.²² For public safety employees in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earliest of 25 years of service or age 55.²³ Members initially enrolled in the pension plan on or after July 1, 2011, have longer vesting requirements. For members initially enrolled after that date, the member must complete 33 years of service or attain age 65, and members in the Special Risk classes must complete 30 years of service or attain age 60.²⁴

The Deferred Retirement Option Program (DROP)

The Deferred Retirement Option Program (DROP) is a program available to eligible members of the FRS pension plan. Under DROP, the member may elect to defer receipt of retirement benefits while continuing employment with his or her FRS employer. The employee financially benefits from participation in DROP as deferred monthly benefits accrue in the FRS, with interest compounded monthly while the employee is in DROP. Upon termination of employment, the member receives the total DROP accumulations and the previously determined normal retirement benefits.²⁵

Contribution Rates

FRS employers are responsible for contributing a specified percentage of the member's monthly compensation to the Division of Retirement to be distributed into the FRS Contributions Clearing Trust Fund. The employer contribution rate is a blended contribution rate set by statute, which is the same percentage regardless of whether the member participates in the pension plan or the investment plan.²⁶ The rate is determined annually based on an actuarial study by the Department of Management Services that calculates the necessary level of funding to support all of the benefit obligations under both FRS retirement plans.

¹⁸ Section 121.025, F.S.

¹⁹ Section 121.021(45)(a), F.S.

²⁰ Section 121.021(45)(b), F.S.

²¹ Section 121.091, F.S.

²² Section 121.021(29)(a)1., F.S.

²³ Section 121.021(29)(b)1., F.S.

²⁴ Sections 121.021(29)(a)2. and (b)2., F.S.

²⁵ Section 121.091(13), F.S.

²⁶ Section 121.70(1), F.S.

In the annual actuarial valuation of the Florida Retirement System based on July 1, 2014, plan assets and liabilities, Milliman, Inc., the state actuary, determined the following key data relating to the FRS pension plan.

	Valuation Results (in \$ billions)			
	July 1, 2011	July 1, 2012	July 1, 2013	July 1, 2014
Actuarial Liability	\$144.1	\$147.2	\$153.3	\$160.1
Actuarial Value of Assets	\$126.1	\$127.9	\$131.7	\$138.6
Unfunded Actuarial Liability	\$ 18.0	\$ 19.3	\$ 21.6	\$21.5
Funded Percentage	87.5%	86.9%	85.9%	86.6%

The following are the current employer contribution rates for each class and the blended rates recommended by the state actuary beginning in July 2015.²⁷ For all membership classes, except the DROP and certain members with renewed membership, employees contribute an additional three percent of their compensation towards retirement.²⁸

Membership Class	Current Rates Effective July 1, 2014		Recommended Rates to be effective July 1, 2015	
	Normal Cost	UAL Rate	Normal Cost	UAL Rate
Regular Class	3.53%	2.54%	2.91%	2.65%
Special Risk Class	11.01%	7.51%	11.35%	8.99%
Special Risk Administrative Support Class	4.18%	36.59%	3.71%	27.54%
Elected Officer's Class				
• Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	6.30%	38.66%	6.48%	37.62%
• Justices and Judges	10.10%	21.77%	11.39%	22.62%
• County Officers	8.36%	33.58%	8.48%	32.09%
Senior Management Service Class	4.80%	15.04%	4.32%	15.41%
Deferred Retirement Option Program	4.30%	6.72%	4.10%	7.12%

As the table above illustrates, the Judicial Subclass of the Elected Officers' Class is the most expensive group (as a percentage of payroll) participating in the Florida Retirement System – more costly the Special Risk Class as a percentage of payroll (11.39% normal cost for Judicial subclass and 11.35% normal cost for Special Risk Class).

After employer and employee contributions are placed into the FRS Contributions Clearing Trust Fund, the allocations under the investment plan are transferred to third-party administrators to be

²⁷ Section 121.71(4) and (5), F.S.

²⁸ Section 121.71(3), F.S.

placed in the employee's individual investment accounts, whereas contributions under the pension plan are transferred into the FRS Trust Fund.²⁹

Employment with an FRS Employer after Retirement

Bona fide termination

Some FRS members wish to return to work with an FRS employer after retirement while receiving monthly retirement payments. To do so, the law requires that the member actually have satisfied the requirement of termination of employment. Before July 1, 2010, retirement followed by employment required just one calendar month of separation from an FRS employer to satisfy the requirement of termination for members of the FRS pension plan.³⁰

The 2010 Legislature changed the one month requirement to 6 months so that an FRS pension plan member who is employed within six months after retirement is considered not to have terminated employment.³¹ Likewise, the Legislature changed the three month requirement to six months for an FRS investment plan member.³² As a result, if an FRS retiree is employed with an FRS employer within the first six calendar months after retirement, termination is considered not to have occurred and any retirement benefits paid, including a DROP payout or an investment plan distribution, must be refunded to the FRS.

The Department of Management Services has determined that an FRS retiree may volunteer with an FRS-participating employer within the first six months without impacting the retiree's termination as long as the retiree receives no compensation now or in the future for the services performed as a volunteer.³³

Concurrent receipt of retirement benefits and salary compensation

After meeting the definition of termination, a retiree is also subject to reemployment limitations in the 7th through 12th calendar months after the DROP termination date or the effective retirement date. A retirement benefit cannot be received in the same month as salary from a FRS participating employer.³⁴ In other words, the retirement benefits of a retiree who returns to work with an FRS employer during the 7th through 12th months after retirement are suspended during that time period.

Twelve calendar months after the DROP termination date or the effective retirement date, a retiree can receive a retirement benefit in the same month as a salary from a FRS participating employer.

Again, service as a volunteer, without receiving compensation for that service, does not limit the retiree's eligibility to receive retirement benefits from the FRS.³⁵

²⁹ See sections 121.4503 and 121.72(1), F.S.

³⁰ Section 121.021(39)(a)1., F.S.

³¹ Section 121.021(39)(a)2., F.S.; Chapter 2009-209, Laws of Fla., increased the time to "sit out" from one calendar month to six calendar months.

³² *Id.*

³³ Division of Retirement Information Release #2010-143, dated July 15, 2010.

³⁴ Section 121.091(9), F.S.

³⁵ Division of Retirement Information Release #2010-143, dated July 15, 2010.

State Court System

The State Court System consists of the 67 county courts, 20 circuit courts, 5 district courts of appeal and the Florida Supreme Court. The table below shows the number of judges by each court level and the additional judges certified to be needed by the Florida Supreme Court.

Level	Current Positions	Certified Need for FY 2015-16 ³⁶
Supreme Court	7	0
District Courts of Appeal	64	0
Circuit Courts	599	3
County Courts	322	32
Total	992	35

In a 2011 survey, the Office of State Courts Administrator (OSCA) estimates that 167 senior judges and 2 senior justices are eligible to serve as senior judges, including 26 volunteer senior judges.³⁷ Based the recent payroll information, it appears that at least 189 persons were compensated by the state as senior judges during the month of February 2015.³⁸ The Office of the State Courts Administrator has indicated that there are 36 senior judges serving as volunteers (without compensation).

Although the retirement laws have been modified, resulting in a delay for retired justices and judges to return as senior judges, the number of senior judges available in the State Court System has increased by 10% during the time since the retirement law change.

Law and Court Rules on Retired Judges

Florida Law

Section 25.073, F.S., authorizes retired judges to resume service as a judge on a temporary basis, provided that the judge:

- Has not lost reelection or retention in his or her last judicial office; and
- Is not engaged in the practice of law.³⁹

Court Rules

Under the Florida Rules of Judicial Administration, Rule 2.205(a)(3) provides in pertinent part:

(A) The chief justice may, either upon request or when otherwise necessary for the prompt dispatch of business in the courts of this state, temporarily assign justices of the

³⁶ *In re: Certification of need for additional judges*, No. SC14-2350 (December 22, 2014).

³⁷ *State Courts System Statistics for Retired Judges 2006-2011*, OSCA (Dec. 13, 2011) (on file with the Senate Committee on Judiciary).

³⁸ Data from the Department of Management Services relating to payment of wages to state employees and officers. http://dmssalaries.herokuapp.com/salaries?employee_name=&employee_type=OPS&agency_name=SCS+-+State+Courts+System&class_code=&begin_salary=&end_salary=&salaries_length=10 (last viewed on March 28, 2015).

³⁹ Section 25.073(1) and (2), F.S.

supreme court, judges of district courts of appeal, circuit judges, and judges of county courts to any court for which they are qualified to serve.

(B) a “retired judge” is defined as a judge not engaged in the practice of law who has been a judicial officer of this state.

(C) When a judge who is eligible to draw retirement compensation has entered the private practice of law, the judge may be eligible for recall to judicial service upon cessation of the private practice of law and approval of the judge’s application to the court. The application shall state the period of time the judge has not engaged in the practice of law, and must be approved by the court before the judge shall be eligible for recall to judicial service.

(D) A “senior judge” is a retired judge who is eligible to serve on assignment to temporary judicial duty.

Federal Law on Pension Plans and Termination of Employment

The Internal Revenue Code as it has been interpreted by the Internal Revenue Service (IRS) generally requires that a bona fide termination occur before an employee is paid retirement benefits.⁴⁰ An employer who does not require a bona fide termination jeopardizes the qualified status of its retirement plan. Thus, upon disqualification, the plan’s trust may lose its tax exempt status and, among other things, the employer contributions to the plan become taxable to the employees and the plan trust may owe income taxes on the trust earnings.⁴¹

Generally, the existence of a bona fide termination is “based on whether facts and circumstances indicate that the employer and employee reasonably anticipated that no further services would be performed after a certain date” or that the services of the employee would not exceed 20 percent of the employee’s previous level of services.⁴² A bona fide termination, for example, would not occur if an employee were to “retire” on one day in order to qualify for the early retirement subsidy, and then immediately return to work.⁴³ However, a short time period between an employee’s retirement and reemployment might not jeopardize the qualified status of a retirement plan if the only employees who are allowed to resume work after a short separation are at least 62 years of age.⁴⁴

In other words, the IRS will be interested in whether an employee and employer both had the intent for the employee, upon retirement, to permanently separate from service.⁴⁵

⁴⁰ Tax Exempt and Government Entities Division, Internal Revenue Service, Department of the Treasury, *Private Letter Ruling 201147038* (Apr. 2010).

⁴¹ Internal Revenue Service, *Tax Consequences of Plan Disqualification* (last updated Feb. 2, 2015) <http://www.irs.gov/Retirement-Plans/Tax-Consequences-of-Plan-Disqualification>.

⁴² 26 C.F.R. s. 1409A-1(h)(1)

⁴³ Tax Exempt and Government Entities Division, *supra* note 27.

⁴⁴ See 26 U.S.C. s. 401(a)(36) (stating [a] trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under this section solely because the plan provides that a distribution may be made from such trust to an employee who has attained age 62 and who is not separated from employment at the time of such distribution.).

⁴⁵ *Id.*

III. Effect of Proposed Changes:

Termination of Employment as a Requirement of a Valid Retirement

CS/CS/SB 838 modifies the timeframe required for retired judges and justices to “sit out” between retirement and subsequent reemployment as a senior judge. This bill reduces from six calendar months to three calendar months the required termination period to be eligible for reemployment with an FRS-participating employer.

To be eligible to use this reduced time period to achieve a bona fide termination, the retired justice or judge must have reached the later of his or her normal retirement age or the age when vested. This means the retired justice or retired judge must be at least 62 years of age (if initially enrolled in the FRS before July 1, 2011, or at least 65 years of age if initially enrolled after July 1, 2011). A later age may apply if the retired justice or retired judge did not have the requisite years of creditable service to be vested at age 62 or age 65, as applicable.

Under existing law, the Florida Retirement System Act treats all retirees the same regardless of profession, class membership, or potential employment, for purposes of reemployment after termination upon retirement. Under current law, a retiree who is reemployed must “sit out” for six calendar months to continue to draw retirement upon reemployment. If the “sit out” period is too short, or the retiree intended to, and established a return to reemployment prior to retirement, the IRS may consider the retirement to be a “sham” retirement and potentially disqualify a state pension plan from its tax preferred status. If a member retires with an expectation of returning to work with an FRS employer and has proceeded accordingly, the termination may not qualify as a “bona fide termination.” Additionally, carving out the three month exception for judges means that the FRS will treat judges more favorably than other employees of FRS employers who want to return to work after retirement.⁴⁶

Concurrent Payment of Retirement Benefits and Salary

CS/CS/SB 838 also allows retired justices and retired judges who are assigned as senior judges to receive retirement benefits and salary compensation from an FRS participating employer during the first twelve months after retirement. That means these retirees can receive retirement benefits and salary compensation between the fourth through twelfth months of retirement.

Funding Mechanism

Because the bill is likely to result in justices and judges retiring earlier than currently expected, and thus receive retirement benefits that otherwise would not have been paid out, the bill provides a funding mechanism to offset these new costs. The bill increases the required employer contribution rates for the:

- Judicial subclass of the Elected Officers’ Class by 0.45 percentage points for normal costs and 0.91 percentage points for the amortization of the unfunded actuarial liability resulting from this bill; and
- DROP by 0.01 percentage points.

⁴⁶ *Impact Statement on Senate Bill 838*, State Board of Administration (Feb. 24, 2015) (on file with the Senate Committee on Judiciary).

Legislative Intent

Legislative intent in the bill provides that this bill serves an important state interest. Specifically, the Legislature finds that assigning retired judges and justices to temporary employment assist the state courts system in managing caseloads.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Although judicial salaries and retirement are paid by the state, contributions for DROP are paid by local governments. To the extent this bill requires cities and counties to spend money or take action that requires the expenditure of money, the mandates provision of Art. VII, s. 18, of the State Constitution may apply. If those constitutional provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest (included in section 14 of the bill), and one of the following relevant exceptions must be met:

- Funds estimated at the time of enactment sufficient to fund such expenditures are appropriated;
- Counties and cities are authorized to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;
- The expenditure is required to comply with a law that applies to all persons similarly situated; or
- The law must be approved by two-thirds of the membership of each house of the Legislature.

This bill contains a statement indicating that the bill fulfills an important state interest. Although the state funds the FRS, local governments must contribute to DROP. The Department of Management Services estimates the following fiscal impact to local government:

- From 7/2015 through 6/2016, \$192,000;
- From 7/2016 through 6/2017, \$198,000;
- From 7/2017 through 6/2018, \$205,000;
- From 7/2018 through 6/2019, \$211,000; and
- From 7/2019 through 6/2020, \$218,000.⁴⁷

However, these estimates are based on the 2012 Milliman actuarial study. As stated below, these figures cannot be used as they are no longer accurate (See discussion in D. Other Constitutional Issues below.)

⁴⁷ 2015 Legislative Bill Analysis, Department of Management Services (Feb. 13, 2015) (on file with the Senate Committee on Judiciary).

Additionally, legislative intent in the bill cites as an important state interest in the bill the backlog in court cases in the state. In the most recent report by the Florida Supreme Court certifying a need for additional judges, the Supreme Court indicates that the judicial branch has had no increase in trial court judges since 2007, despite a sustained increase in judicial workload.⁴⁸

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article X, Section 14 of the Florida Constitution provides:

A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

An actuarial study will need to be conducted to comply with Art. X, sec. 14, Fla. Const. The bill provides adjustments to contribution rates but bases these adjustments on a 2012 special actuarial study.⁴⁹ Given that the actuarial assumptions have changed since 2012, the study is no longer valid.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill enables retired judges and justices to return to the bench as senior judges in a shorter time frame (ceasing employment for three calendar months rather than six calendar months).

⁴⁸ *In Re: Certification of Need for Additional Judges*, No. SC 14-2350 (Dec. 22, 2014) (on file with the Senate Committee on Judiciary).

⁴⁹ Kathryn M. Hunter and Robert Dezube, *Milliman Study Reflecting the Impact to the Blended Rates of the Florida Retirement System of Exempting Retired Judges from Termination and Reemployment Limitations* and *Milliman Study Reflecting the Impact to the Florida Retirement System Defined Benefit Plan of Exempting Retired Judges from Termination and Reemployment Limitations* (Feb. 9, 2012) (on file with the Senate Committee on Judiciary).

C. Government Sector Impact:**State Board of Administration (SBA)**

The SBA, Office of Defined Contribution Programs, expects to incur recurring and nonrecurring costs to implement this bill.

Recurring costs are estimated to be:

- From 7/15 through 6/16, \$1.62 million;
- From 7/16 through 6/17, \$1.67 million;
- From 7/17 through 6/18, \$1.72 million;
- From 7/18 through 6/19, \$1.78 million; and
- From 7/19 through 6/20, \$1.84 million.

Nonrecurring costs, estimated to be less than \$1 million, relate to system programming changes, revisions to printed materials, training service provider personnel, and coordination of service provider systems for data transfers and file formats.⁵⁰

Office of the State Courts Administrator (OSCA)

The Office of the State Courts Administrator expects that this bill will have a positive impact on areas of the court where there is a higher workload.⁵¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 121.021 and 121.091 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Governmental Oversight and Accountability on March 31, 2015:

The CS/CS changes the time period (from 1 month to 3 months) that a retired judge must cease employment with FRS-participating employers to meet the definition of

⁵⁰ *Impact Statement on Senate Bill 838*, State Board of Administration (Feb. 24, 2015) (on file with the Senate Committee on Judiciary).

⁵¹ Office of the State Courts Administrator, *2015 Judicial Impact Statement* (Mar. 2, 2015) (on file with the Senate Committee on Judiciary).

termination and be permitted to receive both retirement benefits and salary during the first twelve months after retirement.

CS by Judiciary on March 3, 2015:

The CS removes from legislative intent that the backlog in court cases in the state is attributable to foreclosure cases. The CS now provides that the important state interest in enabling retired judges to return as senior judges is to assist with the backlog in cases generally.

B. Amendments:

None.



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Senate	.	House
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03/31/2015	.	
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The Committee on Governmental Oversight and Accountability
(Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete lines 68 - 304
and insert:

(d) Effective July 1, 2015, "termination" for a retired
justice or retired judge who returns to temporary employment for
compensation as a senior judge in any court, as assigned by the
Chief Justice of the Supreme Court in accordance with s. 2, Art.
V of the State Constitution, occurs when he or she:

1. Has reached the later of his or her normal retirement



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age or the age when vested; and

2. Has terminated all employment relationships with employers under the Florida Retirement System for at least 3 calendar months before applying for and returning to such temporary employment.

Section 2. Paragraphs (c), (d), and (e) of subsection (9) of section 121.091, Florida Statutes, are amended, and paragraph (f) is added to that subsection, to read:

121.091 Benefits payable under the system.—Benefits may not be paid under this section unless the member has terminated employment as provided in s. 121.021(39) (a) or begun participation in the Deferred Retirement Option Program as provided in subsection (13), and a proper application has been filed in the manner prescribed by the department. The department may cancel an application for retirement benefits when the member or beneficiary fails to timely provide the information and documents required by this chapter and the department's rules. The department shall adopt rules establishing procedures for application for retirement benefits and for the cancellation of such application when the required information or documents are not received.

(9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.—

(c) Any person whose retirement is effective on or after July 1, 2010, or whose participation in the Deferred Retirement Option Program terminates on or after July 1, 2010, who is retired under this chapter, except under the disability retirement provisions of subsection (4) or as provided in s. 121.053, may be reemployed by an employer that participates in a state-administered retirement system and receive retirement



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benefits and compensation from that employer. However, a person may not be reemployed by an employer participating in the Florida Retirement System before meeting the definition of termination in s. 121.021 and may not receive both a salary from the employer and retirement benefits for 6 calendar months after meeting the definition of termination, except as provided in paragraph (f). However, a DROP participant shall continue employment and receive a salary during the period of participation in the Deferred Retirement Option Program, as provided in subsection (13).

1. The reemployed retiree may not renew membership in the Florida Retirement System.

2. The employer shall pay retirement contributions in an amount equal to the unfunded actuarial liability portion of the employer contribution that would be required for active members of the Florida Retirement System in addition to the contributions required by s. 121.76.

3. A retiree initially reemployed in violation of this paragraph and an employer that employs or appoints such person are jointly and severally liable for reimbursement of any retirement benefits paid to the retirement trust fund from which the benefits were paid, including the Florida Retirement System Trust Fund and the Public Employee Optional Retirement Program Trust Fund, as appropriate. The employer must have a written statement from the employee that he or she is not retired from a state-administered retirement system. Retirement benefits shall remain suspended until repayment is made. Benefits suspended beyond the end of the retiree's 6-month reemployment limitation period shall apply toward the repayment of benefits received in



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violation of this paragraph.

(d) Except as provided in paragraph (f), this subsection applies to retirees, as defined in s. 121.4501(2), of the Florida Retirement System Investment Plan, subject to the following conditions:

1. A retiree may not be reemployed with an employer participating in the Florida Retirement System until such person has been retired for 6 calendar months.

2. A retiree employed in violation of this subsection and an employer that employs or appoints such person are jointly and severally liable for reimbursement of any benefits paid to the retirement trust fund from which the benefits were paid. The employer must have a written statement from the retiree that he or she is not retired from a state-administered retirement system.

(e) The limitations of this subsection apply to reemployment in any capacity irrespective of the category of funds from which the person is compensated, except as provided in paragraph (f).

(f) Effective July 1, 2015, a retired justice or retired judge who has reached the later of his or her normal retirement age or the age when vested, who has terminated all employment with employers participating under the Florida Retirement System for at least 3 calendar months, and who subsequently applies for and returns to temporary employment for compensation as a senior judge in any court, as assigned by the Chief Justice of the Supreme Court in accordance with s. 2, Art. V of the State Constitution, is not subject to paragraph (c), paragraph (d), or paragraph (e) while reemployed as a senior judge.



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Section 3. Paragraph (a) of subsection (1) of section 121.591, Florida Statutes, is amended to read:

121.591 Payment of benefits.—Benefits may not be paid under the Florida Retirement System Investment Plan unless the member has terminated employment as provided in s. 121.021(39) (a) or is deceased and a proper application has been filed as prescribed by the state board or the department. Benefits, including employee contributions, are not payable under the investment plan for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or foreclosure on an employee's principal residence, or any other reason except a requested distribution for retirement, a mandatory de minimis distribution authorized by the administrator, or a required minimum distribution provided pursuant to the Internal Revenue Code. The state board or department, as appropriate, may cancel an application for retirement benefits if the member or beneficiary fails to timely provide the information and documents required by this chapter and the rules of the state board and department. In accordance with their respective responsibilities, the state board and the department shall adopt rules establishing procedures for application for retirement benefits and for the cancellation of such application if the required information or documents are not received. The state board and the department, as appropriate, are authorized to cash out a de minimis account of a member who has been terminated from Florida Retirement System covered employment for a minimum of 6 calendar months. A de minimis account is an account containing employer and employee contributions and accumulated



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earnings of not more than \$5,000 made under the provisions of this chapter. Such cash-out must be a complete lump-sum liquidation of the account balance, subject to the provisions of the Internal Revenue Code, or a lump-sum direct rollover distribution paid directly to the custodian of an eligible retirement plan, as defined by the Internal Revenue Code, on behalf of the member. Any nonvested accumulations and associated service credit, including amounts transferred to the suspense account of the Florida Retirement System Investment Plan Trust Fund authorized under s. 121.4501(6), shall be forfeited upon payment of any vested benefit to a member or beneficiary, except for de minimis distributions or minimum required distributions as provided under this section. If any financial instrument issued for the payment of retirement benefits under this section is not presented for payment within 180 days after the last day of the month in which it was originally issued, the third-party administrator or other duly authorized agent of the state board shall cancel the instrument and credit the amount of the instrument to the suspense account of the Florida Retirement System Investment Plan Trust Fund authorized under s. 121.4501(6). Any amounts transferred to the suspense account are payable upon a proper application, not to include earnings thereon, as provided in this section, within 10 years after the last day of the month in which the instrument was originally issued, after which time such amounts and any earnings attributable to employer contributions shall be forfeited. Any forfeited amounts are assets of the trust fund and are not subject to chapter 717.

(1) NORMAL BENEFITS.—Under the investment plan:



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(a) Benefits in the form of vested accumulations as described in s. 121.4501(6) are payable under this subsection in accordance with the following terms and conditions:

1. Benefits are payable only to a member, an alternate payee of a qualified domestic relations order, or a beneficiary.

2. Benefits shall be paid by the third-party administrator or designated approved providers in accordance with the law, the contracts, and any applicable board rule or policy.

3. The member must be terminated from all employment with all Florida Retirement System employers, as provided in s. 121.021(39).

4. Benefit payments may not be made until the member has been terminated for 3 calendar months, except that the state board may authorize by rule for the distribution of up to 10 percent of the member's account after being terminated for 1 calendar month if the member has reached the normal retirement date as defined in s. 121.021. Effective July 1, 2015, a retired justice or retired judge who returns to temporary employment as a senior judge in any court pursuant to s. 2, Art. V of the State Constitution and meets the criteria in the definition of the term "termination" in s. 121.021(39) (d) may continue to receive a distribution of his or her account as provided under this paragraph after providing proof of assignment as a senior judge.

5. If a member or former member of the Florida Retirement System receives an invalid distribution, such person must either repay the full amount within 90 days after receipt of final notification by the state board or the third-party administrator that the distribution was invalid, or, in lieu of repayment, the



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member must terminate employment from all participating employers. If such person fails to repay the full invalid distribution within 90 days after receipt of final notification, the person may be deemed retired from the investment plan by the state board and is subject to s. 121.122. If such person is deemed retired, any joint and several liability set out in s. 121.091(9)(d)2. is void, and the state board, the department, or the employing agency is not liable for gains on payroll contributions that have not been deposited to the person's account in the investment plan, pending resolution of the invalid distribution. The member or former member who has been deemed retired or who has been determined by the state board to have taken an invalid distribution may appeal the agency decision through the complaint process as provided under s. 121.4501(9)(g)3. As used in this subparagraph, the term "invalid distribution" means any distribution from an account in the investment plan which is taken in violation of this section, s. 121.091(9), or s. 121.4501.

Section 4. (1) In order to fund the benefit changes provided in this act, the required employer contribution rates for members of the Florida Retirement System established in s. 121.71(4), Florida Statutes, must be adjusted as follows:

(a) The Elected Officers' Class for Justices and Judges must be increased by 0.45 percentage point; and

(b) The Deferred Retirement Option Program must be increased by 0.01 percentage point.

(2) In order to fund the benefit changes provided in this act, the required employer contribution rate for the unfunded actuarial liability of the Florida Retirement System established



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in s. 121.71(5), Florida Statutes, for the Elected Officers' Class for Justices and Judges is increased by 0.91 percentage point.

(3) The adjustments provided in subsections (1) and (2) shall be in addition to all other changes to such contribution rates which may be enacted into law to take effect on July 1, 2015, and July 1, 2016. The Division of Law Revision and Information is directed to adjust accordingly the contribution rates provided in s. 121.71, Florida Statutes.

Section 5. (1) The Legislature finds that a proper and legitimate state purpose is served if employees and retirees of the state and its political subdivisions, and the dependents, survivors, and beneficiaries of such employees and retirees, are extended the basic protections afforded by governmental retirement systems which provide fair and adequate benefits and which are managed, administered, and funded in an actuarially sound manner as required by s. 14, Article X of the State Constitution and part VII of chapter 112, Florida Statutes. Therefore, the Legislature determines and declares that this act fulfills an important state interest.

(2) The Legislature further finds that the assignments of former justices and judges to temporary employment as senior judges in any court by the Chief Justice of the Supreme Court in accordance with s. 2, Article V of the State Constitution assist the state courts system in managing caseloads and providing individuals and businesses with access to courts. Therefore, the Legislature further determines and declares that this act fulfills an important state interest by facilitating the ability of justices and judges who retire under the Florida Retirement



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243 System in a bona fide termination to return to temporary
244 employment as senior judges in a timely manner.

245
246 ===== T I T L E A M E N D M E N T =====

247 And the title is amended as follows:

248 Delete line 9

249 and insert:

250 retired judge who applies for and returns to temporary
251 employment for compensation as a



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LEGISLATIVE ACTION

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The Committee on Governmental Oversight and Accountability
(Latvala) recommended the following:

**Senate Substitute for Amendment (851236) (with title
amendment)**

Delete lines 68 - 304
and insert:

(d) Effective July 1, 2015, and notwithstanding paragraphs
(a) and (b), which void a termination if a member does not cease
all employment relationships with participating employers for at
least 6 calendar months, the termination of a retired justice or
retired judge is not void if he or she:



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11 1. Has reached the later of his or her normal retirement
12 age or the age at which he or she is vested;

13 2. Has terminated all employment relationships with
14 employers under the Florida Retirement System for at least 3
15 calendar months after retirement; and

16 3. Returns to temporary employment only as a senior judge
17 in any court, as assigned by the Chief Justice of the Supreme
18 Court in accordance with s. 2, Art. V of the State Constitution,
19 no earlier than 4 calendar months after retirement.

20
21 This paragraph does not apply if a retired justice or retired
22 judge is employed for any other purpose by an employer
23 participating in the Florida Retirement System within 6 calendar
24 months of termination.

25 Section 2. Paragraphs (c), (d), and (e) of subsection (9)
26 of section 121.091, Florida Statutes, are amended, and paragraph
27 (f) is added to that subsection, to read:

28 121.091 Benefits payable under the system.—Benefits may not
29 be paid under this section unless the member has terminated
30 employment as provided in s. 121.021(39)(a) or begun
31 participation in the Deferred Retirement Option Program as
32 provided in subsection (13), and a proper application has been
33 filed in the manner prescribed by the department. The department
34 may cancel an application for retirement benefits when the
35 member or beneficiary fails to timely provide the information
36 and documents required by this chapter and the department's
37 rules. The department shall adopt rules establishing procedures
38 for application for retirement benefits and for the cancellation
39 of such application when the required information or documents



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are not received.

(9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.—

(c) Any person whose retirement is effective on or after July 1, 2010, or whose participation in the Deferred Retirement Option Program terminates on or after July 1, 2010, who is retired under this chapter, except under the disability retirement provisions of subsection (4) or as provided in s. 121.053, may be reemployed by an employer that participates in a state-administered retirement system and receive retirement benefits and compensation from that employer. However, a person may not be reemployed by an employer participating in the Florida Retirement System before meeting the definition of termination in s. 121.021 and may not receive both a salary from the employer and retirement benefits for 6 calendar months after meeting the definition of termination, except as provided in paragraph (f). However, a DROP participant shall continue employment and receive a salary during the period of participation in the Deferred Retirement Option Program, as provided in subsection (13).

1. The reemployed retiree may not renew membership in the Florida Retirement System.

2. The employer shall pay retirement contributions in an amount equal to the unfunded actuarial liability portion of the employer contribution that would be required for active members of the Florida Retirement System in addition to the contributions required by s. 121.76.

3. A retiree initially reemployed in violation of this paragraph and an employer that employs or appoints such person are jointly and severally liable for reimbursement of any



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retirement benefits paid to the retirement trust fund from which the benefits were paid, including the Florida Retirement System Trust Fund and the Public Employee Optional Retirement Program Trust Fund, as appropriate. The employer must have a written statement from the employee that he or she is not retired from a state-administered retirement system. Retirement benefits shall remain suspended until repayment is made. Benefits suspended beyond the end of the retiree's 6-month reemployment limitation period shall apply toward the repayment of benefits received in violation of this paragraph.

(d) Except as provided in paragraph (f), this subsection applies to retirees, as defined in s. 121.4501(2), of the Florida Retirement System Investment Plan, subject to the following conditions:

1. A retiree may not be reemployed with an employer participating in the Florida Retirement System until such person has been retired for 6 calendar months.

2. A retiree employed in violation of this subsection and an employer that employs or appoints such person are jointly and severally liable for reimbursement of any benefits paid to the retirement trust fund from which the benefits were paid. The employer must have a written statement from the retiree that he or she is not retired from a state-administered retirement system.

(e) The limitations of this subsection apply to reemployment in any capacity irrespective of the category of funds from which the person is compensated, except as provided in paragraph (f).

(f) Effective July 1, 2015, a retired justice or retired



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judge who has reached the later of his or her normal retirement age or the age at which he or she is vested, who has terminated all employment with employers participating under the Florida Retirement System for at least 3 calendar months, and who subsequently returns to temporary employment only as a senior judge in any court, as assigned by the Chief Justice of the Supreme Court in accordance with s. 2, Art. V of the State Constitution, is not subject to paragraph (c), paragraph (d), or paragraph (e) while reemployed solely as a senior judge. This paragraph does not apply if the retired justice or retired judge is employed for any other purpose by an employer participating in the Florida Retirement System within 12 calendar months of termination.

Section 3. (1) The State Board of Administration and the Department of Management Services shall request, as soon as practicable, a determination letter and private letter ruling from the Internal Revenue Service. If the Internal Revenue Service refuses to act upon a request for a private letter ruling, a legal opinion from a qualified tax attorney or firm may be substituted for such private letter ruling.

(2) If the state board or the department receives notification from the Internal Revenue Service that this act or any portion of this act will cause the Florida Retirement System, or a portion thereof, to be disqualified for tax purposes under the Internal Revenue Code, the portion that will cause the disqualification does not apply. Upon receipt of such notice, the state board and the department shall notify the presiding officers of the Legislature.

Section 4. (1) In order to fund the benefit changes



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provided in this act, the required employer contribution rates
for members of the Florida Retirement System established in s.
121.71(4), Florida Statutes, must be adjusted as follows:

(a) The Elected Officers' Class for Justices and Judges
must be increased by 0.45 percentage point; and

(b) The Deferred Retirement Option Program must be
increased by 0.01 percentage point.

(2) In order to fund the benefit changes provided in this
act, the required employer contribution rate for the unfunded
actuarial liability of the Florida Retirement System established
in s. 121.71(5), Florida Statutes, for the Elected Officers'
Class for Justices and Judges is increased by 0.91 percentage
point.

(3) The adjustments provided in subsections (1) and (2)
shall be in addition to all other changes to such contribution
rates which may be enacted into law to take effect on July 1,
2015, and July 1, 2016. The Division of Law Revision and
Information is directed to adjust accordingly the contribution
rates provided in s. 121.71, Florida Statutes.

Section 5. (1) The Legislature finds that a proper and
legitimate state purpose is served if employees and retirees of
the state and its political subdivisions, and the dependents,
survivors, and beneficiaries of such employees and retirees, are
extended the basic protections afforded by governmental
retirement systems which provide fair and adequate benefits and
which are managed, administered, and funded in an actuarially
sound manner as required by s. 14, Article X of the State
Constitution and part VII of chapter 112, Florida Statutes.
Therefore, the Legislature determines and declares that this act



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fulfills an important state interest.

(2) The Legislature further finds that the assignments of former justices and judges to temporary employment as senior judges in any court by the Chief Justice of the Supreme Court in accordance with s. 2, Article V of the State Constitution assist the state courts system in managing caseloads and providing individuals and businesses with access to courts. Therefore, the Legislature further determines and declares that this act fulfills an important state interest by facilitating the ability of justices and judges who retire under the Florida Retirement System in a bona fide termination to return to temporary employment as senior judges in a timely manner.

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

And the title is amended as follows:

Delete lines 7 - 13

and insert:

otherwise applicable to retired employees; requiring the State Board of Administration and the Department of Management Services to request a determination letter and private letter ruling from the Internal Revenue Service; adjusting employer

By the Committee on Judiciary; and Senator Bradley

590-01887-15

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A bill to be entitled

An act relating to justices and judges; amending s. 121.021, F.S.; revising the applicability of the term "termination"; amending s. 121.091, F.S.; providing that a retired justice or retired judge is not subject to certain restrictions on employment after retirement otherwise applicable to retired employees; amending s. 121.591, F.S.; providing that a retired justice or retired judge who returns to temporary employment as a senior judge in any court may continue to receive a distribution of his or her retirement account after providing proof of termination from his or her regularly established position; adjusting employer contribution rates in order to fund changes made by the act; providing a directive to the Division of Law Revision and Information; providing findings of an important state interest; providing an effective date.

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

Section 1. Subsection (39) of section 121.021, Florida Statutes, is amended to read:

121.021 Definitions.—The following words and phrases as used in this chapter have the respective meanings set forth unless a different meaning is plainly required by the context:

(39)(a) "Termination" occurs, except as provided in paragraph (b), when a member ceases all employment relationships with participating employers, however:

1. For retirements effective before July 1, 2010, if a

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member is employed by any such employer within the next calendar month, termination shall be deemed not to have occurred. A leave of absence constitutes a continuation of the employment relationship, except that a leave of absence without pay due to disability may constitute termination if such member makes application for and is approved for disability retirement in accordance with s. 121.091(4). The department or state board may require other evidence of termination as it deems necessary.

2. For retirements effective on or after July 1, 2010, if a member is employed by any such employer within the next 6 calendar months, termination shall be deemed not to have occurred. A leave of absence constitutes a continuation of the employment relationship, except that a leave of absence without pay due to disability may constitute termination if such member makes application for and is approved for disability retirement in accordance with s. 121.091(4). The department or state board may require other evidence of termination as it deems necessary.

(b) "Termination" for a member electing to participate in the Deferred Retirement Option Program occurs when the program participant ceases all employment relationships with participating employers in accordance with s. 121.091(13), however:

1. For termination dates occurring before July 1, 2010, if the member is employed by any such employer within the next calendar month, termination will be deemed not to have occurred, except as provided in s. 121.091(13)(b)4.c. A leave of absence shall constitute a continuation of the employment relationship.

2. For termination dates occurring on or after July 1, 2010, if the member becomes employed by any such employer within

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the next 6 calendar months, termination will be deemed not to have occurred, except as provided in s. 121.091(13)(b)4.c. A leave of absence constitutes a continuation of the employment relationship.

(c) Effective July 1, 2011, "termination" for a member receiving a refund of employee contributions occurs when a member ceases all employment relationships with participating employers for 3 calendar months. A leave of absence constitutes a continuation of the employment relationship.

(d) Effective July 1, 2015, "termination" for a retired justice or retired judge occurs when he or she has reached the later of his or her normal retirement age or the age when vested and has terminated all employment relationships with employers under the Florida Retirement System for at least 1 calendar month before returning to temporary employment as a senior judge in any court, as assigned by the Chief Justice of the Supreme Court in accordance with s. 2, Art. V of the State Constitution.

Section 2. Paragraphs (c), (d), and (e) of subsection (9) of section 121.091, Florida Statutes, are amended, and paragraph (f) is added to that subsection, to read:

121.091 Benefits payable under the system.—Benefits may not be paid under this section unless the member has terminated employment as provided in s. 121.021(39)(a) or begun participation in the Deferred Retirement Option Program as provided in subsection (13), and a proper application has been filed in the manner prescribed by the department. The department may cancel an application for retirement benefits when the member or beneficiary fails to timely provide the information and documents required by this chapter and the department's

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rules. The department shall adopt rules establishing procedures for application for retirement benefits and for the cancellation of such application when the required information or documents are not received.

(9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.—

(c) Any person whose retirement is effective on or after July 1, 2010, or whose participation in the Deferred Retirement Option Program terminates on or after July 1, 2010, who is retired under this chapter, except under the disability retirement provisions of subsection (4) or as provided in s. 121.053, may be reemployed by an employer that participates in a state-administered retirement system and receive retirement benefits and compensation from that employer. However, a person may not be reemployed by an employer participating in the Florida Retirement System before meeting the definition of termination in s. 121.021 and may not receive both a salary from the employer and retirement benefits for 6 calendar months after meeting the definition of termination, except as provided in paragraph (f). However, a DROP participant shall continue employment and receive a salary during the period of participation in the Deferred Retirement Option Program, as provided in subsection (13).

1. The reemployed retiree may not renew membership in the Florida Retirement System.

2. The employer shall pay retirement contributions in an amount equal to the unfunded actuarial liability portion of the employer contribution that would be required for active members of the Florida Retirement System in addition to the contributions required by s. 121.76.

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117 3. A retiree initially reemployed in violation of this
 118 paragraph and an employer that employs or appoints such person
 119 are jointly and severally liable for reimbursement of any
 120 retirement benefits paid to the retirement trust fund from which
 121 the benefits were paid, including the Florida Retirement System
 122 Trust Fund and the Public Employee Optional Retirement Program
 123 Trust Fund, as appropriate. The employer must have a written
 124 statement from the employee that he or she is not retired from a
 125 state-administered retirement system. Retirement benefits shall
 126 remain suspended until repayment is made. Benefits suspended
 127 beyond the end of the retiree's 6-month reemployment limitation
 128 period shall apply toward the repayment of benefits received in
 129 violation of this paragraph.

130 (d) Except as provided in paragraph (f), this subsection
 131 applies to retirees, as defined in s. 121.4501(2), of the
 132 Florida Retirement System Investment Plan, subject to the
 133 following conditions:

134 1. A retiree may not be reemployed with an employer
 135 participating in the Florida Retirement System until such person
 136 has been retired for 6 calendar months.

137 2. A retiree employed in violation of this subsection and
 138 an employer that employs or appoints such person are jointly and
 139 severally liable for reimbursement of any benefits paid to the
 140 retirement trust fund from which the benefits were paid. The
 141 employer must have a written statement from the retiree that he
 142 or she is not retired from a state-administered retirement
 143 system.

144 (e) The limitations of this subsection apply to
 145 reemployment in any capacity irrespective of the category of

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146 funds from which the person is compensated, except as provided
 147 in paragraph (f).

148 (f) Effective July 1, 2015, a retired justice or retired
 149 judge who has reached the later of his or her normal retirement
 150 age or the age when vested, who has terminated all employment
 151 with employers participating under the Florida Retirement System
 152 for at least 1 calendar month, and who subsequently returns to
 153 temporary employment as a senior judge in any court, as assigned
 154 by the Chief Justice of the Supreme Court in accordance with s.
 155 2, Art. V of the State Constitution is not subject to paragraph
 156 (c), paragraph (d), or paragraph (e) while reemployed as a
 157 senior judge.

158 Section 3. Paragraph (a) of subsection (1) of section
 159 121.591, Florida Statutes, is amended to read:

160 121.591 Payment of benefits.—Benefits may not be paid under
 161 the Florida Retirement System Investment Plan unless the member
 162 has terminated employment as provided in s. 121.021(39) (a) or is
 163 deceased and a proper application has been filed as prescribed
 164 by the state board or the department. Benefits, including
 165 employee contributions, are not payable under the investment
 166 plan for employee hardships, unforeseeable emergencies, loans,
 167 medical expenses, educational expenses, purchase of a principal
 168 residence, payments necessary to prevent eviction or foreclosure
 169 on an employee's principal residence, or any other reason except
 170 a requested distribution for retirement, a mandatory de minimis
 171 distribution authorized by the administrator, or a required
 172 minimum distribution provided pursuant to the Internal Revenue
 173 Code. The state board or department, as appropriate, may cancel
 174 an application for retirement benefits if the member or

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175 beneficiary fails to timely provide the information and
 176 documents required by this chapter and the rules of the state
 177 board and department. In accordance with their respective
 178 responsibilities, the state board and the department shall adopt
 179 rules establishing procedures for application for retirement
 180 benefits and for the cancellation of such application if the
 181 required information or documents are not received. The state
 182 board and the department, as appropriate, are authorized to cash
 183 out a de minimis account of a member who has been terminated
 184 from Florida Retirement System covered employment for a minimum
 185 of 6 calendar months. A de minimis account is an account
 186 containing employer and employee contributions and accumulated
 187 earnings of not more than \$5,000 made under the provisions of
 188 this chapter. Such cash-out must be a complete lump-sum
 189 liquidation of the account balance, subject to the provisions of
 190 the Internal Revenue Code, or a lump-sum direct rollover
 191 distribution paid directly to the custodian of an eligible
 192 retirement plan, as defined by the Internal Revenue Code, on
 193 behalf of the member. Any nonvested accumulations and associated
 194 service credit, including amounts transferred to the suspense
 195 account of the Florida Retirement System Investment Plan Trust
 196 Fund authorized under s. 121.4501(6), shall be forfeited upon
 197 payment of any vested benefit to a member or beneficiary, except
 198 for de minimis distributions or minimum required distributions
 199 as provided under this section. If any financial instrument
 200 issued for the payment of retirement benefits under this section
 201 is not presented for payment within 180 days after the last day
 202 of the month in which it was originally issued, the third-party
 203 administrator or other duly authorized agent of the state board

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

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204 shall cancel the instrument and credit the amount of the
 205 instrument to the suspense account of the Florida Retirement
 206 System Investment Plan Trust Fund authorized under s.
 207 121.4501(6). Any amounts transferred to the suspense account are
 208 payable upon a proper application, not to include earnings
 209 thereon, as provided in this section, within 10 years after the
 210 last day of the month in which the instrument was originally
 211 issued, after which time such amounts and any earnings
 212 attributable to employer contributions shall be forfeited. Any
 213 forfeited amounts are assets of the trust fund and are not
 214 subject to chapter 717.

215 (1) NORMAL BENEFITS.—Under the investment plan:

216 (a) Benefits in the form of vested accumulations as
 217 described in s. 121.4501(6) are payable under this subsection in
 218 accordance with the following terms and conditions:

219 1. Benefits are payable only to a member, an alternate
 220 payee of a qualified domestic relations order, or a beneficiary.

221 2. Benefits shall be paid by the third-party administrator
 222 or designated approved providers in accordance with the law, the
 223 contracts, and any applicable board rule or policy.

224 3. The member must be terminated from all employment with
 225 all Florida Retirement System employers, as provided in s.
 226 121.021(39).

227 4. Benefit payments may not be made until the member has
 228 been terminated for 3 calendar months, except that the state
 229 board may authorize by rule for the distribution of up to 10
 230 percent of the member's account after being terminated for 1
 231 calendar month if the member has reached the normal retirement
 232 date as defined in s. 121.021. Effective July 1, 2015, a retired

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233 justice or retired judge who returns to temporary employment as
 234 a senior judge in any court pursuant to s. 2, Art. V of the
 235 State Constitution and meets the criteria in the definition of
 236 the term "termination" in s. 121.021(39) (d) may continue to
 237 receive a distribution of his or her account as provided under
 238 this paragraph after providing proof of assignment as a senior
 239 judge.

240 5. If a member or former member of the Florida Retirement
 241 System receives an invalid distribution, such person must either
 242 repay the full amount within 90 days after receipt of final
 243 notification by the state board or the third-party administrator
 244 that the distribution was invalid, or, in lieu of repayment, the
 245 member must terminate employment from all participating
 246 employers. If such person fails to repay the full invalid
 247 distribution within 90 days after receipt of final notification,
 248 the person may be deemed retired from the investment plan by the
 249 state board and is subject to s. 121.122. If such person is
 250 deemed retired, any joint and several liability set out in s.
 251 121.091(9)(d)2. is void, and the state board, the department, or
 252 the employing agency is not liable for gains on payroll
 253 contributions that have not been deposited to the person's
 254 account in the investment plan, pending resolution of the
 255 invalid distribution. The member or former member who has been
 256 deemed retired or who has been determined by the state board to
 257 have taken an invalid distribution may appeal the agency
 258 decision through the complaint process as provided under s.
 259 121.4501(9)(g)3. As used in this subparagraph, the term "invalid
 260 distribution" means any distribution from an account in the
 261 investment plan which is taken in violation of this section, s.

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262 121.091(9), or s. 121.4501.

263 Section 4. (1) In order to fund the benefit changes
 264 provided in this act, the required employer contribution rates
 265 for members of the Florida Retirement System established in s.
 266 121.71(4), Florida Statutes, must be adjusted as follows:

267 (a) The Elected Officers' Class for Justices and Judges
 268 must be increased by 0.45 percentage point; and
 269 (b) The Deferred Retirement Option Program must be
 270 increased by 0.01 percentage point.

271 (2) In order to fund the benefit changes provided in this
 272 act, the required employer contribution rate for the unfunded
 273 actuarial liability of the Florida Retirement System established
 274 in s. 121.71(5), Florida Statutes, for the Elected Officers'
 275 Class for Justices and Judges is increased by 0.91 percentage
 276 point.

277 (3) The adjustments provided in subsections (1) and (2)
 278 shall be in addition to all other changes to such contribution
 279 rates which may be enacted into law to take effect on July 1,
 280 2015, and July 1, 2016. The Division of Law Revision and
 281 Information is directed to adjust accordingly the contribution
 282 rates provided in s. 121.71, Florida Statutes.

283 Section 5. (1) The Legislature finds that a proper and
 284 legitimate state purpose is served if employees and retirees of
 285 the state and its political subdivisions, and the dependents,
 286 survivors, and beneficiaries of such employees and retirees, are
 287 extended the basic protections afforded by governmental
 288 retirement systems which provide fair and adequate benefits and
 289 which are managed, administered, and funded in an actuarially
 290 sound manner as required by s. 14, Article X of the State

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291 Constitution and part VII of chapter 112, Florida Statutes.
292 Therefore, the Legislature determines and declares that this act
293 fulfills an important state interest.

294 (2) The Legislature further finds that the assignments of
295 former justices and judges to temporary employment as senior
296 judges in any court by the Chief Justice of the Supreme Court in
297 accordance with s. 2, Article V of the State Constitution assist
298 the state courts system in managing caseloads and providing
299 individuals and businesses with access to courts. Therefore, the
300 Legislature further determines and declares that this act
301 fulfills an important state interest by facilitating the ability
302 of justices and judges who retire under the Florida Retirement
303 System to return to temporary employment as senior judges in a
304 timely manner.

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



The Florida Senate

Committee Agenda Request

To: Senator Jeremy Ring, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: March 6, 2015

I respectfully request that **Senate Bill # 838**, relating to Justices and Judges, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in dark ink, appearing to read "Rob Bradley", is written over a horizontal line.

Senator Rob Bradley
Florida Senate, District 7

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date _____

Bill Number (if applicable) _____

Topic _____

Amendment Barcode (if applicable) _____

Name Pete Dunbar

Job Title _____

Address 215 S. Monroe #815 Phone 999-4100

Street

City

Tall

State

FL

Zip

32301

Email _____

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/31/15
Meeting Date

838
Bill Number (if applicable)

Topic Justices & Judges

Amendment Barcode (if applicable)

Name Olin Shinholser

Job Title Circuit Judge, Legislative Co-Chair of Circuit Judges Conference

Address 430 S. Commerce Ave.
Street

Phone 863-402-6901

Sebring
City

FL
State

33870
Zip

Email oshinholser@jud10.flcourts.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Conference of Circuit Judges

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/31/15
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 838
Bill Number (if applicable)

233778
Amendment Barcode (if applicable)
(substitute amendment)

Topic Judges & Justices

Name Olin W. Shinkholser

Job Title Circuit Judge, Co legislative Chair - Conference of Circuit Judges

Address 430 S. Commerce Ave
Street
City Sebring State FL Zip 33870

Phone 863-402-6901

Email oshinkholser@jud10.flcourts.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Conference of Circuit Judges

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/SB 1352

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Smith

SUBJECT: Deferred Compensation

DATE: April 1, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	Fav/CS
2.			AGG	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1352 prohibits a county, municipality, political subdivision or constitutional county officer from entering into contracts with investment providers and recordkeepers for local deferred compensation programs from exceeding a five-year term. The bill prohibits specified persons from participating in the selection of an investment provider or recordkeeper under certain circumstances.

The bill further requires the administrator of a local deferred compensation program to comply with certain fiduciary standards. The bill authorizes a public body or official that establishes a local deferred compensation program to organize an oversight committee.

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

II. Present Situation:

Government Employees' Deferred Compensation Act

The Government Employees' Deferred Compensation Act¹ allows the state and local governments² to permit an employee to defer a portion of that employee's otherwise payable

¹ Section 112.215(1), F.S.

² Including, any state agency, county, municipality, other political subdivision, or constitutional county officer. Section 112.215(3), F.S.

compensation until a later date.³ Typically, employees participate in order to supplement their retirement income with an additional income stream that may have realized a variety of tax advantages.⁴

Deferment of federal taxation on funds is allowed up to an annually indexed amount.⁵ The maximum amount of salary that can be deferred is set by IRS regulations and is currently the lesser of 80 percent of compensation or \$17,500. Participants aged 50 or older may participate in the “50+ Catch-up” provision, which currently allows a maximum annual contribution of \$23,000. Making contributions into a deferred compensation account immediately lowers an employee’s amount of taxable income during working years. Account earnings are similarly sheltered from federal taxation until a distribution occurs.⁶ A participant reports the income and earnings on their federal tax return only upon receiving distributions from the plan.⁷

County, Municipal, and Other Political Subdivision and Constitutional County Officer Deferred Compensation Programs

Counties, municipalities, and other political subdivisions may adopt and establish their own deferred compensation program by ordinance.⁸ Constitutional county officers also may establish their own deferred compensation program by contractual agreement or through similar approval documentation.⁹ The county, municipality, other political subdivision, or county constitutional officers are responsible for the programs which they establish.

III. Effect of Proposed Changes:

County, Municipal, Political Subdivision or Constitutional County Officer Deferred Compensation Plan

Section 1 amends s. 112.215(5), F.S., to prohibit a county, municipality, political subdivision, or constitutional county officer from entering into a contract with an investment provider or recordkeeper for purposes of offering investment vehicles or products to participants in the deferred compensation program or recordkeeping services for the program that exceeds 5 years.

Before the end of each contract term, the public official or body must initiate a public bid for the procurement of investment providers and recordkeepers.

The bill provides that if the administrator of a deferred compensation program or any other person involved with the selection of an investment provider or recordkeeper has had any direct

³ Section 112.215(3), F.S.

⁴ Florida Deferred Compensation Website, *FAQ*, <https://www.myfloridaderferredcomp.com/SOFWeb/publications/ImportantDocuments/FAQs1.pdf>. (last visited March 26, 2015).

⁵ Florida Bureau of Deferred Compensation, *Deferred Compensation Plan*, available at <https://www.myfloridaderferredcomp.com/SOFWeb/publications/ImportantDocuments/DFS-J3-1176.pdf>. (last visited March 26, 2015) (See Section 3.05: Maximum Deferral, at 10).

⁶ Florida Deferred Compensation Website, *FAQ*, *supra*.

⁷ *Id.*

⁸ Section 112.215(5), F.S.

⁹ *Id.*

interest in any contract, privilege, or other benefit granted by the investment provider or recordkeeper in the preceding two years, he or she must abstain from participating in any decision regarding the selection of the investment provider or recordkeeper.

The bill clarifies that establishing a personal account with an investment provider or recordkeeper or taking a distribution from a personal account does not constitute a direct interest.

Additionally, the bill requires that the administrator of a deferred compensation program must comply with the fiduciary standards set forth in the Employee Retirement Income Security Act of 1974, as amended, at 29 U.S.C. s. 1104(a)(1)(A)-(C).

Oversight Committee

Further, the bill provides that a county, municipality, or political subdivision or constitutional county officer that establishes a deferred compensation plan may evaluate the performance of the plan administrator through an oversight committee. The oversight committee is required to provide assistance and recommendations with respect to the administration of the plan, including, but not limited to, investment options offered under the plan. A county, municipality, or political subdivision or constitutional county officer must determine the authority, activities, and composition of the oversight committee.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent this bill requires a local government to expend funds to comply with its terms (competitively procure services related to deferred compensation plans on a more frequent basis), the provisions of Art. VII, s. 18(a) of the Florida Constitution, may apply. If those constitutional provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest, and one of the following relevant exceptions must be met:

- Funds estimated at the time of enactment sufficient to fund such expenditures are appropriated;
- Counties and cities are authorized to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;
- The expenditure is required to comply with a law that applies to all persons similarly situated; or
- The law must be approved by two-thirds of the membership of each house of the Legislature.

However, based on the limited fiscal impact that is likely be incurred, the bill may be exempt from those provisions based on the anticipated insignificant annual fiscal impact on counties.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate. Counties, municipalities, political subdivisions and constitutional county officers may incur costs in the bid and procurement process for deferred compensation programs and record keeping services every five years.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 112.215 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on March 31, 2015:

The provisions that applied to the State of Florida's deferred compensation plan are deleted.

The requirement that local government procurements for services related to deferred compensation programs be overseen by a professionally qualified independent consultant is deleted.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



357586

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/31/2015	.	
	.	
	.	
	.	

The Committee on Governmental Oversight and Accountability
(Ring) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 29 - 66.

===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

And the directory clause is amended as follows:

Delete lines 21 - 26

and insert:

Section 1. Subsections (5) and (14) of section 112.215,
Florida Statutes, are amended to read:



357586

11
12 ===== T I T L E A M E N D M E N T =====
13 And the title is amended as follows:
14 Delete lines 4 - 7
15 and insert:
16 providers and recordkeepers for local deferred
17 compensation programs from exceeding a 5-year term;
18 specifying requirements for the bidding process for
19 investment



187538

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/31/2015	.	
	.	
	.	
	.	

The Committee on Governmental Oversight and Accountability
(Hays) recommended the following:

Senate Amendment (with title amendment)

Delete lines 92 - 100.

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

And the title is amended as follows:

Delete lines 8 - 9

and insert:

providers and recordkeepers;

By Senator Smith

31-01324A-15

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A bill to be entitled

An act relating to deferred compensation; amending s. 112.215, F.S.; prohibiting contracts with investment providers and recordkeepers for state or local deferred compensation programs from exceeding a 5-year term; specifying requirements for the competitive solicitation or bidding process for investment providers and recordkeepers; defining the term "professionally qualified independent consultant"; prohibiting specified persons from participating in the selection of an investment provider or recordkeeper under certain circumstances; requiring the administrator of a local deferred compensation program to comply with certain fiduciary standards; authorizing a public body or official that establishes a local deferred compensation program to organize an oversight committee; providing an effective date.

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

Section 1. Paragraph (a) of subsection (4) of section 112.215, Florida Statutes, is amended, present paragraphs (b) through (e) of subsection (4) are redesignated as paragraphs (c) through (f), respectively, a new paragraph (b) is added to that subsection, and subsections (5) and (14) of that section are amended, to read:

112.215 Government employees; deferred compensation program.—

(4) (a) The Chief Financial Officer, with the approval of

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the State Board of Administration, shall establish such plan or plans of deferred compensation for state employees, including all such investment vehicles or products ~~incident thereto, as may be available through,~~ or offered by, qualified companies or persons, and may approve one or more such plans for implementation by and on behalf of the state and its agencies and employees. The Chief Financial Officer, or the administrator delegated responsibility for administration of the plan under paragraph (d), may not enter into a contract with an investment provider or recordkeeper for purposes of offering investment vehicles or products to participants in the deferred compensation program or recordkeeping services for the program for a term to exceed 5 years. Before the end of each contract term, the Chief Financial Officer or plan administrator shall initiate a competitive solicitation for the procurement of investment providers and recordkeepers. The solicitation must be overseen by a professionally qualified independent consultant procured through the competitive solicitation processes authorized in s. 287.057. For purposes of this paragraph, the term "professionally qualified independent consultant" means a consultant who is professionally qualified based on education and experience to evaluate the performance of investment providers and recordkeepers, not associated in any manner with an investment provider or recordkeeper responding to the competitive solicitation, and not offering any products or services other than overseeing the procurement process.

(b) If the Chief Financial Officer, plan administrator, or any other person involved with the selection of an investment provider or recordkeeper has had any direct interest in any

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contract, privilege, or other benefit granted by the investment provider or recordkeeper in the preceding 2 years, he or she must abstain from participating in any decision regarding the selection of the investment provider or recordkeeper. Establishing a personal account with an investment provider or recordkeeper or taking a distribution from a personal account does not constitute a direct interest for purposes of this paragraph.

(5) Any county, municipality, or other political subdivision ~~of the state~~ may by ordinance, and any constitutional county officer under s. 1(d), Art. VIII of the State Constitution ~~of 1968~~ may by contract agreement or other documentation constituting approval, adopt and establish for itself and its employees a deferred compensation program. The ordinance shall designate an appropriate official of the county, municipality, or political subdivision to approve and administer a deferred compensation plan or otherwise provide for such approval and administration. The ordinance shall also designate a public official or body to make the determinations provided for in paragraph (6)(b). If a constitutional county officer elects to adopt and establish for that office and its employees a deferred compensation program, the constitutional county officer shall be the appropriate official to make the determinations provided for in this subsection and in paragraph (6)(b).

(a) A county, municipality, political subdivision, or constitutional county officer may not enter into a contract with an investment provider or recordkeeper for purposes of offering investment vehicles or products to participants in the deferred

31-01324A-15

20151352

compensation program or recordkeeping services for the program for a term to exceed 5 years. Before the end of each contract term, the public official or body shall initiate a public bid for the procurement of investment providers and recordkeepers. The public bid must be overseen by a professionally qualified independent consultant procured through public bid. For purposes of this paragraph, the term "professionally qualified independent consultant" means a consultant who is professionally qualified based on education and experience to evaluate the performance of investment providers and recordkeepers, not associated in any manner with an investment provider or recordkeeper responding to the public bid, and not offering any products or services other than overseeing the bid process.

(b) If the administrator of a deferred compensation program or any other person involved with the selection of an investment provider or recordkeeper has had any direct interest in any contract, privilege, or other benefit granted by the investment provider or recordkeeper in the preceding 2 years, he or she must abstain from participating in any decision regarding the selection of the investment provider or recordkeeper. Establishing a personal account with an investment provider or recordkeeper or taking a distribution from a personal account does not constitute a direct interest for purposes of this paragraph.

(c) The administrator of a deferred compensation program established pursuant to this subsection shall comply with the fiduciary standards set forth in the Employee Retirement Income Security Act of 1974, as amended, at 29 U.S.C. s. 1104(a)(1)(A)-(C).

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20151352__

117 (d) A county, municipality, or political subdivision or
118 constitutional county officer that establishes a deferred
119 compensation plan may evaluate the performance of the plan
120 administrator through an oversight committee. An oversight
121 committee shall provide assistance and recommendations with
122 respect to the administration of the plan, including, but not
123 limited to, investment options offered under the plan. A county,
124 municipality, or political subdivision or constitutional county
125 officer shall determine the authority, activities, and
126 composition of the oversight committee.

127 (14) This section ~~subsection~~ may not impair an existing
128 contract. In each county that has one or more constitutional
129 county officers, the board of county commissioners and the
130 constitutional county officers shall negotiate a joint deferred
131 compensation program for all their respective employees under s.
132 163.01. If all parties to the negotiation cannot agree upon a
133 joint deferred compensation program, the provisions of
134 subsection (5) apply.

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



The Florida Senate

Committee Agenda Request

To: Senator Jeremy Ring, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: March 2, 2015

I respectfully request that **Senate Bill #1352**, relating to Deferred Compensation, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in black ink, appearing to read "Chris Smith", is written over a horizontal line.

Senator Christopher L. Smith
Florida Senate, District 31

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/31/15

Meeting Date

SB 1352

Bill Number (if applicable)

357586

Amendment Barcode (if applicable)

Topic

Name Kraig Conn

Job Title

Address 301 S. Bromo yk

Street

City

State

Zip

Phone 222 9684

Email Kconn@flcities.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

3.31.15
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1352
Bill Number (if applicable)

Topic defraud comp

Amendment Barcode (if applicable)

Name Ashley Mayer

Job Title lawyer

Address 101 E. College Ave Suite 502 Phone 222-9075

Street

Tallahassee FL

City

State

32301

Zip

Email akalitha@comp
cityconsult.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Voya

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/CS/SB 716

INTRODUCER: Governmental Oversight and Accountability Committee; Regulated Industries Committee; Senator Hays and others

SUBJECT: Public Records/Animal Medical Records

DATE: April 1, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 716 makes animal medical records held by any state college of veterinary medicine accredited by the American Veterinary Medical Association Council on Education confidential and exempt from public inspection and copying.

In addition, the bill makes medical records that are transferred by a records owner in connection with official business by any accredited state college of veterinary medicine confidential and exempt from disclosure. Confidential and exempt animal medical records may be disclosed to another governmental entity in the performance of its duties and responsibilities and as provided by current law governing veterinary medical records. The bill provides a public necessity statement justifying the exemption pursuant to s. 24(c), Art. I, of the State Constitution.

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.

This bill creates a new public records exemption and therefore requires a two-thirds vote for passage in each house of the Legislature in order to become law.

II. Present Situation:

Veterinary Medical Records

In 1979, the Legislature determined that because the practice of veterinary medicine is potentially dangerous to public health and safety if conducted by incompetent and unlicensed practitioners, it mandated minimum requirements for licensure of veterinarians in the state.¹ A veterinarian is a health care practitioner licensed to engage in the practice of veterinary medicine in Florida pursuant to ch. 474, F.S. The practice of veterinary medicine is the diagnosis of medical conditions of animals, and the prescribing or administering of medicine and treatment to animals for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease, or holding oneself out as performing any of these functions.²

Section 474.2165, F.S. governs the ownership and control of veterinary medical records. Anyone who provides veterinary medical services is required to maintain medical records.³ In general, veterinary medical records are confidential and may only be disclosed to other veterinarians involved in the treatment of the animal, with the consent of the owner or when there is a legal action.⁴ Medical records may be furnished without written authorization of the owner to an entity that provided treatment,⁵ upon issuance of a subpoena,⁶ for research purposes,⁷ or when there is a pending legal or disciplinary action.⁸

Pursuant to s. 474.203, F.S., eight categories of persons are exempt from complying with ch. 474, F.S., respecting veterinary medical practice.

- Faculty veterinarians when they have assigned teaching duties at accredited⁹ institutions;¹⁰
- Intern or resident veterinarians at accredited institutions who are graduates of an accredited institution, but only until they complete or terminate their training;¹¹

¹ See s. 474.201, F.S.

² See s. 474.202(9), F.S. Also included is the determination of the health, fitness, or soundness of an animal, and the performance of any manual procedure for the diagnosis or treatment of pregnancy or fertility or infertility of animals.

³ Section 474.2165(2), F.S.

⁴ Section 474.2165(4) and (5), F.S.

⁵ Section 474.2165(4)(a), F.S.

⁶ Section 474.2165(4)(b), F.S.

⁷ Section 474.2165(4)(c), F.S.

⁸ Section 474.2165(5) and (6), F.S.

⁹ Pursuant to s. 474.203(1) and (2), F.S., accreditation of a school or college must be granted by the American Veterinary Medical Association (AMVA) Council on Education, or the American Veterinary Medical Association Commission for Foreign Veterinary Graduates. The AVMA Council on Education is recognized by the Council for Higher Education Accreditation (CHEA) as the accrediting body for schools and programs that offer the professional Doctor of Veterinary Medicine degree (or its equivalent) in the US and Canada, and may also approve foreign veterinary colleges. See <https://www.avma.org/professionaldevelopment/education/accreditation/colleges/pages/coe-pp-overview-of-the-coe.aspx> (last visited Mar. 20, 2015). The American Veterinary Medical Association Commission for Foreign Veterinary Graduates assists graduates of foreign, non-accredited schools to meet the requirement of most states that such foreign graduates successfully complete an educational equivalency assessment certification program (ECFVG). See <https://www.avma.org/professionaldevelopment/education/foreign/pages/ecfvg-about-us.aspx> (last visited Mar. 20, 2015). In turn, CHEA, a national advocate for regulation of academic quality through accreditation, is an association of 3,000 degree-granting colleges and universities and recognizes 60 institutional and programmatic accrediting organizations. See <http://chea.org/> (last visited Mar. 20, 2015).

¹⁰ Section 474.203(1), F.S.

¹¹ Section 474.203(2), F.S.

- Students in a school or college of veterinary medicine who perform assigned duties by an instructor or work as preceptors^{12,13};
- Doctors of veterinary medicine employed by a state agency or the United States Government while actually engaged in the performance of official duties;¹⁴
- Persons or their employees caring for the persons' own animals; as well as part-time or temporary employees, or independent contractors, who are hired by an owner to help with herd management and animal husbandry tasks (excluding immunization or treatment of diseases that are communicable to humans and significant to public health) for herd/flock animals, with certain limitations. The exemption is not available to those who are licensed as a veterinarian in another state and are temporarily practicing in Florida, or those convicted of violating ch. 828, F.S., respecting animal cruelty, or of any similar offense in another jurisdiction, and employment may not be provided for the purpose of circumventing ch. 474, F.S.;¹⁵
- Certain entities or persons¹⁶ that conduct experiments and scientific research on animals as part of the development of pharmaceuticals, biologicals, serums, or treatment methods of treatment or techniques to diagnose or treat of human ailments, or in the study and development of methods and techniques applicable to the practice of veterinary medicine.¹⁷
- Veterinary aides, nurses, laboratory technicians, preceptors, or other employee of a licensed veterinarian, who administer medication or provide help or support under the responsible supervision¹⁸ of a licensed veterinarian;¹⁹ and
- Certain non-Florida veterinarians who are licensed and actively practicing veterinary medicine in another state, who are board certified in a specialty recognized by the Florida Board of Veterinary Medicine, who assist upon request of a Florida-licensed veterinarian to consult on the treatment of a specific animal, or on the treatment on a specific case of the animals of a single owner.²⁰

Because these categories of practitioners are exempt from chapter 474 in its entirety, they are not able to keep veterinary medical records private in the same manner as a practitioner who is subject to chapter 474, F.S.

Public Records

The Florida Constitution provides that the public has the right to access government records. The public may 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 of persons acting on their

¹² A preceptor is a skilled practitioner or faculty member who supervises students in a clinical setting to allow practical experience with patients.

¹³ Section 474.203(3), F.S.

¹⁴ Section 474.203(4), F.S.

¹⁵ Section 474.203(5), F.S.

¹⁶ See s. 474.203(6), F.S., which states that the exemption applies to “[s]tate agencies, accredited schools, institutions, foundations, business corporations or associations, physicians licensed to practice medicine and surgery in all its branches, graduate doctors of veterinary medicine, or persons under the direct supervision thereof.”

¹⁷ Section 474.203(6), F.S.

¹⁸ The term “responsible supervision” is defined in s. 474.202(10), F.S. as the “control, direction, and regulation by a licensed veterinarian” of unlicensed personnel to whom the veterinarian has delegated veterinary services duties.

¹⁹ Section 474.203(7), F.S.

²⁰ Section 474.203(8), F.S.

behalf.²¹ In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records. The Public Records Act²² guarantees every person's right to inspect and copy any state or local government public record.²³

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.²⁴ 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 the statutory exemption.²⁵

The Legislature may create an exemption to public records requirements.²⁶ An exemption must specifically state the public necessity justifying the exemption²⁷ and must be tailored to accomplish the stated purpose of the law.²⁸

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records exemptions.²⁹ The OGSR 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.³⁰

²¹ FLA. CONST., art. I, s. 24(a).

²² Chapter 119, F.S.

²³ 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." Section 119.011(2), F.S., defines "agency" to mean as "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 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.

²⁴ *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991).

²⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

²⁶ 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 the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

²⁷ FLA. CONST., art. I, s. 24(c).

²⁸ *Id.*

²⁹ 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 OGSR 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.

³⁰ Section 119.15(3), F.S.

The OGSR 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.³¹ 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;³²
- 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;³³ or
- It protects trade or business secrets.³⁴

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's public policy favoring open government and that the purpose of the exemption cannot be accomplished without the exemption.³⁵

The OGSR also requires specific questions to be considered during the review process.³⁶ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.³⁷ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.³⁸

III. Effect of Proposed Changes:

CS/CS/SB 716 creates s. 474.2167, F.S., to provide that certain animal medical records held by or transferred to any state college of veterinary medicine accredited by the American Veterinary Medical Association Council on Education³⁹ are confidential and exempt from public inspection

³¹ Section 119.15(6)(b), F.S.

³² Section 119.15(6)(b)1., F.S.

³³ Section 119.15(6)(b)2., F.S.

³⁴ Section 119.15(6)(b)3., F.S.

³⁵ Section 119.15(6)(b), F.S.

³⁶ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

³⁷ FLA. CONST., art. I, s. 24(c).

³⁸ Section 119.15(7), F.S.

³⁹ The American Veterinary Medical Association (AVMA) Council on Education is recognized by the Council for Higher Education Accreditation (CHEA) as the accrediting body for schools and programs that offer the professional Doctor of Veterinary Medicine degree (or its equivalent) in the US and Canada, and may also approve foreign veterinary colleges. See <https://www.avma.org/professionaldevelopment/education/accreditation/colleges/pages/coe-pp-overview-of-the-coe.aspx> (last visited Mar. 20, 2015).

and copying. State colleges of veterinary medicine are government institutions and are subject to public records laws. The intent of the bill is to provide the same level of protection at a public veterinary facility that an animal's owner may receive at a private facility in which the practitioners are governed by ch. 474, F.S.

An animal medical record relates to:

- The diagnosis of the medical condition of an animal;
- Prescribing, dispensing, or administering drugs, medicine, appliances, applications, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of an animal; or
- Performing a manual procedure for the diagnosis of or treatment for pregnancy, fertility, or infertility of an animal.

The bill provides that confidential and exempt animal medical records may be disclosed to another governmental entity in the performance of its duties and responsibilities and may also be released pursuant to the existing laws governing veterinary medical records at a private clinic.

The bill provides for retroactive application of the exemption to records that are currently being held by state college of veterinary medicine accredited by the American Veterinary Medical Association Council on Education, and also provides for the exemption to be reviewed in five years pursuant to the OGSR.

The bill includes a public necessity statement and an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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 record exemption for veterinary medical records; 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 public necessity statement provides legislative findings that the release of animal medical records will compromise the confidentiality protections otherwise afforded to owners of the animals being treated at a state college of veterinary medicine. Further, the Legislature finds that the owners of animals have a right to privacy in the medical records

of their animals and that the privacy concerns outweigh the public benefit received from disclosure of the records.

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. This exemption appears to be no broader than necessary in that it affords the same protections that an owner of an animal treated at a private facility would receive.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Eligible accredited state colleges of veterinary medicine will be permitted to shield certain animal medical records from public disclosure. Persons seeking public inspection and copying of these confidential, exempted documents will no longer be able to obtain them.

C. Government Sector Impact:

State colleges of veterinary medicine that are eligible to shield certain animal medical records may be subject to legal challenges by those persons previously able to review those records.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 474.2167 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Governmental Oversight and Accountability on March 31, 2015:

The CS provides that records may be released in the same manner as if the records were being held by a private veterinarian. The CS removes references to animals having privacy rights or agents. The CS also conforms the public necessity statement to the CS.

CS by Regulated Industries on March 18, 2015:

CS/SB 716 provides a statement of public necessity that animal medical records held by or transferred to any accredited state college of veterinary medicine be confidential and exempt from the inspection and copying requirements set forth in s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution.

Confidential and exempt medical records that are transferred in connection with official business by any accredited state college of veterinary medicine remain confidential and exempt from disclosure.

Confidential and exempt animal medical records may be disclosed to another governmental entity in the performance of its duties and responsibilities.

B. Amendments:

None.



815610

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/31/2015	.	
	.	
	.	
	.	

The Committee on Governmental Oversight and Accountability
(Hays) recommended the following:

Senate Amendment (with title amendment)

Delete lines 38 - 75
and insert:
performance of its duties and responsibilities and may be
disclosed pursuant to s. 474.2165.

(3) The exemption from public records requirements under
subsection (1) applies to animal medical records held before,
on, or after the effective date of this exemption.

(4) This section is subject to the Open Government Sunset



815610

Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that a medical record that relates to diagnosing the medical condition of an animal; prescribing, dispensing, or administering drugs, medicine, appliances, applications, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of an animal; or performing a manual procedure for the diagnosis of or treatment for pregnancy or fertility or infertility of an animal, which is held by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature also finds that it is a public necessity that any such medical record that is transferred by a previous records owner in connection with the transaction of official business by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education and that is held by such state college be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature also finds that it is a public necessity that this exemption apply to such animal medical records held by such a state college of veterinary medicine before, on, or after the effective date of the exemption. The Legislature finds that the release of such animal medical records compromises the confidentiality protections



815610

otherwise afforded the owners of such animals treated by
licensed veterinarians in this state pursuant to chapter 474.
The Legislature finds that the owners of animals have the right
to the privacy of the medical records of their animals. The
Legislature finds that this exemption permits a state college of
veterinary medicine accredited by the American Veterinary
Medical Association Council on Education to effectively and
efficiently carry out its mission to educate students in
veterinary medicine. Without this exemption this mission would
be significantly impaired.

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

And the title is amended as follows:

Delete line 9

and insert:

applicability of the exemption; providing

By the Committee on Regulated Industries; and Senators Hays,
Soto, and Diaz de la Portilla

580-02523-15

2015716c1

A bill to be entitled

An act relating to public records; creating s.
474.2167, F.S.; providing an exemption from public
records requirements for certain animal medical
records held by a state college of veterinary medicine
that is accredited by the American Veterinary Medical
Association Council on Education; authorizing
disclosure under certain circumstances; providing for
retroactive applicability of the exemption; 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. Section 474.2167, Florida Statutes, is created
to read:

474.2167 Confidentiality of animal medical records.—

(1) The following records held by any state college of
veterinary medicine that is accredited by the American
Veterinary Medical Association Council on Education are
confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
of the State Constitution:

(a) A medical record generated which relates to diagnosing
the medical condition of an animal; prescribing, dispensing, or
administering drugs, medicine, appliances, applications, or
treatment of whatever nature for the prevention, cure, or relief
of a wound, fracture, bodily injury, or disease of an animal; or
performing a manual procedure for the diagnosis of or treatment

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

580-02523-15

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for pregnancy, fertility, or infertility of an animal; and

(b) A medical record described in paragraph (a) which is
transferred by a previous record owner in connection with the
transaction of official business by a state college of
veterinary medicine that is accredited by the American
Veterinary Medical Association Council on Education.

(2) A record made confidential and exempt under subsection
(1) may be disclosed to another governmental entity in the
performance of its duties and responsibilities.

(3) The exemption from public records requirements under
subsection (1) applies to animal medical records held before,
on, or after the effective date of this exemption.

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

Section 2. The Legislature finds that it is a public
necessity that a medical record generated which relates to
diagnosing the medical condition of an animal; prescribing,
dispensing, or administering drugs, medicine, appliances,
applications, or treatment of whatever nature for the
prevention, cure, or relief of a wound, fracture, bodily injury,
or disease of an animal; or performing a manual procedure for
the diagnosis of or treatment for pregnancy or fertility or
infertility of an animal, which is held by a state college of
veterinary medicine that is accredited by the American
Veterinary Medical Association Council on Education, be made
confidential and exempt from s. 119.07(1), Florida Statutes, and
s. 24(a), Article I of the State Constitution. The Legislature

Page 2 of 3

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

580-02523-15

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59 also finds that it is a public necessity that any such medical
60 record that is transferred by a previous records owner in
61 connection with the transaction of official business by a state
62 college of veterinary medicine that is accredited by the
63 American Veterinary Medical Association Council on Education and
64 that is held by such state college be made confidential and
65 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
66 Article I of the State Constitution. The Legislature also finds
67 that it is a public necessity that this exemption apply to such
68 animal medical records held by such a state college of
69 veterinary medicine before, on, or after the effective date of
70 the exemption. The Legislature finds that the release of such
71 animal medical records will compromise the confidentiality
72 protections otherwise afforded to animals and the owners or
73 agents of such animals treated by licensed veterinarians. The
74 Legislature finds that owners or agents of animals have the
75 right to the privacy of the medical records of their animals.
76 The Legislature finds that the privacy concerns that result from
77 the release of animal medical records outweigh any public
78 benefit that may be derived from the disclosure of the
79 information.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on General Government, *Chair*
Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Environmental Preservation and Conservation
Ethics and Elections
Fiscal Policy

JOINT COMMITTEE:

Joint Select Committee on Collective Bargaining, *Alternating Chair*

SENATOR ALAN HAYS

11th District

MEMORANDUM

To: Senator Jeremy Ring, Chair
Governmental Oversight and Accountability Committee
CC: Joe McVaney, Staff Director
Allison Rudd, Committee Administrative Assistant

From: Senator D. Alan Hays

Subject: Request to agenda SB 716 – Public Records/Animal Medical Records

Date: March 23, 2015

I respectfully request that you agenda the above referenced bill at your earliest convenience. If you have any questions regarding this legislation, I welcome the opportunity to meet with you one-on-one to discuss it in further detail. Thank you so much for your consideration of this request.

Sincerely,

A handwritten signature in cursive script that reads "D. Alan Hays" followed by a stylized flourish.

D. Alan Hays, DMD
State Senator, District 11

REPLY TO:

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ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/31/15
Meeting Date

716
Bill Number (if applicable)

Topic Vet Reads

Amendment Barcode (if applicable)

Name WILBUR BREWTON

Job Title _____

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Speaking: ☒ For ☐ Against ☒ Information *if needed* Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing University of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: SM 1422

INTRODUCER: Senator Abruzzo

SUBJECT: Iran/Economic Sanctions

DATE: March 31, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sanders	Ryon	MS	Favorable
2.	Peacock	McVane	GO	Favorable
3.			RC	

I. Summary:

SM 1422 urges Congress and the President of the United States to pass and enact new economic sanctions against Iran should that nation be found to be in violation of the Joint Plan of Action (JPOA) or fail to reach an acceptable agreement by the dates set forth in the November 2014 extension of the JPOA.

II. Present Situation:

In a 2006 resolution, the United Nations Security Council¹ (Security Council) noted with serious concern that Iran's nuclear program could have a military nuclear dimension.² The Security Council also noted that the International Atomic Energy Agency³ (IAEA) has been unable to conclude that there are no undeclared nuclear materials or activities in Iran.⁴ Since then the Security Council has published eight additional resolutions determining that Iran's proliferation of weapons of mass destruction, as well as their means of delivery, continued to constitute a threat to international peace and security.⁵

¹ The United Nations Security Council has primary responsibility for the maintenance of international peace and security. The council also takes the lead in determining the existence of a threat to the peace or act of aggression. The Security Council is composed of five permanent members (China, France, Russia, the United Kingdom, and the United States) and 10 non-permanent members elected for two-year terms by the General Assembly of the United Nations.

² United Nations Security Council, *Resolution 1696*, 1 (2006), [http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1696\(2006\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1696(2006)) (last visited March 19, 2015).

³ The International Atomic Energy Agency (IAEA) was established in 1957 as the world's center for cooperation in the nuclear field, the IAEA works with its Member States and multiple partners worldwide to promote the safe, secure and peaceful use of nuclear technologies. <https://www.iaea.org/>.

⁴ United Nations Security Council, *Resolution 1696*, 1 (2006), [http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1696\(2006\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1696(2006)) (last visited March 19, 2015).

⁵ United Nations Security Council, *Resolution 2159*, 1 (2014), [http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2159%20\(2014\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2159%20(2014)) (last visited March 19, 2015).

In an effort to perpetuate diplomatic negotiations, the five permanent members of the Security Council (known as the P5) in partnership with Germany convened to negotiate an agreement with Iran to prevent the development of nuclear weapons in Iran. An initial agreement was reached in November 2013 that outlined measures to be taken by all parties within a six month time frame. This initial agreement called for the P5+1⁶ and Iran to also finalize within six months a mutually-agreed upon long-term comprehensive solution that would ensure Iran's nuclear program will be exclusively peaceful.⁷

Joint Plan of Action

On November 24, 2013, the P5+1 and Iran formalized their agreement by signing the Joint Plan of Action (JPOA). The JPOA is an interim agreement and is the first step towards a long-term solution to stop the advance of Iran's nuclear program. Both the P5+1 and Iran are held to a series of voluntary measures for a duration of six months with the option to extend the JPOA, if necessary.⁸ The JPOA has since been renewed and extended twice, first on July 19, 2014, and again on November 24, 2014.⁹

Voluntary Measures Committed to by Iran

As part of the JPOA, Iran agreed to implement the following measures beginning January 20, 2014:¹⁰

- Halt production of enriched uranium¹¹ and disable the centrifuges¹² used to produce the material;
- Dilute and reduce the enriched uranium stockpile;
- Limit safeguarded research and development;
- Provide access for the International Atomic Energy Association (IAEA) to verify compliance on the technical understandings of the JPOA;
- Be transparent about its nuclear program by allowing access to its facilities, equipment, surveillance information, and other infrastructure; and
- Permit IAEA inspectors to conduct scheduled and unannounced inspections.¹³

⁶ Germany is recognized as an additional partner (“+1”) for the P5 in diplomatic negotiations with Iran.

⁷ European Union, European External Action Service, *Joint Plan of Action* (2013).
http://eeas.europa.eu/statements/docs/2013/131124_03_en.pdf (last visited March 19, 2015).

⁸ *Id.*

⁹ United States Department of the Treasury, Office of Foreign Assets Control, *Frequently Asked Questions Relating to the Extension of Temporary Sanctions Relief through June 30, 2015, to Implement the Joint Plan of Action between the P5 + 1 and the Islamic Republic of Iran*, http://www.treasury.gov/resource-center/sanctions/Programs/Documents/jpoa_ext_faq_11252014.pdf (last visited March 19, 2015).

¹⁰ The White House, Office of the Press Secretary, *Summary of Technical Understandings Related to the Implementation of the Joint Plan of Action on the Islamic Republic of Iran's Nuclear Program*, <https://www.whitehouse.gov/the-press-office/2014/01/16/summary-technical-understandings-related-implementation-joint-plan-action> (last visited March 19, 2015).

¹¹ Uranium enrichment is one of the key steps in building nuclear weapons.

¹² A centrifuge is a device that applies rotational force to a material in order to separate particles by density. The widest use of centrifuges is for the concentration and purification of materials. See Centrifuge. In *Encyclopedia Britannica*.
<http://www.britannica.com/EBchecked/topic/102850/centrifuge> (last visited March 19, 2015).

¹³ The White House, Office of the Press Secretary, *Summary of Technical Understandings Related to the Implementation of the Joint Plan of Action on the Islamic Republic of Iran's Nuclear Program*, <https://www.whitehouse.gov/the-press-office/2014/01/16/summary-technical-understandings-related-implementation-joint-plan-action> (last visited March 19, 2015).

Voluntary Measures Committed to by the P5+1

In order to continue negotiations, the P5+1 agreed to temporarily suspend the following sanctions involving Iran's:

- Purchase and sale of gold and other precious metals;
- Export of petrochemical products;
- Automotive industry; and
- Certain associated services regarding each of the foregoing.¹⁴

Additionally, the P5+1 committed to:

- Establish financial channels to facilitate Iran's import of certain humanitarian goods to Iran;
- Payment of medical expenses incurred by Iranians abroad;
- Payment of Iran's UN obligations;
- Payment of \$400 million in governmental tuition assistance for Iranian students studying abroad;
- License certain transactions related to the safety of Iran's civil aviation industry;
- Pause efforts to further reduce Iran's crude oil exports; and
- Enable Iran to access \$4.2 billion in Restricted Funds.¹⁵

These voluntary measures may be revoked at any time should Iran fail to comply with the JPOA.¹⁶

International Atomic Energy Association

The International Atomic Energy Association (IAEA) is designated by the United Nations' Treaty on the Non-Proliferation of Nuclear Weapons (NPT)¹⁷ as the authority responsible for the implementation of a safeguards system intended to prevent the diversion of nuclear material for weapons use.¹⁸ The IAEA has been the authority on nuclear inspections since the inception of the NPT in 1968.

¹⁴ United States Department of the Treasury, Office of Foreign Assets Control, *Frequently Asked Questions Relating to the Extension of Temporary Sanctions Relief through June 30, 2015, to Implement the Joint Plan of Action between the P5 + 1 and the Islamic Republic of Iran*, http://www.treasury.gov/resource-center/sanctions/Programs/Documents/jpoa_ext_faq_11252014.pdf (last visited March 19, 2015).

¹⁵ The term "Restricted Funds" refers to: any existing and future revenues from the sale of Iranian petroleum or petroleum products, wherever they may be held, and any Central Bank of Iran (CBI) funds, with certain exceptions for non-petroleum CBI funds held at a foreign country's central bank.

¹⁶ European Union, European External Action Service, *Joint Plan of Action* (2013). http://eeas.europa.eu/statements/docs/2013/131124_03_en.pdf (last visited March 19, 2015).

¹⁷ The Treaty on the Non-Proliferation of Nuclear Weapons (NPT) is a binding, multilateral treaty to the goal of preventing the spread of nuclear weapons and weapons technology, to promote cooperation in the peaceful uses of nuclear energy and to achieve nuclear disarmament and general and complete disarmament. More countries have ratified the NPT than any other arms limitation and disarmament agreement. See <https://www.iaea.org/publications/documents/treaties/npt> (last visited March 19, 2015).

¹⁸ United National Office for Disarmament Affairs, *Treaty on the Non-Proliferation of Nuclear Weapons (NPT)*, UN.org, <http://www.un.org/disarmament/WMD/Nuclear/NPT.shtml> (last visited March 19, 2015).

As member states of the United Nations, the P5+1 and Iran delegated the IAEA as the investigative authority for determining Iran's compliance with the provisions of the JPOA. The IAEA is tasked to verify that Iran:

- Is not enriching uranium in centrifuges at its major nuclear facilities;
- Limits its centrifuge production to those needed to replace damaged machines, so Iran cannot stockpile centrifuges;
- Does not construct additional enrichment facilities;
- Does not go beyond its current enrichment research and development practices;
- Does not operate, produce or test fuel, install additional components, or transfer material to the Arak¹⁹ reactor; and
- Does not construct a facility capable of reprocessing.^{20, 21}

The IAEA remains concerned about the possible existence in Iran of undisclosed nuclear-related activities involving military-related organizations, including activities related to the development of a nuclear payload for a missile.²²

III. Effect of Proposed Changes:

The memorial urges the Congress and the President of the United States to pass and enact new economic sanctions against Iran should that nation be found to be in violation of the Joint Plan of Action (JPOA) or fail to reach an acceptable agreement by the dates set forth in the November 2014 extension of the JPOA.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁹ The Arak complex is host to a water production plant and the IR-40 heavy water reactor, which remains under construction. See, the Institute for Science and International Security website at <http://www.isisnucleariran.org/sites/detail/arak/>.

²⁰ Reprocessing is a series of chemical operations that separates plutonium and uranium from other nuclear waste contained in the used (or "spent") fuel from nuclear power reactors. The separated plutonium can be used to fuel reactors, but also to make nuclear weapons.

²¹ The White House, Office of the Press Secretary, *Summary of Technical Understandings Related to the Implementation of the Joint Plan of Action on the Islamic Republic of Iran's Nuclear Program*, <https://www.whitehouse.gov/the-press-office/2014/01/16/summary-technical-understandings-related-implementation-joint-plan-actio> (last visited March 19, 2015).

²² Iran is required to cooperate fully with the IAEA on all outstanding issues, particularly those which give rise to concerns about the possible military dimensions to Iran's nuclear program, including by providing access without delay to all sites, equipment, persons and documents requested by the IAEA. See United Nations Security Council Resolution 1929, [http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1929\(2010\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1929(2010)) (last visited March 19, 2015).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Abruzzo

25-00335A-15

20151422__

Senate Memorial

A memorial to the Congress of the United States and the President of the United States, urging them to pass and enact new economic sanctions against Iran should that nation be found to be in violation of the Joint Plan of Action or fail to reach an acceptable agreement by the dates set forth in the November 2014 extension of the Joint Plan of Action.

WHEREAS, Iran has installed 19,000 centrifuges, and

WHEREAS, Iran continues to research and develop advanced centrifuges and has not cooperated with the International Atomic Energy Agency's investigation into the possible military dimensions of its nuclear program, and

WHEREAS, a nuclear-armed Iran poses a significant threat to the United States and international security, and

WHEREAS, the P5+1 has agreed to two extensions of the Joint Plan of Action and Iran has not publicly agreed to any significant concessions, and

WHEREAS, the United States must make clear that new economic sanctions will be enacted if Iran does not timely enter into a nuclear agreement, NOW, THEREFORE,

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

That the Congress of the United States and the President of the United States are urged to pass and enact new economic sanctions against Iran should that nation be found to be in violation of the Joint Plan of Action or fail to reach an

Page 1 of 2

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25-00335A-15

20151422__

acceptable agreement by the dates set forth in the November 2014 extension of the Joint Plan of Action.

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

Page 2 of 2

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/SB 1108

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Flores

SUBJECT: Public Records/Identity of a Victim/Human Trafficking Offenses

DATE: April 1, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable
2.	Kim	McVaney	GO	Fav/CS
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1108 expands the current public records exemption for certain criminal intelligence and criminal investigative information to include identifying information of a child victim of human trafficking for labor or services, as well as any victim of human trafficking for commercial sexual activity.

The bill also creates a public record exemption for this newly described criminal intelligence or investigative information relating to human trafficking victims that is expunged or ordered expunged under s. 943.0583, F.S.

The bill provides for repeal of the exemptions on October 2, 2020, pursuant to the Open Government Sunset Review Act, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

This bill expands an existing public record exemption and creates a new one; therefore, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included in the Florida Constitution.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records or open

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "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." Section 119.011(2), F.S., defines "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 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 Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁵ Section 119.07(1)(a), F.S.

⁶ 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 (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

meetings exemptions.¹⁰ The OGSR 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.¹¹

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹² An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹³
- 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;¹⁴ or
- It protects trade or business secrets.¹⁵

The OGSR also requires specified questions to be considered during the review process.¹⁶ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.¹⁷ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.¹⁸

¹⁰ 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 OGSR 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.

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

¹³ Section 119.15(6)(b)1., F.S.

¹⁴ Section 119.15(6)(b)2., F.S.

¹⁵ Section 119.15(6)(b)3., F.S.

¹⁶ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?
If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

¹⁷ FLA. CONST., art. I, s. 24(c).

¹⁸ Section 119.15(7), F.S.

Public Record Exemption for Investigation Information

Section 119.071(2)(h), F.S., provides that specified criminal intelligence information¹⁹ or criminal investigative information^{20,21} is confidential and exempt from public records requirements, including the following:

- Any information, including the photograph, name, address, or other fact, which reveals the identity of the victim of the crime of child abuse as defined by ch. 827, F.S. (child abuse);
- Any information, which may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in ch. 794, F.S. (sexual battery), ch. 796, F.S. (prostitution), ch. 800, F.S. (lewdness and indecent exposure), ch. 827, F.S. (abuse of children), or ch. 847, F.S. (obscenity); and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under ch. 794, F.S. (sexual battery), ch. 796, F.S. (prostitution), ch. 800, F.S. (lewdness and indecent exposure), s. 810.145, F.S. (video voyeurism), ch. 827, F.S. (child abuse), or ch. 847, F.S. (obscenity), regardless of whether the photograph, videotape, or image identifies the victim.²²

This confidential and exempt criminal investigative and criminal intelligence information may be disclosed by a law enforcement agency in specified instances, including:

- In the furtherance of its official duties and responsibilities;
- For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered;²³ or
- To another governmental agency in the furtherance of its official duties and responsibilities.

¹⁹ Section 119.011(3)(a), F.S., defines “criminal intelligence information” to mean 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.

²⁰ Section 119.011(3)(b), F.S., defines “criminal investigative information” to mean 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.

²¹ Section 119.011(3)(c), F.S., provides “criminal intelligence information” and “criminal investigative information” shall not include:

- The time, date, location, and nature of a reported crime.
- The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.071(2)(h), F.S.
- The time, date, and location of the incident and of the arrest.
- The crime charged.
- Documents given or required by law or agency rule to be given to the person arrested, except as provided in s. 119.071(2)(h), F.S., and, except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the provisions of s. 119.071(1), F.S., until released at trial if it is found that the release of such information would:
 - Be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness; and
 - Impair the ability of a state attorney to locate or prosecute a codefendant.
- Informations and indictments except as provided in s. 905.26, F.S.

²² Section 119.071(2)(h)3., F.S., requires the exemption to apply to confidential and exempt criminal intelligence and criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

²³ Section 119.071(2)(h)2.b., F.S., provides the information disclosed should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.

Public Record Exemption for Expunged Criminal History Records

A criminal history record of a minor or an adult that is ordered expunged must be physically destroyed by any criminal justice agency having custody of such record, with the exception of the Florida Department of Law Enforcement (FDLE), which must retain criminal history records in all cases.²⁴ Current law provides that a criminal history record ordered expunged that is retained by FDLE is confidential and exempt from public records requirements, and is not available to any person or entity except upon order of the court with jurisdiction.²⁵

In addition, information relating to the existence of an expunged criminal history record is confidential and exempt from public record requirements; however, FDLE must disclose the existence of such record to specified entities for their respective licensing, access authorization, and employment purposes as well as to criminal justice agencies for their respective criminal justice purposes.²⁶ Disclosure of the existence of such record to unauthorized persons is a first degree misdemeanor.²⁷

Human Trafficking

Human trafficking is defined as “transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.”²⁸ The human trafficking statute, s. 787.06, F.S., states that the Legislature finds that this crime is a form of modern-day slavery and that victims of human trafficking include young children, teenagers, and adults. These victims are subjected to force, fraud, or coercion so they can become forced labor or be sexually exploited.²⁹

Human Trafficking Victim Expunction/Public Record Exemption

Section 943.0583, F.S., authorizes a victim of human trafficking to petition the court for an expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed while he or she was a victim of human trafficking. The statute defines “victim of human trafficking” to mean a person subjected to coercion for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.³⁰

The court of original jurisdiction over the crime desired to be expunged is the court designated in the statute to hear the victim’s petition.³¹ A petition must be initiated by the petitioner with due

²⁴ Section 943.0585(4), F.S.

²⁵ *Id.*

²⁶ Section 943.0585(4)(c), F.S.

²⁷ *Id.* A first degree misdemeanor is punishable by serving up to one year in county jail and/or paying a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

²⁸ Section 787.06(2)(d), F.S.

²⁹ Section 787.06(1)(a), F.S.

³⁰ Section 943.0583(1)(c), F.S.

³¹ Section 943.0583(2), F.S.

diligence after the victim has ceased being a victim of human trafficking or has sought human trafficking services.³² A petition to expunge must be accompanied by the following:

- A sworn statement attesting that the petitioner is eligible for an expunction to the best of his or her knowledge and does not have other petitions to expunge or seal pending before any court; and
- Official documentation of the petitioner's status as a human trafficking victim, if any exists.³³

The petitioner or the petitioner's attorney is allowed under the statute to appear at the hearing telephonically, via video conference, or by other electronic means.³⁴

If the court grants relief to the petitioner, the clerk of the court must certify copies of the expunction order to the appropriate state attorney or statewide prosecutor and the arresting agency. FDLE is responsible for forwarding the order to expunge to the Federal Bureau of Investigation.³⁵

Any criminal justice agency having custody of such record, except FDLE, must physically destroy the record. Human trafficking victims receiving a record expunction under this statute are lawfully able to deny or fail to acknowledge the covered arrests, except if they are applying for employment with a criminal justice agency or are a defendant in a criminal prosecution.³⁶

A criminal history record ordered expunged under this section that is retained by FDLE is confidential and exempt from public record requirements and can only be made available to criminal justice agencies for their respective criminal justice purposes and to any governmental agency that is authorized to determine eligibility to buy or possess a firearm or to carry a concealed firearm for use in the course of such agency's official duties. A criminal justice agency may retain a notation indicating compliance with an order to expunge. The exemption is repealed on October 2, 2018, unless reviewed and reenacted by the Legislature.³⁷

III. Effect of Proposed Changes:

CS/SB 1108 expands the current public records exemption for certain criminal intelligence and criminal investigative information that is confidential and exempt under s. 119.071(2)(h), F.S., to include the following:

- Any information that reveals the identity of a person under 18 who is the victim of human trafficking for labor or services under s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is the victim of human trafficking for commercial sexual activity under s. 787.06(3)(b), (d), (f), or (g), F.S.; and
- Any photograph, videotape, or image of a body part of a victim of human trafficking involving commercial sexual activity under s. 787.06(3)(b), (d), (f), or (g), F.S.

³² Section 943.0583(4), F.S.

³³ Section 943.0583(6), F.S.

³⁴ Section 943.0583(7)(b), F.S.

³⁵ Section 943.0583(7)(c), F.S.

³⁶ Section 943.0583(8), F.S.

³⁷ Section 943.0583(10), F.S.

This bill does not exempt criminal intelligence and investigative information related to an adult or child who is an unauthorized alien and a victim of human trafficking for labor or services under s. 787.06(3)(c), F.S. It is not clear why this category of people are excluded from the exemption since unauthorized aliens who are trafficked for commercial sexual activity under 787.06(3)(d), F.S., are included in this exemption.

The bill also creates a public record exemption under s. 943.0583, F.S. The new exemption makes confidential and exempt from public disclosure any criminal intelligence information or criminal investigative information that reveals the identity of victim of human trafficking whose criminal history has been expunged. The exemption also applies to criminal intelligence information or criminal investigative information that may reveal the identity of a victim of human trafficking whose criminal history been ordered to be expunged.

The exempted information may be disclosed by a law enforcement agency as follows:

- In the furtherance of its official duties and responsibilities;
- For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered;³⁸ or
- To another governmental agency in the furtherance of its official duties and responsibilities.

The exemption applies to information held by a law enforcement agency before, on, or after the effective date of the exemption.

The bill provides the following public necessity statement as required by the Florida Constitution:

The Legislature finds that it is a public necessity to make confidential and exempt from public records requirements certain intelligence or investigative records revealing the identity of a minor victim for labor or any victim for commercial sexual activity of human trafficking. The identity of such victims is of a sensitive personal nature and protecting the release of such information protects them from further embarrassment, harassment, or injury.

The Legislature also finds that it is a public necessity that intelligence or investigative records related to a criminal history record ordered expunged under s. 943.0583, Florida Statutes, which would or could reasonably be expected to reveal the identity of a victim of human trafficking whose criminal history record has been ordered expunged be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State Constitution. Persons who are victims of human trafficking and who have been charged with crimes allegedly committed at the behest of their traffickers are themselves victims of crimes. Such victims face barriers to employment and other life opportunities as long as these criminal charges remain on record and accessible to potential employers and others. It is necessary that these records be made confidential in order for human trafficking victims to have the chance to rebuild their lives and reenter society.

³⁸ See Note 17.

It also provides for repeal of the exemptions on October 2, 2020, unless reviewed and reenacted by the Legislature.

The act will become effective on October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

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 or expanded public record or public meeting exemption. The bill expands and creates a public record 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 expands and creates a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 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 a public record exemption limited to certain criminal intelligence and criminal investigative information relating to human trafficking and it creates a public record exemption limited to such information that has been ordered expunged. The exemption appears to be no broader than necessary to accomplish its stated purpose.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 119.071 and 943.0583.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on March 31, 2015:

The CS removes the contingent effective date which linked the bill to the enactment of SB 1106 and provides an effective date.

B. Amendments:

None.



359086

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/31/2015	.	
	.	
	.	
	.	

The Committee on Governmental Oversight and Accountability
(Bullard) recommended the following:

Senate Amendment (with title amendment)

Delete lines 135 - 138

and insert:

Section 4. This act shall take effect October 1, 2015.

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

And the title is amended as follows:

Delete lines 13 - 14

and insert:



359086

11 providing a statement of public necessity; providing
12 an effective date.

By Senator Flores

37-00752-15

20151108__

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; revising an exemption from public records requirements for certain criminal intelligence and investigative information to exempt information that reveals the identity of a victim of certain human trafficking offenses; amending s. 943.0583, F.S.; providing an exemption from public records requirements for investigative information relating to criminal history records of human trafficking victims that have been ordered expunged; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Paragraph (h) of subsection (2) of section 119.071, Florida Statutes, is amended to read:

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

(2) AGENCY INVESTIGATIONS.—

(h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Any information ~~that, including the photograph, name, address, or other fact, which~~ reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that

Page 1 of 5

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

37-00752-15

20151108__

reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).

b. Any information ~~that which~~ may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.

c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.

2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:

a. In the furtherance of its official duties and responsibilities.

b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.

c. To another governmental agency in the furtherance of its official duties and responsibilities.

3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative

Page 2 of 5

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

37-00752-15

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information held by a law enforcement agency before, on, or after the effective date of the exemption.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2020 ~~2016~~, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Subsection (11) is added to section 943.0583, Florida Statutes, to read:

943.0583 Human trafficking victim expunction.—

(11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.

2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.

(b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:

1. In the furtherance of its official duties and responsibilities.

2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.

37-00752-15

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3. To another governmental agency in the furtherance of its official duties and responsibilities.

(c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

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

Section 3. The Legislature finds that it is a public necessity to make confidential and exempt from public records requirements certain criminal intelligence information or criminal investigative information that reveals the identity of a victim of the crime of human trafficking of a minor for labor or any victim of human trafficking for commercial sexual activity. The Legislature finds that it is important to strengthen the protections afforded victims of human trafficking for labor who are minors and victims of human trafficking for commercial sexual activity, regardless of age, in order to ensure their privacy and to prevent their revictimization by making such information confidential and exempt. The identity of these victims is information of a sensitive personal nature. As such, this exemption serves to minimize the trauma to victims because the release of such information would compound the tragedy already visited upon their lives and would be defamatory to or cause unwarranted damage to the good name or reputation of the victims. Protecting the release of identifying information of such victims protects them from further embarrassment,

37-00752-15

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117 harassment, or injury. The Legislature also finds that it is a
118 public necessity that information in the investigative or
119 intelligence records related to a criminal history record
120 ordered expunged under s. 943.0583, Florida Statutes, which
121 would or could reasonably be expected to reveal the identity of
122 a person who is a victim of human trafficking whose criminal
123 history record has been ordered expunged under s. 943.0583,
124 Florida Statutes, be made confidential and exempt from s.
125 119.07(1), Florida Statutes, and s. 24(a), Article I of the
126 State Constitution. Persons who are victims of human trafficking
127 and who have been charged with crimes allegedly committed at the
128 behest of their traffickers are themselves victims of crimes.
129 Such victims face barriers to employment and other life
130 opportunities as long as these criminal charges remain on record
131 and accessible to potential employers and others. Therefore, it
132 is necessary that these records be made confidential and exempt
133 in order for human trafficking victims to have the chance to
134 rebuild their lives and reenter society.

135 Section 4. This act shall take effect on the same date that
136 SB ____ or similar legislation relating to human trafficking
137 takes effect, if such legislation is adopted in the same
138 legislative session or an extension thereof and becomes a law.



The Florida Senate

Committee Agenda Request

To: Senator Jeremy Ring, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: March 24, 2015

I respectfully request that **Senate Bill #1108**, relating to Public Records / Human Trafficking Victims, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in cursive script that reads "Anitere Flores".

Senator Anitere Flores
Florida Senate, District 37



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Fiscal Policy, *Chair*
Appropriations
Appropriations Subcommittee on Criminal and
Civil Justice
Ethics and Elections
Finance and Tax
Health Policy
Regulated Industries

SENATOR ANITERE FLORES

37th District

March 31, 2015

The Honorable Jeremy Ring
Chair of Senate Committee on Governmental Oversight and Accountability
525 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Ring:

Due to a scheduling conflict, I request that in my absence, my legislative assistant, William McRea present SB 1108 and SB1110.

Please do not hesitate to contact me should you have any questions.

Sincerely,


Anitere Flores

CC: Joe McVaney, Staff Director, Committee on Governmental Oversight and Accountability, 525 Knott Building

REPLY TO:

- ☐ 10691 North Kendall Drive, Suite 309, Miami, Florida 33176 (305) 270-6550
- ☐ 413 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5037

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-31-15
Meeting Date

1108
Bill Number (if applicable)

Topic Public Records / Human Trafficking

Amendment Barcode (if applicable)

Name Erin Choy

Job Title Board Member

Address 404 E. Sixth Ave.
Street

Phone (850) 556-4133

Tallahassee, FL 32303
City State Zip

Email echoy@craterblastsres.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Junior Leagues of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/15
Meeting Date

1108
Bill Number (if applicable)

Topic PUBLIC RECORDS

Amendment Barcode (if applicable)

Name Juliet Riley

Job Title GOVERNMENTAL AFFAIRS

Address 701 W RINDACOLA
Street

Phone 941 830 2922

TALLAHASSEE FL 32304
City State Zip

Email jrriley@

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing PACE Center for Girls

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/31/15
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1108
Bill Number (if applicable)

Topic Public Records / Identity of a Victim / Human Trafficking Amendment Barcode (if applicable)

Name Laura Fellman

Job Title Florida PTA Legislative Committee Member

Address 7654 Solimar Cir Phone _____
Street
Boca Raton FL 33433 Email _____
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/SB 1110

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Flores

SUBJECT: Public Records/Residential Facilities Serving Victims of Sexual Exploitation and Human Trafficking

DATE: April 1, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	Fav/CS
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1110 makes confidential and exempt from public disclosure the location information of a safe house, safe foster home, or other residential facility serving child victims of sexual exploitation. It also makes confidential and exempt the location information of a residential facility offering services for adult victims of human trafficking involving commercial sexual activity.

The exempted location information can be disclosed to an agency as necessary to maintain health and safety standards or to address emergency situations in the safe house or residential facility.

The bill provides for repeal of the exemptions on October 2, 2020, pursuant to the Open Government Sunset Review Act, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

Since the bill creates two public records exemptions, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included in the Florida Constitution.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records or open

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "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." Section 119.011(2), F.S., defines "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 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 Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁵ Section 119.07(1)(a), F.S.

⁶ 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 (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

meetings exemptions.¹⁰ The OGSR 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.¹¹

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹² An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹³
- 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;¹⁴ or
- It protects trade or business secrets.¹⁵

The OGSR also requires specified questions to be considered during the review process.¹⁶ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.¹⁷ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.¹⁸

Residential Facilities Serving Victims of Sexual Exploitation and Human Trafficking

Human trafficking is defined as “transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that

¹⁰ 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 OGSR 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.

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

¹³ Section 119.15(6)(b)1., F.S.

¹⁴ Section 119.15(6)(b)2., F.S.

¹⁵ Section 119.15(6)(b)3., F.S.

¹⁶ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

¹⁷ FLA. CONST., art. I, s. 24(c).

¹⁸ Section 119.15(7), F.S.

person.”¹⁹ The human trafficking statute, s. 787.06, F.S., states that the Legislature finds that this crime is a form of modern-day slavery and that victims of human trafficking include young children, teenagers, and adults. These victims are subjected to force, fraud, or coercion so they can become forced labor or be sexually exploited.²⁰ The statute also expresses legislative intent that the Department of Children and Families (DCF) and other state agencies cooperate with other state and federal agencies to ensure that these victims can access social services and benefits to alleviate their plight.²¹

Section 409.1678, F.S., provides specialized residential options for children who are victims of sexual exploitation²² to include safe foster homes and safe houses. A “safe foster home” is a foster home certified by the DCF to care for sexually exploited children.²³ A “safe house” is a group residential placement certified by the DCF to also care for sexually exploited children.²⁴ To be certified, a safe foster home must hold a license as a family foster home, and a safe house must hold a license as a residential child-caring agency, both defined under s. 409.175, F.S.²⁵

These residential facilities must also do the following to be designated a safe foster home or safe house under the statute: use strength-based and trauma-informed approaches to care; serve exclusively one sex; group sexually exploited children by age or maturity level; care for them in a way that separates them from children with other needs; have awake staff members on duty 24 hours a day; provide appropriate security; and meet all other department criteria.²⁶

There are traditional residential facilities that serve both children and adult victims of sexual exploitation, but if these facilities serve adults, they cannot be designated a safe foster home or safe house under s. 409.1678, F.S.

III. Effect of Proposed Changes:

The bill creates a new public records exemption for facilities that serve children and adults who are victims of sexual exploitation and trafficking. The bill makes confidential and exempt from public records the location information of a safe house, safe foster home, or other residential facility serving child victims of sexual exploitation. It also makes confidential and exempt from public disclosure the location information of a residential facility offering services for adult victims of human trafficking involving commercial sexual activity.

The bill allows the exempted location information to be disclosed to an agency as necessary to maintain health and safety standards or to address emergency situations in the safe house or residential facility. This may be problematic if an agency needs to disclose the location information for any other purpose since confidential and exempt information can only be

¹⁹ Section 787.06(2)(d), F.S.

²⁰ Section 787.06(1)(a), F.S.

²¹ Section 787.06(1)(d), F.S.

²² Defined in part, to include allowing, encouraging, or forcing a child to participate in the trade of human trafficking for commercial sexual activity. Section 39.01(69)(g)3., F.S.

²³ Section 409.1678(1)(a), F.S.

²⁴ Section 409.1678(1)(b), F.S.

²⁵ Section 409.1678(2)(c), F.S.

²⁶ *Id.*

released pursuant to statute or by a court order. However, since this exemption only applies to agencies, the victim may reveal his or her location if the need arose.

The bill provides the following public necessity statement as required by the Florida Constitution:

The Legislature finds that it is a public necessity to make confidential and exempt from public records requirements the location information of safe houses, safe foster homes, and other residential facilities serving child victims of sexual exploitation or adult victims of human trafficking involving commercial sexual activity. Knowledge about such location information could enable the individuals who victimized these persons to locate and attempt to return them to their former situations, or continue their victimization and inhibit their recoveries. It could also enable other individuals to locate and attempt to victimize the residents.

It also provides for repeal of the exemptions on October 2, 2020, unless reviewed and reenacted by the Legislature, pursuant to the OGSR.

This act will go into effect on October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. 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, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

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 or expanded public record or public meeting exemption. The bill creates two public records exemptions and 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 two public records exemptions and it includes a public necessity statement.

Breadth of Exemption

Article I, s. 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 creates two limited public records exemptions: one exempts the location information of safe houses, safe foster homes, and other residential facilities serving child victims of sexual exploitation and the other exempts the location information of residential facilities for adult victims of human trafficking involving commercial sexual activity. These exemptions are not broader than necessary to accomplish their purpose.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not include a retroactivity clause, therefore the exemption would only apply prospectively. Any location information held by an agency before this bill goes into effect will remain public.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 409.1678 and 787.06.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on March 31, 2015:

The CS removes the contingent effective date which linked the bill to the enactment of SB 1106 and adds an effective date.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



188706

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/31/2015	.	
	.	
	.	
	.	

The Committee on Governmental Oversight and Accountability
(Bullard) recommended the following:

Senate Amendment (with title amendment)

Delete lines 89 - 92
and insert:
Section 4. This act shall take effect October 1, 2015.

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

And the title is amended as follows:

Delete lines 15 - 16
and insert:



188706

11 providing a statement of public necessity; providing
12 an effective date.

By Senator Flores

37-00753-15

20151110__

A bill to be entitled

An act relating to public records; amending s. 409.1678, F.S.; providing an exemption from public records requirements for information held by an agency about the location of safe houses, safe foster homes, and other residential facilities serving victims of sexual exploitation; providing for future legislative review and repeal of the exemption; amending s. 787.06, F.S.; providing an exemption from public records requirements for information held by an agency about the location of residential facilities serving adult victims of human trafficking involving commercial sexual activity; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (6) is added to section 409.1678, Florida Statutes, to read:

409.1678 Specialized residential options for children who are victims of sexual exploitation.—

(6) (a) LOCATION INFORMATION.—Information about the location of a safe house, safe foster home, or other residential facility serving children who are victims of sexual exploitation, as defined in s. 39.01(69)(g), which is held by an agency, as defined in s. 119.011, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

Page 1 of 4

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

37-00753-15

20151110__

(b) Information about the location of a safe house, safe foster home, or other residential facility serving children who are victims of sexual exploitation, as defined in s. 39.01(69)(g), may be provided to an agency, as defined in s. 119.011, as necessary to maintain health and safety standards and to address emergency situations in the safe house, safe foster home, or other residential facility.

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

Section 2. Subsection (9) is added to section 787.06, Florida Statutes, to read:

787.06 Human trafficking.—

(9) (a) Information about the location of a residential facility offering services for adult victims of human trafficking involving commercial sexual activity, which is held by an agency, as defined in s. 119.011, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Information about the location of a residential facility offering services for adult victims of human trafficking involving commercial sexual activity may be provided to an agency, as defined in s. 119.011, as necessary to maintain health and safety standards and to address emergency situations in the residential facility.

(c) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from

Page 2 of 4

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

37-00753-15

20151110__

59 repeal through reenactment by the Legislature.

60 Section 3. The Legislature finds that it is a public
 61 necessity that information about the location of safe houses,
 62 safe foster homes, and other residential facilities serving
 63 children who are victims of sexual exploitation, as defined in
 64 s. 39.01(69)(g), Florida Statutes, or adult victims of human
 65 trafficking involving commercial sexual activity, held by an
 66 agency, as defined in s. 119.011, Florida Statutes, be made
 67 confidential and exempt from s. 119.07(1), Florida Statutes, and
 68 s. 24(a), Article I of the State Constitution. Safe houses, safe
 69 foster homes, and other residential facilities serving victims
 70 of sexual exploitation, as defined in s. 39.01(69)(g), Florida
 71 Statutes, or adult victims of human trafficking involving
 72 commercial sexual activity, are intended as refuges for sexually
 73 exploited victims from those who exploited them. If the
 74 individuals who victimized these people were able to learn the
 75 location of such facilities, they may attempt to contact their
 76 victims, exploit their vulnerabilities, and return them to the
 77 situations in which they were victimized. Even without the
 78 return of these victims to their former situations, additional
 79 contact with those who victimized them would have the effect of
 80 continuing their victimization and inhibiting their recoveries.
 81 Additionally, knowledge about the location of safe houses, safe
 82 foster homes, and other residential facilities serving victims
 83 of sexual exploitation, as defined in s. 39.01(69)(g), Florida
 84 Statutes, or adult victims of human trafficking involving
 85 commercial sexual activity, could enable other individuals to
 86 locate and attempt to victimize the residents. Therefore, it is
 87 the finding of the Legislature that such information must be

Page 3 of 4

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

37-00753-15

20151110__

88 made confidential and exempt from public records requirements.

89 Section 4. This act shall take effect on the same date that
 90 SB ____ or similar legislation relating to human trafficking
 91 takes effect, if such legislation is adopted in the same
 92 legislative session or an extension thereof and becomes a law.

Page 4 of 4

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



The Florida Senate

Committee Agenda Request

To: Senator Jeremy Ring, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: March 24, 2015

I respectfully request that **Senate Bill #1110**, relating to Public Records / Residential Facilities Serving Victims of Sexual Exploitation, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in cursive script that reads "Anitere Flores".

Senator Anitere Flores
Florida Senate, District 37



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Fiscal Policy, *Chair*
Appropriations
Appropriations Subcommittee on Criminal and
Civil Justice
Ethics and Elections
Finance and Tax
Health Policy
Regulated Industries

SENATOR ANITERE FLORES

37th District

March 31, 2015

The Honorable Jeremy Ring
Chair of Senate Committee on Governmental Oversight and Accountability
525 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Ring:

Due to a scheduling conflict, I request that in my absence, my legislative assistant, William McRea present SB 1108 and SB1110.

Please do not hesitate to contact me should you have any questions.

Sincerely,


Anitere Flores

CC: Joe McVaney, Staff Director, Committee on Governmental Oversight and Accountability, 525 Knott Building

REPLY TO:

- ☐ 10691 North Kendall Drive, Suite 309, Miami, Florida 33176 (305) 270-6550
- ☐ 413 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5037

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-31-15

Meeting Date

1110

Bill Number (if applicable)

Topic Public Rec./Residential Facilities serving victims of sexual exploitation

Amendment Barcode (if applicable)

Name Erin Choy

Job Title Board member

Address 434 E. Sixth Ave

Street

Phone (850) 556-4133

Tallahassee

FL

State

32303

Zip

Email choy@nationalstrategies.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Junior Leagues of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/31/15
Meeting Date

1110
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Juliet Rieley

Job Title Governmental Affairs

Address 701 W PENACOLA
Street

Phone 941 830 2122

TALLAHASSEE FL 32304
City State Zip

Email jrielle@my.fom.edu

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing PACE Center for Girls

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/CS/SB 962

INTRODUCER: Governmental Oversight and Accountability Committee; Community Affairs Committee; and Senator Legg

SUBJECT: Public Records/Surveillance Recordings

DATE: April 1, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	Fav/CS
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	Fav/CS
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 962 creates a public records exemption for community development district (CDD) surveillance recordings. Specifically, the bill provides that any surveillance recording created to monitor activities occurring inside or outside of a public building or on public property that is held by a CDD is confidential and exempt from public records requirements. The bill allows a CDD to disclose surveillance recordings to a law enforcement agency in the furtherance of its official duties and responsibilities, pursuant to a court order, to a person who owns property in the CDD but does not reside there, or to specified residents of the CDD who can establish proof of residency in certain enumerated ways.

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.

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

The bill creates a new public records exemption. Thus, it requires a two-thirds vote for final passage, in accordance with Article I, section 24(c) of the Florida Constitution.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. The public may 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 of persons acting on their behalf.¹ The public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.² The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.³

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁴ guarantees every person's right to inspect and copy any state or local government public record.⁵ The Sunshine Law⁶ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.⁷

The Legislature may create an exemption to public records or open meetings requirements.⁸ An exemption must specifically state the public necessity justifying the exemption⁹ and must be tailored to accomplish the stated purpose of the law.¹⁰

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(b).

³ *Id.*

⁴ Chapter 119, F.S.

⁵ 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." Section 119.011(2), F.S., defines "agency" to mean as "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 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.

⁶ Section 286.011, F.S.

⁷ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provide that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

⁸ 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 the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹¹ The OGSR 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.¹²

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹³ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁴
- 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;¹⁵ or
- It protects trade or business secrets.¹⁶

The OGSR also requires specified questions to be considered during the review process.¹⁷ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.¹⁸ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.¹⁹

¹¹ 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 OGSR 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.

¹² Section 119.15(3), F.S.

¹³ Section 119.15(6)(b), F.S.

¹⁴ Section 119.15(6)(b)1., F.S.

¹⁵ Section 119.15(6)(b)2., F.S.

¹⁶ Section 119.15(6)(b)3., F.S.

¹⁷ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?
If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

¹⁸ FLA. CONST., art. I, s. 24(c).

¹⁹ Section 119.15(7), F.S.

Community Development Districts

Community development districts (CDDs) are special districts that are local units of special purpose government, created pursuant to ch. 190, F.S., the Uniform Community Development District Act of 1980, and limited to the authority provided in that act. CDDs are governed by a five-member board of supervisors,²⁰ and have governmental authority to manage and finance infrastructure for planned developments.²¹ They are, in effect, a means by which private entities secure development capital through bond sales repaid by assessments on public improvements and community facilities.

Some CDDs utilize video cameras to provide security and surveillance within their community.²² The security cameras are set up at fixed locations in public areas such as community roadway entrances, pool areas, and clubhouses. The video is used to provide a CDD board or law enforcement with leads in the event of a crime on CDD property, or violations regarding the misuse of CDD property or rules.²³

The Florida Department of State records retention schedule for state and local agencies requires surveillance recordings to be retained for at least 30 days.²⁴ After 30 days, the recordings may be deleted or written over, or stored for longer periods. This includes CDD surveillance recordings.

A CDD is considered an “agency”²⁵ pursuant to Florida’s public records requirements, and unless a specific public records exemption exists that would protect the recordings from public access, a CDD is required to allow access to the records to anyone for inspection or copying.²⁶

Currently, a public records exemption does not exist that would specifically protect CDD surveillance recordings from public records requirements. As a result, unless a CDD chooses to discard or record over the recordings after 30 days, they must be disclosed to anyone who makes a request.

²⁰ See s. 190.006, F.S.

²¹ See s. 190.002(1)(a), F.S.

²² Pursuant to s. 190.012(2)(d), F.S., CDDs have “the power to plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain . . . systems and facilities for: . . . [s]ecurity, including, but not limited to, guard-houses, fences and gates, electronic intrusion-detection systems, and patrol cars”

²³ For more information on CDD surveillance cameras, see Jim Flateau, “Let’s increase residents’ privacy,” *The Ballantrae Communicator*, Vol. 6, No. 4 (April-June 2014), p. 4, at ballantraecdd.org/other_docs/communicator/apr-jun-2014.pdf (last visited Mar. 13, 2015).

²⁴ According to the State of Florida General Records Schedule GS1-SL for State and Local Government Agencies, effective February 19, 2015, at page 37 Item #302, surveillance recordings are only required to be maintained for 30 days. This document can be viewed at <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/> (Last viewed Mar. 13, 2015).

²⁵ Section 119.011(2), F.S., defines agency as 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.

²⁶ Section 119.07(1), F.S.

III. Effect of Proposed Changes:

Section 1 creates s. 190.0121, F.S., to create a public records exemption for surveillance recordings held by a community development district. Specifically, the bill provides that any surveillance recording created to monitor activities occurring inside or outside of a public building or on public property that is held by a CDD is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

The bill provides that a CDD may disclose such recordings to a law enforcement agency in the furtherance of its official duties and responsibilities or pursuant to a court order.²⁷ The CDD may release a recording to a nonresident owner of real property in the CDD. Additionally, the CDD may disclose such recordings to a resident of the CDD. A resident is defined as:

- A member of the United States Armed Forces stationed in the CDD;
- A family member residing with a member of the United States Armed Forces stationed in the CDD; or
- A person who has declared the CDD as his or her only residence as evidenced by:
 - A valid state driver license or identification card that has both an address within the CDD and a residence verified by the Department of Highway Safety and Motor Vehicles;
 - A current voter information card registered with an address within the CDD;
 - A sworn statement manifesting and evidencing domicile in the CDD;
 - Proof of a current homestead exemption with an address in the CDD; or
 - For a child under 18 years of age, a student identification card from a school zoned to include the CDD, or their parent's proof of residency within the CDD.

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.

Section 2 provides a statement of public necessity as required by the State Constitution. The statement of public necessity states that CDDs provide surveillance of public areas in order to monitor activities and ensure the security of its residents. The public necessity statement also provides that the exemption allows a CDD to effectively and efficiently provide security and surveillance while maintaining the privacy of the residents and guest who use community facilities. However, there are no privacy interests in a public place. In addition, privacy rights may not override public access to records. Article I, section 23 of the Florida Constitution provides that:

Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

Finally, the public necessity statement states that the exemption is necessary so that the coverage and technical aspect of the surveillance system would be revealed and make it easier for people

²⁷ This provision may be unnecessary since courts already have the power to order the release of exempt or confidential and exempt records.

to evade detection. In current law, there are two exemptions which protect information relating to security systems for property.²⁸ This exemption may be overly broad in that the necessity of protecting the technical aspects of a security system are already protected by public records exemptions.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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 or expanded public records or public meeting exemption. The bill creates a new 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 records or public meeting exemption. The bill creates a

²⁸ Section 281.301, F.S., titled “Security systems; records and meetings exempt from public access or disclosure” provides that “information relating to the security systems for any property owned by or leased to the state or any of its political subdivisions, and information relating to the security systems for any privately owned or leased property which is in the possession of any agency as defined in s. 119.011(2), including all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such systems or information, and all meetings relating directly to or that would reveal such systems or information are confidential and exempt from ss. 119.07(1) and 286.011 and other laws and rules requiring public access or disclosure. In addition s. 119.071(3)(a), F.S., provides in pertinent part: (a)1. As used in this paragraph, the term “security system plan” includes all:

- a. Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;
- b. Threat assessments conducted by any agency or any private entity;
- c. Threat response plans;
- d. Emergency evacuation plans;
- e. Sheltering arrangements; or
- f. Manuals for security personnel, emergency equipment, or security training.

2. A security system plan or portion thereof for:

- a. Any property owned by or leased to the state or any of its political subdivisions; or
- b. Any privately owned or leased property

held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption is remedial in nature, and it is the intent of the Legislature that this exemption apply to security system plans held by an agency before, on, or after the effective date of this paragraph.

new public records exemption; thus, it includes a public necessity statement. The public necessity statement may not support the breadth of the exemption.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public records or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates the public records exemption to protect from public disclosure surveillance recordings captured by a CDD. The exemption may be overly broad in scope.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CDD staff responsible for complying with public records requests may require training related to the new public records exemption. Any associated cost, however, should be absorbed as part of the day-to-day responsibilities of CDDs.

VI. Technical Deficiencies:

The bill does not include a statement of retroactivity, therefore, any videos which are in existence prior to the effect date of this act will not be protected by this exemption.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 190.0121 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Governmental Oversight and Accountability on March 31, 2015:

The CS permits a recording to be given to a nonresident who owns property in the CDD.

CS by Community Affairs on March 17, 2015:

Allows a CDD to disclose recordings to CDD residents who have proof of residency.

B. Amendments:

None.



810702

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/31/2015	.	
	.	
	.	
	.	

The Committee on Governmental Oversight and Accountability
(Legg) recommended the following:

Senate Amendment

Delete line 27
and insert:
(b) Pursuant to a court order;
(c) To a nonresident owner of real property in the
district; or

By the Committee on Community Affairs; and Senator Legg

578-02384-15

2015962c1

A bill to be entitled

An act relating to public records; creating s. 190.0121, F.S.; providing an exemption from public records requirements for certain surveillance recordings held by a community development district; providing exceptions; defining the term "resident" of a community development district; 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. Section 190.0121, Florida Statutes, is created to read:

190.0121 Public records exemption; surveillance recordings.—

(1) A surveillance recording created by monitoring activities occurring inside or outside a public building or on public property which is held by a community development district is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2) A community development district may disclose such a recording:

(a) To a law enforcement agency in the furtherance of the agency's official duties and responsibilities;

(b) Pursuant to a court order; or

(c) To a resident of the community development district.

For the purpose of this paragraph, the term "resident" of a

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community development district means:

1. A member of the United States Armed Forces who is stationed in the community development district and his or her family members residing with such member; or

2. A person who has declared the community development district as his or her only residence as evidenced by a valid state driver license or identification card that has both an address within the community development district and a residence verified by the Department of Highway Safety and Motor Vehicles, or, in the absence thereof, one of the following:

a. A current voter information card registered to an individual with an address within the community development district;

b. A sworn statement manifesting and evidencing domicile in the community development district;

c. Proof of a current homestead exemption with an address in the community development district; or

d. For a child younger than 18 years of age, a student identification card from a school zoned to include the child of the community development district or, if accompanied by his or her parent or guardian at the time, the parent's proof of residency within the community development district.

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

Section 2. The Legislature finds that it is a public necessity that any surveillance recording created by monitoring activities occurring inside or outside a public building or on

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public property which is held by a community development district be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Community development districts provide surveillance of public areas in order to monitor activities occurring within the districts and to ensure the security of the district residents. The exemption for surveillance recordings allows community development districts to effectively and efficiently provide security and surveillance while maintaining the privacy of the residents and the guests of the residents, including those who use community facilities. Without the public records exemption, coverage and other technical aspects of the surveillance system would be revealed and would make it easier for individuals who wish to evade detection by the surveillance systems to do so. As such, the Legislature finds that it is a public necessity to prohibit the disclosure of such surveillance recordings held by a community development district.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Education Pre-K - 12, Chair
Ethics and Elections, Vice Chair
Appropriations Subcommittee on Education
Fiscal Policy
Government Oversight and Accountability
Higher Education

SENATOR JOHN LEGG

17th District

Legg.John.web@FLSenate.gov

March 25, 2015

The Honorable Jeremy Ring
Committee on Governmental Oversight and Accountability Chair
525 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

RE: SB 962 - Public Records/Surveillance Recordings

Dear Chair Ring:

SB 962 - Public Records/Surveillance Recordings has been referred to your committee. I respectfully request that it be placed on the Committee on Governmental Oversight and Accountability Agenda, at your convenience. Your leadership and consideration are appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "John Legg", with a long horizontal stroke extending to the right.

John Legg
State Senator, District 17

cc: Joe McVaney, Staff Director

JL/jb

REPLY TO:

- ☐ 262 Crystal Grove Boulevard, Lutz, Florida 33548 (813) 909-9919
- ☐ 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

CourtSmart Tag Report

Room: SB 401
Caption: Senate Governmental Oversight and Accountability Committee

Type:
Judge:

Started: 3/31/2015 10:32:48 AM
Ends: 3/31/2015 11:13:36 AM **Length:** 00:40:49

10:32:51 AM Meeting called to order - Roll call
10:33:49 AM Tab 5 - CS/SB 782 by Community Affairs / Senator Montford—County Officials
10:34:04 AM Amendment Barcode 136204
10:36:42 AM Senator Latvala asks a question of Senator Montford.
10:38:42 AM Roll Call for CS/SB 782
10:39:14 AM Tab 1 - Senate Confirmation Hearing: Secretary of Management Services, Patterson Chad Poppell
10:39:28 AM Mr. Poppell makes a statement.
10:42:31 AM Senator Bullard asks a question. Mr. Poppell responds.
10:44:35 AM Senator Ring asks a question of Mr. Poppell.
10:45:52 AM Senator Legg makes a statement.
10:48:25 AM Closing remarks from Mr. Poppell.
10:48:41 AM Senator Hays recommends confirmation.
10:49:04 AM Roll call for confirmation of Patterson Chad Poppell
10:49:22 AM Tab 9 - SM 1422 by Senator Abruzzo-Iran/Economic Sanctions
10:50:45 AM Senator Hays asks a question.
10:51:29 AM Senator Abruzzo closes on SM 1422.
10:51:56 AM Roll Call for SM 1422
10:52:18 AM Tab 12 - CS/SB 962 by Community Affairs / Senator Legg—Public Records/Surveillance
10:52:58 AM Amendment 810702
10:53:14 AM Roll Call for CS/SB 962
10:53:39 AM Tab 8 - CS/SB 716 by Regulated Industries / Senator Hays—Public Records/Animal Medical Records
10:53:54 AM Amendment Barcode 815610, Senator Hays
10:54:19 AM Roll Call for CS/SB 716
10:54:51 AM Tab 2 - CS/SB 674 Senator Evers—Public Records/Military Special Operations Unit Service Members
10:55:06 AM Amendment Barcode 8458924
10:55:31 AM Roll Call for CS/SB 264
10:55:58 AM Tab 3 - CS/SB 824 by Community Affairs / Senator Evers—Public-private Partnerships
10:56:10 AM Amendment Barcode 840186
10:56:44 AM Roll Call for CS/SB 824
10:57:04 AM Tab 4 - SB 826 by Senator Evers—Public Records and Public Meetings/Public-private Project Proposal
10:57:23 AM Amendment Barcode 112778
10:57:40 AM Roll Call for SB 826
10:58:11 AM Tab 10 - SB 1108 by Senator Flores—Public Records/Identity of a Victim/Human Trafficking Offenses
10:58:23 AM Amendment Barcode 359086
10:58:58 AM Roll Call for SB 1108
10:59:17 AM Tab 11 SB 1110 by Senator Flores—Public Records/Residential Facilities Serving Victims of Sexual Exploitation and Human Trafficking
10:59:30 AM Amendment Barcode 188706
10:59:51 AM Roll Call for SB 1110
11:00:25 AM Recess
11:01:10 AM Tab 6 - CS/SB 838 by Judiciary / Senator Bradley—Justices and Judges
11:01:40 AM Amendment Barcode 233778, Senator Latvala explains.
11:03:18 AM Mr. Dunbar explains
11:05:54 AM Senator Ring asks a question
11:07:00 AM Roll Call for CS/SB 838
11:07:20 AM Tab 7 - SB 1352 by Senator Smith—Deferred Compensation
11:08:31 AM Amendment Barcode 357586
11:08:45 AM Amendment Barcode 187538 by Senator Hays
11:10:20 AM Kraig Conn, Florida League of Cities
11:12:23 AM Ashley Mayer, Voya
11:12:47 AM Senator Smith closes on SB 1352
11:13:11 AM Roll Call for SB 1352

11:13:26 AM Meeting adjourned