

Tab 1	SB 168 by Latvala (CO-INTRODUCERS) Steube; (Identical to H 00247) Career Development for Officers and Firefighters					
733988	D	S	RCS	GO, Latvala	Delete everything after	03/27 07:46 PM

Tab 2	CS/SB 450 by CJ, Brandes; (Similar to CS/H 00369) Public Records					
116034	A	S	RS	GO, Brandes	Delete L.18 - 40:	03/27 07:46 PM
480408	SA	S	RCS	GO, Brandes	Delete L.18 - 40:	03/27 07:46 PM

Tab 3	CS/CS/SB 550 by JU, CJ, Bracy (CO-INTRODUCERS) Campbell; (Similar to CS/CS/H 00111) Public Records/Murder Witness					
--------------	--	--	--	--	--	--

Tab 4	CS/SB 596 by CU, Hutson (CO-INTRODUCERS) Young, Broxson; (Similar to CS/H 00687) Utilities					
561176	D	S	RCS	GO, Hutson	Delete everything after	03/27 07:47 PM
634024	AA	S	RCS	GO, Baxley	Delete L.59 - 285:	03/27 07:47 PM
755080	AA	S	UNFAV	GO, Rader	Delete L.52 - 56:	03/27 07:47 PM
266314	A	S	WD	GO, Baxley	Delete L.64 - 269:	03/27 07:47 PM

Tab 5	CS/SB 674 by HP, Bean; (Similar to CS/H 00103) Public Records/Nonviable Birth Records					
630118	A	S	RCS	GO, Bean	Delete L.12 - 49:	03/27 07:47 PM

Tab 6	CS/SB 738 by BI, Mayfield (CO-INTRODUCERS) Steube; (Similar to CS/H 00437) Public Records/International Financial Institutions					
244480	D	S	RCS	GO, Mayfield	Delete everything after	03/27 07:47 PM

Tab 7	SB 1024 by Stewart; (Identical to H 00381) Public Records/Homeless Management Information System					
--------------	---	--	--	--	--	--

Tab 8	SB 1108 by Artiles; (Similar to CS/H 00383) Public Records/Firefighters and their Spouses and Children					
312804	D	S	RCS	GO, Artiles	Delete everything after	03/27 07:47 PM

Tab 9	SB 1470 by Simmons; (Similar to H 00207) Agency Inspectors General					
--------------	---	--	--	--	--	--

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY
Senator Baxley, Chair
Senator Artiles, Vice Chair

MEETING DATE: Monday, March 27, 2017
TIME: 4:00—6:00 p.m.
PLACE: James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building

MEMBERS: Senator Baxley, Chair; Senator Artiles, Vice Chair; Senators Galvano, Grimsley, Rader, Rouson, and Stewart

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 168 Latvala (Identical H 247)	Career Development for Officers and Firefighters; Requiring state agencies to establish a career development plan for certain purposes; specifying circumstances under which salary increases must be awarded to officers and firefighters; prescribing duties to state agencies with respect to plan implementation, etc. GO 03/27/2017 Fav/CS AGG AP	Fav/CS Yeas 7 Nays 0
2	CS/SB 450 Criminal Justice / Brandes (Similar CS/H 369, Compare CS/H 367, Linked CS/S 448)	Public Records; Providing that the personal identifying information of an adult who participates in a prearrest diversion program is exempt from public record requirements; providing for future review and repeal of the exemption; providing a statement of public necessity, etc. CJ 03/06/2017 Temporarily Postponed CJ 03/13/2017 Fav/CS GO 03/27/2017 Fav/CS AP RC	Fav/CS Yeas 7 Nays 0
3	CS/CS/SB 550 Judiciary / Criminal Justice / Bracy (Similar CS/CS/H 111)	Public Records/Murder Witness ; Providing that the personal identifying information of a witness to a murder remains confidential and exempt for a specified period; providing an exemption from public records requirements for criminal intelligence or criminal investigative information that reveals the personal identifying information of a witness to a murder for a specified period; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CJ 02/21/2017 Fav/CS JU 03/07/2017 Fav/CS GO 03/27/2017 Favorable RC	Favorable Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDAGovernmental Oversight and Accountability
Monday, March 27, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 596 Communications, Energy, and Public Utilities / Hutson (Similar CS/H 687)	Utilities; Creating the "Advanced Wireless Infrastructure Deployment Act"; prohibiting the Department of Transportation and certain local governmental entities, collectively referred to as the "authority," from prohibiting, regulating, or charging for the collocation of small wireless facilities in public rights-of-way under certain circumstances; prohibiting an authority from requiring approval or charges for routine maintenance, the replacement of certain wireless facilities, or the installation, placement, maintenance, or replacement of certain micro wireless facilities, etc. CU 03/07/2017 Fav/CS GO 03/27/2017 Fav/CS RC	Fav/CS Yeas 5 Nays 1
5	CS/SB 674 Health Policy / Bean (Similar H 103, Compare CS/H 101, Linked S 672)	Public Records/Nonviable Birth Records; Providing that certain information included in nonviable birth records is confidential and exempt from public records requirements; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. HP 03/14/2017 Fav/CS GO 03/27/2017 Fav/CS AP	Fav/CS Yeas 6 Nays 0
6	CS/SB 738 Banking and Insurance / Mayfield (Similar CS/H 437, Compare CS/H 435, H 769, H 771, S 1078, S 1080, Linked CS/S 736)	Public Records/International Financial Institutions; Providing exemptions from public records requirements for certain information held by the Office of Financial Regulation relating to international trust company representative offices or limited service affiliates, respectively, and relating to affiliated international trust entities; providing future legislative review and repeal of the exemptions; providing that certain exemptions from public records requirements for information relating to investigations; providing a statement of public necessity, etc. BI 03/06/2017 Fav/CS GO 03/27/2017 Fav/CS AP RC	Fav/CS Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability
Monday, March 27, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	SB 1024 Stewart (Identical H 381)	Public Records/Homeless Management Information System; Creating a public records exemption for individual identifying information of a person contained in a Point-in-Time Count and Survey or data in a Homeless Management Information System; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CF 03/13/2017 Favorable GO 03/27/2017 Favorable RC	Favorable Yeas 6 Nays 0
8	SB 1108 Artiles (Similar CS/H 383)	Public Records/Firefighters and their Spouses and Children; Expanding an exemption from public records requirements for the personal identifying and location information of certain firefighters and their spouses and children to include the personal identifying and location information of former firefighters and their spouses and children; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. BI 03/14/2017 Favorable GO 03/27/2017 Fav/CS RC	Fav/CS Yeas 6 Nays 0
9	SB 1470 Simmons (Similar H 207)	Agency Inspectors General; Prohibiting an agency from offering a bonus on work performance in an inspector general contract or agreement; prohibiting the Florida Housing Finance Corporation from offering a bonus on work performance in an inspector general contract or agreement, etc. GO 03/27/2017 Favorable CA RC	Favorable Yeas 7 Nays 0

Other Related Meeting Documents

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 168

INTRODUCER: Governmental Oversight and Accountability Committee and Senators Latvala and Steube

SUBJECT: Career Development for Officers and Firefighters

DATE: March 28, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ferrin	Ferrin	GO	Fav/CS
2.			AGG	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 168 requires each state agency that employs law enforcement, correctional officers, correctional probation officers, or firefighters to offer a monthly salary enhancement equal to the full amount provided to officers and firefighters who participate in the established incentive programs for credit earned towards a postsecondary degree or completion of approved career development program training classes.

Doubling the existing monthly salary enhancement is intended to strengthen the ability of state agencies to provide career development incentives and to retain well-qualified officers and firefighters.

The fiscal impact of the bill has not been determined.

The bill provides an effective date of July 1, 2017.

II. Present Situation:

Career Development Programs

Outside of the provisions in ss. 943.22 and 1009.265, F.S., there is not a uniform approach to career development. Efforts are primarily agency-specific and limited in scope. Some examples are:¹

- Filling higher level sworn supervisor vacancies from within internal sworn ranks;
- Agency training academies and trainee programs which unit employee must complete before they perform law enforcement duties and responsibilities;
- Mentoring new officers through Field Training Officer programs;
- Requiring maintenance of certain certifications and ongoing training requirements (e.g., firearms);
- Providing opportunities for additional voluntary training online and in person, including training candidates for specialty positions; and
- Providing clear career paths to officers and the training requirement associated with specific ranks.

Incentive Pay for Law Enforcement Officers and Firefighters

The Legislature has expressed intent to attract and retain competent, qualified, and experienced officers in law enforcement agencies and correctional institutions, and to provide for a statewide minimum salary, monetary supplement, and educational and training standards for these officers.² Similarly, the Legislature has recognized the need for supplemental compensation for firefighters who pursue educational opportunities that directly relate to the improvement of the health, safety, and welfare of firefighters and those who firefighters protect.³

Section 943.22, F.S., and s. 633.422, F.S., provide salary incentive increases for law enforcement officers and firefighters who successfully complete and are awarded an Associate Degree or a Bachelor Degree. The following increases or supplements are available to all full-time law

¹ Joint Submission by the Department of Management Services and the Florida Police Benevolent Association in Accordance with Ch. 2016-62, Section 65, Laws of Florida, Implementing the 2016-2017 General Appropriations Act, dated January 17, 2017 (on file with the Senate Committee on Governmental Accountability and Oversight).

² Section 943.085, F.S.

³ Section 633.422(1), F.S.

enforcement officers, correctional officers, correctional probation officers,⁴ and firefighters⁵ employed by any municipality of the state or any political subdivision thereof:

- \$30 per month for law enforcement officers with an Associate Degree;
- \$50 per month for law enforcement officers with a Bachelors Degree;
- \$50 per month for firefighters with an Associate Degree; and
- \$110 per month for firefighters with a Bachelors Degree.

Law enforcement officers can also receive incentive increases up to \$120 per month for completion of 480 hours of approved career development program training classes.⁶ Such training completed after June 30, 1985 must be in courses established to enhance an officer's knowledge, skills, and abilities for the job he or she performs or is related to promotion to a higher rank or position.⁷ The maximum amount an officer can receive for a college degree or completion of career development courses is \$130 per month.⁸

Tuition Waivers

In order to facilitate educational attainment for the state workforce, all state employees,⁹ including law enforcement officers and firefighters, are eligible to have tuition at state university and Florida College System institutions waived.¹⁰ Participation in the program is subject to approval by an employee's agency head, and limited to up to six credit hours per term on a space-available basis.¹¹

Career Development Plan Workgroup

On January 17, 2017, the Department of Management Services (DMS) submitted a career development plan, as required by Chapter 2016-62, Laws of Florida, implementing the

⁴ "Law enforcement officer" is defined in s. 943.10(1), F.S. as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. "Correctional probation officer" is defined in 943.10(3), F.S. as a person who is employed full time by the state whose primary responsibility is the supervised custody, surveillance, and control of assigned inmates, probationers, parolees, or community controllees within institutions of the Department of Corrections or within the community. The term includes supervisory personnel whose duties include, in whole or in part, the supervision, training, and guidance of correctional probation officers, but excludes management and administrative personnel above, but not including, the probation and parole regional administrator level. "Correctional officer" is defined in 943.10(2), F.S. as any person who is appointed or employed full time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution; however, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel.

⁵ "Firefighter" is defined in s. 633.102(9), F.S. as an individual who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshall within the Department of Financial Services.

⁶ Section 943.22(2)(d), F.S.

⁷ Sections 943.17(1)(b) and (c), F.S.

⁸ Section 943.22(2)(e), F.S.

⁹ Section 1009.265(5), F.S. excludes persons employed by a state university.

¹⁰ Section 1009.265, F.S.

¹¹ *Id.*

2016-2017 General Appropriations Act on behalf of the department and the Florida Police Benevolent Association (PBA).¹² The referenced implementing bill directed DMS to organize a work group to develop a sworn law enforcement officers' Career Development Plan (CDP) to attract and retain quality employees that emphasizes job training, job skills, educational attainment, experience and retention.¹³ The 2016 legislation did not include correctional officers, correctional probation officers or firefighters. Therefore, the work group's focus included the Highway Patrol, Law Enforcement Officer, Lottery, and Florida Department of Law Enforcement Special Agent bargaining units represented by the PBA.¹⁴

Workgroup Recommendations

The CDP work group met and agreed¹⁵ upon the following concepts to recommend as potential plan components that will attract and retain quality employees and improve job training, job skills, educational attainment, experience and retention. They are listed in the order in which the work group participants believed will have the greatest impact. The work group recommended the Legislature consider:¹⁶

- Revising the hiring minimum for entry level classes and consider salary compression impacts within the adjusted and higher level classes;
- Reviewing Salary Incentive Program pay amounts that have not been adjusted since its inception in 1974;
- Establishing consistent career pathing requirements across state agencies; and
- Reviewing Competitive Area Differential (CAD) additive amounts and approved locations, which are currently \$4999.80 per year in Broward, Dade, Monroe, and Palm Beach counties.

The work group also recommended the establishment of metrics to determine the level of effectiveness of the CDP.¹⁷

III. Effect of Proposed Changes:

Section 1 requires each state agency that employs law enforcement, correctional officers, correctional probation officers, or firefighters to provide a monthly salary enhancement equal to the full amount provided to officers and firefighters who participate in the established salary incentive and supplemental compensation programs provided in ss. 943.22, F.S. and 633.422, F.S.

The bill states that the additional monthly salary enhancement is intended to strengthen the ability of state agencies to provide career development incentives and to retain well-qualified officers and firefighters.

Section 2 establishes the effective date for this bill of July 1, 2017.

¹² See *supra* note 1.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ The Police Benevolent Association attached a separate submission describing areas in which the parties were unable to reach agreement.

¹⁶ See *supra* note 1.

¹⁷ *Id.*

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:

None.

C. Government Sector Impact:

Each state agency that employs law enforcement officers, correctional probation officers, correctional officers, or firefighters can expect to double the funds expended on the current salary incentive programs. However, the additional incentives may help attract or retain officers and firefighters.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 110.2035 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 27, 2017:

The amendment adopted by the Senate Committee on Governmental Oversight and Accountability requires each state agency that employs law enforcement, correctional officers, correctional probation officers, or firefighters to offer a monthly salary enhancement equal to the full amount provided to officers and firefighters who participate in the established incentive programs for credit earned towards a postsecondary degree or completion of approved career development program training classes.

- B. **Amendments:**

None.



733988

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2017	.	
	.	
	.	
	.	

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. Subsection (9) is added to section 110.2035,
Florida Statutes, to read:

110.2035 Classification and compensation program.—

(9) In order to strengthen the ability of state agencies to
provide career development incentives and to retain well-
qualified law enforcement officers, correctional officers,



733988

11 correctional probation officers, and firefighters, each state
12 agency that employs such officers or firefighters shall provide
13 a monthly salary enhancement equal to the full amount provided
14 to officers and firefighters who participate in the salary
15 incentive program provided in s. 943.22 or are paid supplemental
16 compensation in accordance with s. 633.422. The monthly salary
17 enhancement shall be made available to law enforcement officers,
18 correctional officers, and correctional probation officers, as
19 defined in s. 943.10, and firefighters, as defined in s.
20 633.102, who are employed by a state agency in a career service
21 position.

22 Section 2. This act shall take effect July 1, 2017.

23
24 ===== T I T L E A M E N D M E N T =====

25 And the title is amended as follows:

26 Delete everything before the enacting clause
27 and insert:

28 A bill to be entitled

29 An act relating to salaries of specified officers and
30 firefighters; amending s. 110.2035, F.S.; requiring
31 each state agency that employs law enforcement
32 officers, correctional officers, correctional
33 probation officers, and firefighters to provide a
34 monthly salary adjustment; specifying eligibility for
35 the monthly salary adjustment; providing an effective
36 date.

By Senator Latvala

16-00056-17

2017168__

A bill to be entitled

An act relating to career development for officers and firefighters; amending s. 110.2035, F.S.; requiring state agencies to establish a career development plan for certain purposes; specifying circumstances under which salary increases must be awarded to officers and firefighters; prescribing duties to state agencies with respect to plan implementation; specifying eligibility criteria; restricting the number of officers and firefighters who may qualify for each level; providing an effective date.

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

Section 1. Subsection (9) is added to section 110.2035, Florida Statutes, to read:

110.2035 Classification and compensation program.—

(9) (a) In order to strengthen the ability of state agencies to provide career development for law enforcement officers, correctional officers, correctional probation officers, and firefighters and to retain well-qualified and experienced officers and firefighters, each state agency that employs such officers and firefighters shall establish a career development plan. The plan must be voluntary and must provide salary increases for officer and firefighter achievements that exceed the minimum requirements for employment.

(b) Salary increases shall be awarded to an officer or a firefighter in good standing who achieves and maintains specified levels of achievement as determined by his or her employing agency.

(c) 1. Each state agency shall provide levels of achievement for law enforcement officers, correctional officers,

Page 1 of 2

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

16-00056-17

2017168__

correctional probation officers, and firefighters and shall develop standards, through collective bargaining, if applicable, which specify activities that must be successfully completed by an officer or a firefighter before he or she may attain each level. The state agency shall document an officer's or a firefighter's specific achievements to attain each level and his or her completion of a specified number of years of service.

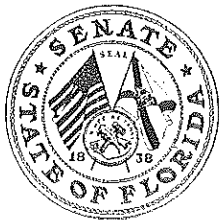
2. Achievements may include the earning of postsecondary education credits and the completion of leadership or advanced training. An officer or a firefighter may attain a specified level by participating in approved activities that advance his or her professional interests as specified in his or her job description.

(d) The plan shall be made available to law enforcement officers, correctional officers, and correctional probation officers, as each are defined in s. 943.10, and firefighters, as defined in s. 633.102, in all career service positions. The number of officers or firefighters who qualify for each level may not exceed the number of officers or firefighters covered by the bargaining unit covering such classes of employees in the agency.

Section 2. This act shall take effect July 1, 2017.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations, *Chair*
Commerce and Tourism
Environmental Preservation and Conservation
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission,
Alternating Chair

SENATOR JACK LATVALA

16th District

January 24, 2017

The Honorable Dennis Baxley
320 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Baxley,

I respectfully request you place Senate Bill 168, relating to Career Development for Officers and Firefighters, on your Governmental Oversight and Accountability agenda at your earliest convenience.

Should you have any questions or concerns regarding this legislation, please do not hesitate to contact me personally.

Sincerely,

A handwritten signature in black ink that reads "Jack Latvala".

Jack Latvala
Senator, 16th District

cc: Jay Ferrin, Staff Director ✓

REPLY TO:

☐ 28133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
☐ 412 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-27-19
Meeting Date

168
Bill Number (if applicable)

733988
Amendment Barcode (if applicable)

Topic Career Dev Plan / Salary Incentive

Name Ken COP-CIEN-SKI Koczynski

Job Title Lobbyist

Address 300 East Brevard St
Street

Phone 950-222-3329

Tallahassee FL 32301
City State Zip

Email ken@flpba.org

Speaking: For Against Information

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

Representing Florida PBA

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)

3/27
Meeting Date

168
Bill Number (if applicable)

Topic Career Development

Amendment Barcode (if applicable)

Name Rocco Salvatori

Job Title Firefighter

Address 343 West Madison
Street

Phone 850-224-7333

Tallahassee
City

FL
State

32301
Zip

Email roccofish@verizon.net

Speaking: For Against Information

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

Representing Florida Professional Firefighters

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 450

INTRODUCER: Governmental Oversight and Accountability Committee; Criminal Justice Committee and Senator Brandes

SUBJECT: Public Records

DATE: March 29, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jones</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>Ferrin</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 450, which is linked to the passage of CS/SB 448, creates a public records exemption for personal identifying information of an adult who participates in a civil citation or prearrest diversion program. The personal identifying information becomes public, however, if the participant fails to complete the program. This public records exemption has retroactive application.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2022, unless reviewed and saved from repeal by the Legislature. The bill provides a statement of public necessity as required by the State Constitution.

The Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage because it creates a new public records exemption.

The bill takes effect on the same date that CS/SB 448 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof, and becomes law.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ 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.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Id.*

exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹³ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹⁴

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.¹⁵ 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.¹⁶

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.¹⁷ 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;¹⁸
- 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;¹⁹ or
- It protects trade or business secrets.²⁰

The OGSR also requires specified questions to be considered during the review process.²¹ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

¹³ 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).

¹⁴ *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

¹⁵ 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.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(b)1., F.S.

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

²¹ Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²² 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.²³

Adult Criminal History Records

A criminal history record is any nonjudicial record maintained by a criminal justice agency containing criminal history information.²⁴ Criminal history information includes information on a person's arrests, detentions, indictments, informations (formal criminal charges), and the disposition of the charges.²⁵

An adult's criminal history information is available free of charge to criminal justice agencies and to the public with payment of a fee.²⁶ Adults seeking to prevent such disclosure may petition the court to seal²⁷ or expunge the record.²⁸

Sections 943.059 and 943.0585, F.S., provide the procedures for sealing and expunging criminal history records. When a record is sealed, it is not destroyed, but access is limited to:

- The subject of the record;
- His or her attorney;
- Criminal justice agencies for criminal justice purposes;
- Judges; and
- Certain agencies for licensing and employment purposes.²⁹

When a criminal history record is expunged, criminal justice agencies other than the Florida Department of Law Enforcement (FDLE) must physically destroy the record. Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order. FDLE is required to retain expunged records.³⁰

Persons who have had their criminal history records sealed or expunged may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain

-
3. What is the identifiable public purpose or goal of the exemption?
 4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
 5. Is the record or meeting protected by another exemption?
 6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²² FLA. CONST. art. I, s. 24(c).

²³ Section 119.15(7), F.S.

²⁴ Section 943.045(6), F.S.

²⁵ Section 943.045(5), F.S.

²⁶ Section 943.053(3)(a), F.S.

²⁷ Section 943.059, F.S.

²⁸ Section 943.0585, F.S.

²⁹ Section 943.059(4), F.S.

³⁰ Section 943.0585(4), F.S.

types of employment,³¹ petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.³²

Sealed or expunged records are confidential and exempt from the public records law.³³ It is a first degree misdemeanor³⁴ to divulge their existence.³⁵

Model Prearrest Diversion Program

CS/SB 448, is the public records bill linked to CS/SB 450. CS/SB 448 creates s. 901.40, F.S., which encourages local communities and public or private educational institutions to implement a prearrest diversion program, and provides a framework for a model adult civil citation program that may be adopted. The model program allows a law enforcement officer, at the officer's sole discretion, to issue a civil citation or similar prearrest diversion program notice to an adult who:

- Commits a misdemeanor offense (as determined by the program);
- Admits to committing the offense or does not contest the offense;
- Has not previously been arrested; and
- Has not previously received an adult civil citation or similar prearrest diversion program unless the terms of the local adult prearrest diversion program allows otherwise.

The model program requires an adult who receives a civil citation to complete the required community service hours and pay restitution. If the adult does not successfully complete the program, the officer must determine if there is good cause to arrest the adult for the original misdemeanor offense and refer the case to the state attorney to determine if prosecution is appropriate or allow the adult to continue in the program.

A civil citation or similar prearrest diversion program notice is issued in lieu of an arrest so no criminal history record is created. However, records of a civil citation or similar prearrest diversion program notice held by the issuing law enforcement agency and by a model program are subject to disclosure. Currently, Florida law does not provide a public records exemption for records associated with a civil citation.

III. Effect of Proposed Changes:

The bill creates a public records exemption for the personal identifying information of an adult who participates in a civil citation or prearrest diversion program. A participant's personal identifying information becomes public, however, if he or she fails to successfully complete the program.

³¹ These include candidates for appointment as a guardian, admission to The Florida Bar, employment with a criminal justice agency, a license by the Division of Insurance Agent and Agent Services of the Department of Financial Services, or a position with an agency which is responsible for the protection of vulnerable persons, including children, disabled persons, and elderly persons.

³² Sections 943.0585(4)(a) and 943.059(4)(a), F.S.

³³ Sections 943.059(4)(c) and 943.0585(4)(c), F.S.

³⁴ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

³⁵ Sections 943.059 and 943.0585, F.S., require FDLE to disclose sealed and expunged criminal history records to specified entities for specified purposes.

The public records exemption would apply to records held by a law enforcement agency, the operators of a civil citation or prearrest diversion program or to records held by a service provider.

The bill provides a statement of public necessity as required by the Florida Constitution.³⁶ The statement includes the following findings:

- The goal of a civil citation or prearrest diversion program is to give a second chance to adults who commit misdemeanor offenses and allow them the opportunity to avoid having an arrest record.
- If the personal identifying information of such adults were not exempt from disclosure, it would defeat the goal of giving adults who commit misdemeanor offenses a means to avoid arrest and prosecution.
- If such information were able to be obtained by the public, that disclosure might negatively impact the effectiveness of the civil citation or prearrest diversion program.

The exemption has retroactive application so that it will apply to people who have already participated in a civil citation or prearrest diversion program.

The bill repeals the exemption on October 2, 2022, unless reviewed and saved from repeal by the Legislature, pursuant to the OGSR Act.

The bill takes effect on the same date that CS/SB 448 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof, and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill creates a new public record exemption. 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 a new public record exemption; thus, it requires a two-thirds vote for final passage.

³⁶ Article I, s. 24(c), FLA. CONST.

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. Based on the legislative findings in the statement of public necessity, this public records 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:

The bill may have a minimal fiscal impact on agencies responsible for complying with public records requests and redacting confidential and exempt information prior to releasing a record. However, these costs should be able to be absorbed with existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill is linked to the passage of CS/SB 448.

VIII. Statutes Affected:

This bill creates section 901.40 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 27, 2017:

The CS/CS does the following:

- Provides that the exemption applies to civil citation programs as well as prearrest diversion programs;
- Specifies that the public records exemption is limited to certain records custodians, and is not a public records exemption of general applicability;
- Specifies that the exemption only applies to the records of those people who complete a civil citation or prearrest diversion program, rather than to all participants regardless of whether they complete the program;
- Provides for retroactive application so that current and past participants can have the benefit of the exemptions; and,
- Removes ambiguous language.

CS by Criminal Justice on March 13, 2017:

The committee substitute:

- Creates a public records exemption for the personal identifying information of an adult who participates in a prearrest diversion program; and
- Makes technical and stylistic changes.

- B. **Amendments:**

None.



116034

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
03/27/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 18 - 40
and insert:
information of an adult who participates in and completes a
civil citation or prearrest diversion program is exempt from s.
119.07(1) and s. 24(a), Art. I of the State Constitution. This
exemption applies to personal identifying information held by
the entity operating an adult civil citation or prearrest
diversion program before, on, or after the effective date of



116034

11 this exemption. This subsection is subject to the Open
12 Government Sunset Review Act in accordance with s. 119.15 and
13 shall stand repealed on October 2, 2022, unless reviewed and
14 saved from such repeal through reenactment by the Legislature.

15 Section 1. The Legislature finds that it is a public
16 necessity that the personal identifying information of an adult
17 who participates in and completes a civil citation or prearrest
18 diversion program be exempt from s. 119.07(1), Florida Statutes,
19 and s. 24(a), Article I of the State Constitution. The goal of
20 such programs is to give a second chance to adults who commit
21 misdemeanor offenses and allow them the opportunity to avoid
22 having an arrest record. If the personal identifying information
23 of such adults were not exempt from disclosure, it would defeat
24 the program's goal of giving adults who commit misdemeanor
25 offenses a means to avoid the negative consequences of an arrest
26 and prosecution. If such information were able to be obtained by
27 the public, the disclosure might negatively impact the
28 effectiveness of the program. For these reasons, the Legislature
29 finds that it is a public necessity that the personal
30 identifying information of an adult who participates in and
31 completes a civil citation or prearrest diversion program be

32
33 ===== T I T L E A M E N D M E N T =====

34 And the title is amended as follows:

35 Delete lines 4 - 7

36 and insert:

37 information of an adult who participates in and
38 completes a civil citation or prearrest diversion
39 program is exempt from public records requirements;



116034

40 providing for future review and repeal of the
41 exemption; providing for retroactive application;
42 providing a statement of



480408

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2017	.	
	.	
	.	
	.	

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

Senate Substitute for Amendment (116034) (with title amendment)

Delete lines 18 - 40

and insert:

information of an adult participating in a civil citation or prearrest diversion program is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. The exemption shall not apply to the personal identifying information of an adult who fails to complete the civil citation or prearrest diversion



11 program. This exemption applies to personal identifying
12 information held by a law enforcement agency, a program services
13 provider, or the entity operating an adult civil citation or
14 prearrest diversion program before, on, or after the effective
15 date of this exemption. This subsection is subject to the Open
16 Government Sunset Review Act in accordance with s. 119.15 and
17 shall stand repealed on October 2, 2022, unless reviewed and
18 saved from such repeal through reenactment by the Legislature.

19 Section 1. The Legislature finds that it is a public
20 necessity that the personal identifying information of an adult
21 participating in a civil citation or prearrest diversion program
22 is exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
23 Article I of the State Constitution. The exemption shall not
24 apply to the personal identifying information of an adult who
25 fails to complete the civil citation or prearrest diversion
26 program. The goal of such programs is to give a second chance to
27 adults who commit misdemeanor offenses and allow them the
28 opportunity to avoid having an arrest record. If the personal
29 identifying information of such adults were not exempt from
30 disclosure, it would defeat the program's goal of giving adults
31 who commit misdemeanor offenses a means to avoid the negative
32 consequences of an arrest and prosecution. If such information
33 were able to be obtained by the public, the disclosure might
34 negatively impact the effectiveness of the program. For these
35 reasons, the Legislature finds that it is a public necessity
36 that the personal identifying information of an adult
37 participating in a civil citation or prearrest diversion program
38 is



480408

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

41 And the title is amended as follows:

42 Delete lines 4 - 7

43 and insert:

44 information of an adult participating in a civil
45 citation or prearrest diversion program is exempt from
46 public records requirements; providing applicability;
47 providing for future review and repeal of the
48 exemption; providing for retroactive application;
49 providing a statement of

By the Committee on Criminal Justice; and Senator Brandes

591-02386-17

2017450c1

1 A bill to be entitled
 2 An act relating to public records; amending s. 901.40,
 3 F.S.; providing that the personal identifying
 4 information of an adult who participates in a
 5 prearrest diversion program is exempt from public
 6 record requirements; providing for future review and
 7 repeal of the exemption; providing a statement of
 8 public necessity; providing a contingent effective
 9 date.

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

11
 12 Section 1. Subsection (6) is added to section 901.40,
 13 Florida Statutes, as created by SB 448, 2017 Regular Session, to
 14 read:
 15
 16 901.40 Prearrest diversion programs.—
 17 (6) PUBLIC RECORDS EXEMPTION.—The personal identifying
 18 information of an adult who participates in a prearrest
 19 diversion program, as encouraged by this section, is exempt from
 20 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.
 21 This subsection is subject to the Open Government Sunset Review
 22 Act in accordance with s. 119.15 and shall stand repealed on
 23 October 2, 2022, unless reviewed and saved from such repeal
 24 through reenactment by the Legislature.

25 Section 2. The Legislature finds that it is a public
 26 necessity that the personal identifying information of an adult
 27 who participates in a prearrest diversion program be exempt from
 28 s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the
 29 State Constitution. The goal of such programs is to give a

Page 1 of 2

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

591-02386-17

2017450c1

30 second chance to adults who commit misdemeanor offenses and
 31 allow them the opportunity to avoid having an arrest record. If
 32 the personal identifying information of such adults were not
 33 exempt from disclosure, it would defeat the program's goal of
 34 giving adults who commit misdemeanor offenses a means to avoid
 35 the negative consequences of an arrest and prosecution. If such
 36 information were able to be obtained by the public, the
 37 disclosure might negatively impact the effectiveness of the
 38 program. For these reasons, the Legislature finds that it is a
 39 public necessity that the personal identifying information of an
 40 adult who participates in a prearrest diversion program be
 41 exempt from public records requirements.

42 Section 3. This act shall take effect on the same date that
 43 SB 448 or similar legislation takes effect, if such legislation
 44 is adopted in the same legislative session or an extension
 45 thereof and becomes a law.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Dennis Baxley
Committee on Governmental Oversight and
Accountability

Subject: Committee Agenda Request

Date: March 20, 2016

I respectfully request that **Senate Bill #450**, relating to **Public Records**, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/27/17

Meeting Date

SB450

Bill Number (if applicable)

Topic PRE-ARREST DIVERSION - PUBLIC RECORDS EXEMPT.

Amendment Barcode (if applicable)

Name GREG FROST

Job Title PRESIDENT

Address 3333 W. PENSACOLA ST.

Street

Phone 850-544-7350

TALLAHASSEE

FL

32312

City

State

Zip

Email GREG@CIVILCITATIONNETWORK.COM

COM

Speaking: [X] For [] Against [] Information

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

Representing CIVIL CITATION NETWORK

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [] Yes [X] 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)

Nov 17
Meeting Date

450
Bill Number (if applicable)

Topic Public Records Exemption - Prearrest Div.

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone 850.510.9922

Tall FL 32301
City State Zip

Email _____

Speaking: For Against Information

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

Representing Fla. Smart Justice Alliance

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 550

INTRODUCER: Judiciary Committee; Criminal Justice Committee; and Senators Bracy and Campbell

SUBJECT: Public Records/Murder Witness

DATE: March 24, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Hrdlicka</u>	<u>CJ</u>	Fav/CS
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	<u>Kim</u>	<u>Ferrin</u>	<u>GO</u>	Favorable
4.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 550 modifies the authority of a state agency to grant access to or disclose criminal intelligence or investigative information that reveals the personal identifying information of a murder witness. Currently, if this information is held by a state agency, then it is a public record that is accessible by every person. The bill designates this information as confidential and exempt from access or disclosure, thus requiring state entities to deny public records requests for the information. The confidentiality and exemption apply to each witness for a period of two years after the commission of the murder observed by the witness.

Two-thirds of the members of each chamber must vote for this bill in order for it to pass because this bill creates a new public records exemption.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides an effective date of July 1, 2017.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ 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.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Id.*

exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹³ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹⁴

Public Records Exemptions for Criminal Investigative and Intelligence Information

Active criminal intelligence information and active criminal investigative information are exempt from s. 119.07(1), F.S., and Article I, s. 24(a), of the Florida Constitution.¹⁵

Section 119.011(3)(a), F.S., defines “criminal intelligence information” as “information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.” Section 119.011(3)(b), F.S., defines criminal investigative information as,

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.

The definitions of criminal intelligence and investigative information do not include some specific types of information, which is therefore public. This public information includes the time, date, location and nature of the crime, the charges, and the identities of the arrested person and the victims of the crime.¹⁶ Also excluded from the definition of criminal intelligence and investigative information are documents that must be given to the person who is arrested, because of a law or agency rule.¹⁷ An example of such a rule would be the discovery rules under the Florida Rules of Criminal Procedure.

Criminal intelligence and investigative information becomes public under two circumstances: 1) when information is given to the defendant through a pretrial discovery request; and 2) when the defendant’s conviction and sentence are final.

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

¹³ 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).

¹⁴ *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991).

¹⁵ Section 119.071(2)(c)1., F.S. The definition of “active” is located at s. 119.011(3)(d), F.S.

¹⁶ Section 119.011(c), F.S.

¹⁷ Section 119.011(c)5., F.S.

After active criminal intelligence investigative information have been provided to a defendant through discovery, that information becomes public under certain circumstances.¹⁸ Those circumstances include considerations about whether making discovery documents public will impede the defendant's right to a fair trial or the right of privacy of third parties.¹⁹ A court may temporarily seal pretrial discovery, even if some of the pretrial discovery information is already public.²⁰ In addition, in criminal cases, discovery may be kept confidential and exempt from public disclosure until trial if the following conditions are met: 1) the information would defamatory or would jeopardize the safety of the witness; and 2) releasing the information would hurt the state attorney's ability to locate or prosecute a codefendant.²¹

Criminal intelligence and investigative information are considered "active" when they are "directly related to pending prosecutions or appeals."²² Therefore, criminal intelligence investigative information becomes public "when the conviction and sentence becomes final... after direct appeal" (emphasis omitted).²³

Public Records Exemptions for Certain Investigative Information

Currently, s. 119.071(2), F.S., in relevant part, designates several types of personal information related to criminal intelligence or criminal investigations as confidential or exempt. Some types of information that are currently confidential or exempt include information revealing the identity of a confidential informant or a confidential source (exempt),²⁴ information revealing the identity of a victim of a child abuse offense (confidential and exempt),²⁵ and information revealing the identity of a victim of any sexual offense (confidential and exempt).²⁶ The personal identifying information of a witness to a murder is not currently confidential or exempt.²⁷

Limited Effect of a "Confidential" or "Exempt" Designation

The designation of a record as exempt, or as confidential and exempt, is effective only as to a public records request brought under Florida's public records laws. Therefore, these exemptions and confidentiality do not block access to government documents if there is an independent basis for that access.²⁸

¹⁸ *Post-Newsweek Stations, Fla. v. Doe*, 612 So. 2d 549, 551 (Fla. 1992). *Florida Freedom Newspapers, Inc., v. McCrary*, 520 So. 2d 32 (Fla. 1988). *Bludworth v. Palm Beach Newspapers, Inc.*, 176 So. 2d 775 (Fla. 5th DCA 1985).

¹⁹ *Post-Newsweek Stations*, 612 So. 2d at 551. *Florida Freedom Newspapers*, 520 So. 2d.

²⁰ *Florida Freedom Newspapers*, 520 So. 2d at 36.

²¹ Section 119.011(c)5.a. and b., F.S.

²² Section 119.011(3)(d)2., F.S. However, "active" does not apply to information in cases which are barred from prosecution under the provisions of s. 775.15 or other statute of limitation. Section 119.011(3)(d)2., F.S. Section 775.15, F.S., is where the criminal statute of limitations is located.

²³ *Allen v. Butterworth*, 756 So. 2d 52, 66 (FLA 2000).

²⁴ Section 119.071(2)(f), F.S.

²⁵ Section 119.071(2)(h)1.a., F.S.

²⁶ Section 119.071(2)(h)1.b., F.S.

²⁷ Section 119.011(3)(c)5., F.S., states in pertinent part 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. 119.07(1) until released at trial if it is found that the release of such information would . . . jeopardize the safety of such victim or witness."

²⁸ Generally, any confidentiality or exemption from public disclosure is eliminated by a record's entering a court file. Certain records remain confidential or exempt, however, even if they enter a court file. *See* s. 119.0714(1), F.S.

One such basis is a discovery request in a criminal case. The Florida Rules of Criminal Procedure require a prosecutor to disclose information about witnesses in discovery.²⁹ This requirement, at least in principle if not in a strict legal sense, is rooted in the “confrontation clause” of the United States Constitution.³⁰ The confrontation clause preserves a defendant’s right to confront a witness against him or her and to bring forward information that aids the jury in determining the truthfulness and reliability of the witness.³¹ For example, the defendant might expose a witness’s prejudice, bias, or ulterior motivation to lie; expose lies; test a witness’s ability to perceive and remember; or expose weaknesses in the witness’s testimony. This right to confront a witness “minimizes the risk that a judgment will be predicated on incomplete, misleading, or even deliberately fabricated testimony.”³²

The Problem of Witness Fear, Intimidation, and Murder

According to one law professor, “[a] witness’s fear is perhaps the greatest threat to the criminal justice system’s ability to prosecute cases.”³³ Whether or not this fear is indeed the *greatest* threat to the criminal justice system’s ability to prosecute cases, it is common knowledge that it is a very serious problem. A witness’s intimidation may cause him or her to decide not to come forward and provide crucial evidence to police or to refuse to testify in a case. As one judge observed,

[I]nstances of witness intimidation create the perception that the law cannot protect its citizens and thereby undermines public confidence in the police and government. If individuals believe that they cannot be adequately protected, they are less likely to cooperate with the police, which in turn impedes the ability of the police to gather evidence in an attempt to stop criminal behavior.³⁴

Providing anecdotal evidence of the threat to witnesses, news articles have recently reported on several homicides that occurred in 2015 in the Tampa area that remain unsolved.³⁵ The victim of

²⁹ Fla. R. Crim. P. 3.220(b) (Discovery: Prosecutor’s Discovery Obligation). Section 119.07(8), F.S., addresses the relationship between discovery obligations and public records. However, the rules allow a court, on its own initiative or upon a motion of counsel, to restrict disclosure if the court finds that “there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment resulting from the disclosure, that outweighs any usefulness of the disclosure to either party.” Fla. R. Crim. P. 3.220(e) (Discovery: Restricting Disclosure).

³⁰ The Sixth Amendment of the U.S. Constitution provides: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

³¹ *Id.*

³² Judge Joan Comparet-Cassani, *Balancing the Anonymity of Threatened Witnesses Versus a Defendant’s Right of Confrontation: The Waiver Doctrine After Alvarado*, 39 SAN DIEGO L. REV. 1165 (Fall, 2002).

³³ Lisa I. Karsai, *You Can’t Give My Name: Rethinking Witness Anonymity In Light of the United States and British Experience*, 79 TENN. L. REV. 29 (Fall, 2011).

³⁴ Judge Joan Comparet-Cassani, *Balancing the Anonymity of Threatened Witnesses Versus a Defendant’s Right of Confrontation: The Waiver Doctrine After Alvarado*, 39 SAN DIEGO L. REV. 1165 (Fall, 2002) (“Even though the United States Department of Justice has conducted surveys about witness intimidation, the results of which indicate that it is increasing and widespread, the Department acknowledged that the exact extent of intimidation is unknown.”).

³⁵ Dan Sullivan, *Federal officials increase rewards, offer protection, to solve four unsolved Tampa murders*, TAMPA BAY TIMES, Oct. 29, 2015, <http://www.tampabay.com/news/publicsafety/crime/federal-officials-increase-rewards-offer-protection-to-solve-four-unsolved/2251784>; Sue Carlton, *Solutions to street violence elusive amid anti-snitching culture*,

one of the unsolved murders was Edward Harris, a 14-year-old boy who was murdered in a park.³⁶ A spokeswoman for the Tampa Police Department stated that between October 2014 and April 2015, Mr. Harris was the witness to multiple crimes that resulted in arrests.³⁷ Mr. Harris's family members have indicated that they believe he was murdered as a result of talking to police.³⁸

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.³⁹ 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.⁴⁰

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.⁴¹ 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;⁴²
- 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;⁴³ or
- It protects trade or business secrets.⁴⁴

The OGSR also requires specified questions to be considered during the review process.⁴⁵ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

TAMPA BAY TIMES, Jun. 2, 2015, <http://www.tampabay.com/news/publicsafety/crime/carlton-no-snitching-no-answers/2232047>.

³⁶ Stephanie Slifer, *Dad believes son was killed in Tampa drive-by shooting for talking to cops*, CBS NEWS, Jun. 2, 2015, <http://www.cbsnews.com/news/dad-believes-son-was-killed-in-tampa-drive-by-shooting-for-talking-to-cops/>.

³⁷ *Id.*

³⁸ *Id.*

³⁹ 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.

⁴⁰ Section 119.15(3), F.S.

⁴¹ Section 119.15(6)(b), F.S.

⁴² Section 119.15(6)(b)1., F.S.

⁴³ Section 119.15(6)(b)2., F.S.

⁴⁴ Section 119.15(6)(b)3., F.S.

⁴⁵ Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.⁴⁶ 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.⁴⁷

III. Effect of Proposed Changes:

Current Florida law expressly requires each branch of this state's government to grant every person access to government records. However, several types of government records are exempt from this requirement. Thus, when a member of the public seeks access to exempt records by submitting a request pursuant to this state's public records laws, the government is not required to grant the request. In addition to being exempt, some records are confidential. These confidential records may not be inspected by the public and may only be disclosed to the persons or organizations designated in statute. Records that are currently exempt, or confidential and exempt, include several types of criminal investigative records, such as the names of confidential informants and victims of certain crimes. However, the personal identifying information of a murder witness is not currently confidential or exempt; the bill changes this, as set forth below.

Personal Identifying Information of a Murder Witness is Confidential and Exempt

The bill designates "criminal intelligence or investigative information that reveals the personal identifying information of a witness to a murder" as confidential and exempt from the disclosure requirements under the public records laws. Therefore, if a person submits a public records request for records containing this information to a state agency, the agency may not provide access to or disclose the information. This confidentiality survives the information entering a court file. The confidential and exempt status of these records applies for a period of two years following the commission of the murder observed by the witness. This means that even if the state provided witness' identity to the defendant during discovery, the information would not be public for a two-year window.

Exceptions to the Confidentiality and Exemption of Murder Witness Information

As exceptions to the general prohibition on disclosing these murder witness records, a state agency may disclose these records:

- In the furtherance of its official duties and responsibilities;
- To assist in locating or identifying the witness if the witness is believed to be missing or endangered;
- To another governmental agency for use in the performance of its official duties and responsibilities; or
- To the parties in a pending criminal prosecution as required by law.

5. Is the record or meeting protected by another exemption?

6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

⁴⁶ FLA. CONST. art. I, s. 24(c).

⁴⁷ Section 119.15(7), F.S.

The Limited Nature of Every Public Records Exemption and Confidentiality Provision

Because a public records exemption generally applies only to public records requests, the bill does not prevent disclosure of information through discovery under the Rules of Criminal Procedure. Accordingly, for example, the defendant in a murder case will be able to access this information through discovery and potentially pass it on to others. With or without the bill, however, if a witness testifies at trial, his or her identity would be revealed to the defendant and anyone else in the courtroom.

OGSR Provision

The bill is subject to the Open Government Sunset Review Act, and therefore stands repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.⁴⁸

Statement of Public Necessity

The bill also provides a statement of public necessity as required by the Florida Constitution.⁴⁹ This statement includes the following findings:

- The judicial system cannot function without the participation of witnesses.
- Complete cooperation and truthful testimony of witnesses are essential to the determination of the facts of a case.
- The public disclosure of personal identifying information of a witness to a murder could have a chilling effect on persons stepping forward and providing their accounts of a murder that has been witnessed.
- A witness to a murder may be unwilling to cooperate fully with law enforcement officers if the witness knows his or her personal identifying information can be made publicly available.
- A witness may be less likely to call a law enforcement officer and report a murder if his or her personal identifying information is made available in connection with the murder that is being reported or under investigation.
- A witness could become the subject of intimidation tactics or threats by the perpetrator of the murder⁵⁰ if the witness's personal identifying information is publicly available.

The bill takes effect on July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁴⁸ See s. 119.15(3), F.S.

⁴⁹ FLA. CONST. art. I, s. 24(c).

⁵⁰ Murder is defined by reference to s. 782.04, F.S., which is the murder statute.

B. Public Records/Open Meetings Issues:**Vote Requirement**

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

Public Necessity Statement

Article I, Section 24(c) of the Florida Constitution requires a public necessity statement for a newly created public record exemption. The bill creates a public record exemption and includes a public necessity statement.

Breadth of Exemption

Article I, Section 24(c) of the Florida Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. Based on the legislative findings in the statement of public necessity, the bill does not appear to be in conflict with this constitutional requirement.

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:

Lines 66-67 of the bill provide that the murder witness' identification information may be provided to the parties in a pending criminal prosecution. This language appears to be redundant since public records laws do not infringe on the discovery rights of parties.⁵¹

⁵¹ In, *Ivester v. State*, 398 So. 2d 926, 931 (Fla. 1st DCA 1981), the court stated “[w]hile Section 119.07(3), Florida Statutes, does foreclose certain items from public inspection the provisions of Section 119.07, Florida Statutes, are not intended to limit the effect of Rule 3.220, the discovery provisions, of the Florida Rules of Criminal Procedure.” Citing *Ivester*, the Fifth DCA noted that in the context of a criminal proceeding, “a public records exemption cannot limit a criminal defendant’s access to discovery.” *B.B. v. Department of Children and Family Services*, 731 So. 2d 30, 34 (Fla. 5th DCA 1999).

The current law provides that discovery may be provided to the defendant because it is “required by law or *agency rule* to be given to the person arrested.” Line 67 of the bill provides that criminal intelligence information or criminal investigative information may be provided to the parties pending criminal prosecution “as required by law.” It is not clear if, in this case, the Rules of Judicial Administration or the Florida Rules of Criminal Procedure would be inapplicable because they are not considered a “law.”⁵²

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 119.011, 119.071, and 119.0714.

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 Judiciary on March 7, 2017:

The committee substitute expressly allows a criminal justice agency to disclose the personal identifying information of a witness to a murder to the parties in a pending criminal prosecution as required by law.

CS by Criminal Justice on February 21, 2017:

The CS:

Amends s. 119.011(3)(c), F.S., to include a cross reference to the newly created s. 119.071(2)(m), F.S.

- Makes *criminal intelligence information or criminal investigative information that reveals* the personal identifying information of a witness to a murder confidential and exempt for two years after the date on which the murder is observed by the witness in s. 119.071(2)(m), F.S.; provides for disclosure of that information under limited circumstances.
- Eliminates the creation of s. 119.0714(1)(k), F.S., and instead amends s. 119.0714(1)(h), F.S., to create a cross reference to s. 119.071(2)(m), F.S.

⁵² Article V, section 2(a) of the Florida Constitution, provides that the Supreme Court has the power to adopt the rule of practice, procedure, and administration for all courts. The Supreme Court found that portions of a public records statute fast-tracking production of public records in capital cases were unconstitutional, commenting, “the adoption of time limitations and procedures governing the production of public records in capital cases is within the exclusive province of this Court.” *Allen v. Butterworth*, 756 So. 2d 52, 66 (Fla. 2000).

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committees on Judiciary; and Criminal Justice; and
Senator Bracy

590-02190-17

2017550c2

1 A bill to be entitled
2 An act relating to public records; amending s.
3 119.011, F.S.; providing that the personal identifying
4 information of a witness to a murder remains
5 confidential and exempt for a specified period;
6 amending s. 119.071, F.S.; providing an exemption from
7 public records requirements for criminal intelligence
8 or criminal investigative information that reveals the
9 personal identifying information of a witness to a
10 murder for a specified period; authorizing specified
11 entities and parties to receive the information;
12 providing for future legislative review and repeal of
13 the exemption; amending s. 119.0714, F.S.; providing
14 that the public records exemption applies to personal
15 identifying information of a witness to a murder that
16 is made part of a court file; providing a statement of
17 public necessity; providing an effective date.
18
19 Be It Enacted by the Legislature of the State of Florida:
20
21 Section 1. Paragraph (c) of subsection (3) of section
22 119.011, Florida Statutes, is amended to read:
23 119.011 Definitions.—As used in this chapter, the term:
24 (3)
25 (c) "Criminal intelligence information" and "criminal
26 investigative information" shall not include:
27 1. The time, date, location, and nature of a reported
28 crime.
29 2. The name, sex, age, and address of a person arrested or

Page 1 of 4

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

590-02190-17

2017550c2

30 of the victim of a crime except as provided in s. 119.071(2)(h).
31 3. The time, date, and location of the incident and of the
32 arrest.
33 4. The crime charged.
34 5. Documents given or required by law or agency rule to be
35 given to the person arrested, except as provided in s.
36 119.071(2)(h) or (2)(m), and, except that the court in a
37 criminal case may order that certain information required by law
38 or agency rule to be given to the person arrested be maintained
39 in a confidential manner and exempt from the provisions of s.
40 119.07(1) until released at trial if it is found that the
41 release of such information would:
42 a. Be defamatory to the good name of a victim or witness or
43 would jeopardize the safety of such victim or witness; and
44 b. Impair the ability of a state attorney to locate or
45 prosecute a codefendant.
46 6. Informations and indictments except as provided in s.
47 905.26.
48 Section 2. Paragraph (m) is added to subsection (2) of
49 section 119.071, Florida Statutes, to read:
50 119.071 General exemptions from inspection or copying of
51 public records.—
52 (2) AGENCY INVESTIGATIONS.—
53 (m)1. Criminal intelligence information or criminal
54 investigative information that reveals the personal identifying
55 information of a witness to a murder, as described in s. 782.04,
56 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.
57 I of the State Constitution for 2 years after the date on which
58 the murder is observed by the witness. A criminal justice agency

Page 2 of 4

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

590-02190-17

2017550c2

59 may disclose such information:

60 a. In the furtherance of its official duties and
61 responsibilities.

62 b. To assist in locating or identifying the witness if the
63 agency believes the witness to be missing or endangered.

64 c. To another governmental agency for use in the
65 performance of its official duties and responsibilities.

66 d. To the parties in a pending criminal prosecution as
67 required by law.

68 2. This paragraph is subject to the Open Government Sunset
69 Review Act in accordance with s. 119.15 and shall stand repealed
70 on October 2, 2022, unless reviewed and saved from repeal
71 through reenactment by the Legislature.

72 Section 3. Paragraph (h) of subsection (1) of section
73 119.0714, Florida Statutes, is amended to read:

74 119.0714 Court files; court records; official records.—

75 (1) COURT FILES.—Nothing in this chapter shall be construed
76 to exempt from s. 119.07(1) a public record that was made a part
77 of a court file and that is not specifically closed by order of
78 court, except:

79 (h) Criminal intelligence information or criminal
80 investigative information that is confidential and exempt as
81 provided in s. 119.071(2)(h) or (2)(m).

82 Section 4. The Legislature finds that it is a public
83 necessity that personal identifying information of a witness to
84 a murder, as described in s. 782.04, Florida Statutes, be made
85 confidential and exempt from s. 119.07(1), Florida Statutes, and
86 s. 24(a), Article I of the State Constitution for 2 years after
87 the date on which the murder is observed by the witness. The

590-02190-17

2017550c2

88 judicial system cannot function without the participation of
89 witnesses. Complete cooperation and truthful testimony of
90 witnesses is essential to the determination of the facts of a
91 case. The public disclosure of personal identifying information
92 of a witness to a murder could have an undesirable chilling
93 effect on witnesses stepping forward and providing their
94 eyewitness accounts of murders. A witness to a murder may be
95 unwilling to cooperate fully with law enforcement officers if
96 the witness knows his or her personal identifying information
97 can be made publicly available. A witness may be less likely to
98 call a law enforcement officer and report a murder if his or her
99 personal identifying information is made available in connection
100 with the murder that is being reported or under investigation.
101 The Legislature further finds that a witness could become the
102 subject of intimidation tactics or threats by the perpetrator of
103 the murder if the witness's personal identifying information is
104 publicly available. For these reasons, the Legislature finds
105 that it is a public necessity that the personal identifying
106 information of a witness to a murder, as described in s. 782.04,
107 Florida Statutes, be made confidential and exempt from public
108 record requirements.

109 Section 5. This act shall take effect July 1, 2017.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/27/17
Meeting Date

550
Bill Number (if applicable)

Topic WITNESS TO MURDER

Amendment Barcode (if applicable)

Name DIANA RAGBEE

Job Title DIRECTOR PUBLIC POLICY

Address 3150 SW 3RD AVE
Street

Phone 305 571 5718

MIAMI FL 33129
City State Zip

Email diana@thechildrens trust
- org

Speaking: For Against Information

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

Representing THE CHILDREN'S TRUST

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)

3-27-17

Meeting Date

550

Bill Number (if applicable)

Topic Murder Witnesses

Amendment Barcode (if applicable)

Name Ken cop-CHEN-ski Koczynski

Job Title lobbyist

Address 300 East Brevard St
Street

Phone 850-228-7789

Tallahassee FL 32301
City State Zip

Email ken@flpba.org

Speaking: For Against Information

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

Representing Florida PBA

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)

3/27/17

Meeting Date

SB 550

Bill Number (if applicable)

Topic Witness of Murden

Amendment Barcode (if applicable)

Name Kathleen Russell

Job Title Dir of Gov Relations

Address 400 S Orange Ave

Phone 407 383 2075

Street

Orlando FL

32801

Email

City

State

Zip

Speaking: ~~For~~ Against Information

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

Representing City of Orlando

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)

550

Bill Number (if applicable)

Meeting Date

Amendment Barcode (if applicable)

Topic

Name JESS McCARTY

Job Title ASS'T COUNTY ATTORNEY

Address 111 NW 1ST ST 2810

Phone 305-979-7110

Street

MIAMI

33128

State

Zip

Email

Speaking: For Against Information

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

Representing MIAMI-DADE

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

3/27/17

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

550

Meeting Date

Bill Number (if applicable)

Topic Witness Protection

Amendment Barcode (if applicable)

Name ~~Atty Gen Dade County Public Schools~~ Mario Bailey

Job Title Sen. Gov Relations Consultant

Address 1 East Broward Blvd
Street

Phone _____

Fort Lauderdale FL
City State Zip

Email mbailey@bpllegal.com

Speaking: For Against Information

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

Representing Miami Dade County & Miami Dade County Public Schools

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)

3/27/17

Meeting Date

550
Bill Number (if applicable)

Topic Witness Protection Bill

Amendment Barcode (if applicable)

Name Arlene Byrd

Job Title Miami Dade County Water & Sewer Dept.

Address Miami Dade County

Phone _____

Street

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Parents of Murdered Kids

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

03/27/17
Meeting Date

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

550
Bill Number (if applicable)

Topic Witness Port Jackson Bill

Amendment Barcode (if applicable)

Name Myra Williams Cammen

Job Title _____

Address 2545 New 8th Street

Phone _____

Miami Beach Fla 33134
City State Zip

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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-27-17

Meeting Date

550

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Wanda Jones

Job Title _____

Address 3220 NW 2-08 Terrace

Phone _____

Miami Gardens FL 33056

Email _____

Street
City

State

Zip

Speaking: For Against Information

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

Representing Witness Protection Bill

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)

550
Bill Number (if applicable)

Meeting Date _____

Topic The Witness Protection

Amendment Barcode (if applicable) _____

Name TANGELA SEARS

Job Title NIA

Address 1270 OW 25 St

Phone 786 286 1104

Street
City Miami, FL State FL Zip 33147

Email tangelasears@gmail.com

Speaking: For Against Information

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

Representing Parents of Murdered Kids

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)

3/27/17
Meeting Date

550
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name TIM STANFIELD

Job Title _____

Address 101 N. MONROE ST Suite 1090

Phone 681 6411

Street

Tallahassee FL 32301

City

State

Zip

Email timothy.stanfield@ipc.com

Speaking: For Against Information

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

Representing Florida Police Chiefs Association

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 596

INTRODUCER: Governmental Oversight and Accountability Committee; Communications, Energy, and Public Utilities Committee; and Senator Hutson and others

SUBJECT: Utilities

DATE: March 29, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiehle</u>	<u>Caldwell</u>	<u>CU</u>	<u>Fav/CS</u>
2.	<u>Peacock</u>	<u>Ferrin</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 596 creates the Advanced Wireless Infrastructure Deployment Act. Put very simply, it creates a process for gaining access to and use of public rights-of-way in connection with the installation of small wireless communications infrastructure.

The bill creates a process and time limits for review and approval of applications by an authority. An authority is defined as a county or municipality having jurisdiction and control of the rights-of-way of any public road. An authority does not include the Department of Transportation, and its rights-of-way are excluded from this bill. The authority must approve a complete application unless it does not meet the authority's applicable codes, defined to include "uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, or local amendments to those codes, enacted solely to address threats of destruction of property or injury to persons," and qualifying government historic preservation zoning regulations. This excludes consideration and application of zoning, land use, aesthetic ordinances, and of any other source of public safety protections.

The bill provides for application or permit fees and collocation or pole attachment fees. Collocation fees cannot exceed \$15.00 per year per authority utility pole. Collocation fees include the costs to alter a pole to strengthen it to support the installation of the wireless infrastructure, including costs to replace a pole if necessary. They do not include any consultant fees or expenses.

The bill does not authorize a person to collocate small wireless facilities on a privately owned utility pole, a utility pole owned by an electric cooperative or by a municipal electric utility, a privately owned wireless support structure, or other private property without the consent of the property owner.

Additionally, the bill does not authorize a person to collocate small wireless facilities or micro wireless facilities on a utility pole or erect a wireless support structure in the right-of-way located within a retirement community that is deed-restricted for specified older persons, has more than 5,000 residents, and has underground utilities.

The bill takes effect July 1, 2017.

II. Present Situation:

Use of Right-of-Way by Communications Services Providers

Section 337.401, F.S., authorizes the Department of Transportation (DOT or the department) and local governmental entities that have jurisdiction and control of public roads (jointly referred to as the or an authority) to prescribe and enforce reasonable rules or regulations for placing and maintaining of structures across, on, or within the right-of-way limits of a road. An authority may authorize any person who is a resident of this state or any corporation either organized under the laws of this state or licensed to do business within this state to use a right-of-way for the utility¹ in accordance with the authority's adopted rules or regulations.² The statute prohibits a utility from installing, locating, or relocating within a right-of-way unless authorized by a written permit.³ The permit must require the permitholder to be responsible for any damage resulting from the use of the right-of-way.⁴

Municipal and county rights-of-way access rules and regulations relating to communications services providers must be reasonable and nondiscriminatory and must be generally applicable to all providers of communications services.⁵ The rules and regulations must be "generally applicable" to all such providers and may not require such providers to apply for or enter into an individual license, franchise, or other agreement as a condition of using the right of way.⁶

A municipality or charter county may require and collect permit fees from any providers of communications services that use or occupy municipal or county roads or rights-of-way.⁷ To ensure nondiscriminatory and competitively neutral permit fees for communications services

¹ Existing paragraph 337.401(1)(a), F.S., refers to "any electric transmission, telephone, telegraph, or other communications services lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in this section and in ss. 337.402, 337.403, and 337.404 as the 'utility'." This indirectly defines the term "utility" not by type of entity or by type of service provided but by the type of structure some type of entity might use in providing some type of service.

² Section 337.401(2), F.S.

³ *Id.*

⁴ *Id.*

⁵ Section 337.401(3)(a), F.S.

⁶ *Id.*

⁷ Section 337.401(3)(c)1.a.(I), F.S.

providers, municipalities and charter counties must elect to collect permit fees for use of the right-of-way in one of two ways. First, the local government can elect to require the payment of fees from any such providers, provided that the fees are “reasonable and commensurate with the direct and actual cost of the regulatory activity,” “demonstrable,” and “equitable among users of the roads or rights-of-way.”⁸ If the local government makes this election, the rate of its local communications service tax⁹ is automatically reduced by a rate of 0.12 percent. Second, the local government can elect not to require payment of fees from any such provider and may increase its local communications service tax by a rate of up to 0.12 percent. A noncharter county may make the same election. If it chooses not to impose permit fees, it may increase its local communications service tax by a rate of up to 0.24 percent to replace the revenues it would have received for such permit fees.¹⁰

Local Government Pole Attachment Fees

With certain exceptions, the authority of a public body¹¹ to require taxes, fees, charges, or other impositions¹² from dealers of communications services for occupying its roads and rights-of-way is specifically preempted by the state.¹³ Among the taxes, fees, and charges *not* preempted¹⁴ are the following:

- Pole attachment fees charged by a local government for attachments to its utility poles.
- Amounts charged for the rental or other use of property owned by a public body which is not in the public rights-of-way to a dealer of communications services for any purpose, including, but not limited to, the placement or attachment of equipment used in the provision of communications services.
- Permit fees related to placing or maintaining facilities in or on public roads or rights-of-way pursuant to s. 337.401, F.S.

Accordingly, local governments may establish pole attachment fees for communications services facilities by ordinance or agreement.

Collocation of Wireless Communications Facilities in DOT Rights-of-Way

With respect to property acquired for state rights-of-way, the DOT is responsible for negotiating leases that provide access for wireless communications facilities.¹⁵ Payments required under such leases must be reasonable and reflect the market rate for the use of the state government-

⁸ Section 337.401(3)(c)1.a.(I), F.S. Such costs include the costs of issuing and processing permits, plan reviews, physical inspection, and direct administrative costs.

⁹ Local communications services taxes are authorized and governed by ch. 202, F.S.

¹⁰ Section 337.401(3)(c)2., F.S.

¹¹ Section 1.01(8), F.S., provides that a “public body” includes counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state.

¹² Section 202.24(2)(b), F.S., provides, in part, that a tax, charge, fee, or other imposition includes any amount or in-kind payment of property or services which is required by ordinance or agreement to be paid or furnished to a public body by or through a dealer of communications services in its capacity as a dealer of communications services.

¹³ Section 202.24(1), F.S.

¹⁴ See s. 202.24(2)(c), F.S.

¹⁵ Section 365.172(13)(f), F.S.

owned property. DOT is authorized to adopt rules for granting such leases, including terms and conditions.¹⁶

The DOT has entered into three competitively bid leases that allow the lessee to place wireless facilities on the DOT's rights-of-way or to sublease those rights to a third-party for the same purpose.¹⁷ The DOT indicates that it derives an income stream from each of these agreements.¹⁸ The DOT Turnpike System, which includes the Western Beltway, Suncoast Parkway, Veterans Expressway, I-4 connector, Polk Parkway, Sawgrass Expressway, Turnpike Mainline, Beachline Expressway, and Seminole Expressway, is not subject to rights-of-way leases for wireless facilities.¹⁹

Federal Law on Wireless Facilities Siting

The FCC interprets and implements certain provisions of federal law that are designed, among other purposes, to “remove barriers to deployment of wireless network facilities by hastening the review and approval of siting applications by local land-use authorities.”²⁰ These statutory provisions preserve state and local governments’ authority to control the “placement, construction, and modification of personal wireless service facilities” and to manage “use of public rights-of-way,” but they prohibit state and local governments from using certain unreasonable criteria in making such decisions.²¹ Under the authority granted by these provisions, the FCC has issued orders to clarify the “maximum presumptively reasonable time frames for review of siting applications and the criteria local governments may apply in deciding whether to approve them.”²²

Federal law establishes that state and local governments may not establish laws, regulations, or other requirements that prohibit or have the effect of prohibiting the ability of any entity to provide personal wireless services²³ or other telecommunications services.²⁴ The FCC has interpreted these provisions as precluding state or local government actions that materially inhibit the ability of an entity to compete in a fair and balanced legal and regulatory environment. Federal circuit courts have varied on the particular standards to apply in this area.²⁵

¹⁶ *Id.*

¹⁷ Florida Department of Transportation, *2017 Legislative Bill Analysis SB 596* (Jan. 30, 2017) (Copy on file with the Governmental Oversight and Accountability Committee). The analysis identifies the following leases: American Tower/Lodestar, entered into on March 25, 1999, with a thirty-year term; Rowstar #1, entered into on December 4, 2014, with a ten-year term, extendable for up to four additional ten year terms at the discretion of Rowstar; and Rowstar #2, entered into on December 29, 2016, with a ten-year term, extendable for up to four additional ten year terms at the discretion of Rowstar.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See FEDERAL COMMUNICATIONS COMMISSION, *Comments Sought on Mobilitie, LLC Petition for Declaratory Ruling and Possible Ways to Streamline Deployment Of Small Cell Infrastructure (FCC 2016 Notice)*, WT Docket No. 16-421, DA 16-1427, December 22, 2016, at p. 2; 47 U.S.C. §§253, 332(c)(7), and 1455(a).

²¹ *Id.* at p. 5, citing 47 U.S.C. §§253(c) and 332(c)(7)(A).

²² *Id.* at p. 2

²³ Under 47 U.S.C. 332(c)(7), “personal wireless services” are defined as “commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.”

²⁴ *FCC 2016 Notice* at p. 10, citing 47 U.S.C. §§253(a) and 332(c)(7).

²⁵ *Id.*

Further, federal law provides that state and local governments may manage the public rights-of-way and may require fair and reasonable compensation from telecommunications providers for use of those rights-of-way on a nondiscriminatory basis.²⁶ The FCC has not interpreted this provision, and federal circuit courts have varied on the issue of what constitutes “fair and reasonable” compensation.²⁷

In December 2016, in response to a petition for declaratory ruling, the FCC issued a public notice seeking comment on streamlining the deployment of small cell infrastructure by improving wireless facilities siting policies.²⁸ In its notice, the FCC summarized the issues:

To satisfy consumers’ rapidly growing demand for wireless broadband and other services, wireless companies are actively expanding the network capacity needed to maintain and improve the quality of existing services and to support the introduction of new technologies and services. In particular, many wireless providers are deploying small cells and distributed antenna systems (DAS) to meet localized needs for coverage and increased capacity in outdoor and indoor environments. Although the facilities used in these networks are smaller and less obtrusive than traditional cell towers and antennas, they must be deployed more densely – i.e., in many more locations – to function effectively. As a result, local land-use authorities in many areas are facing substantial increases in the volume of siting applications for deployment of these facilities. This trend in infrastructure deployment is expected to continue, and even accelerate, as wireless providers begin rolling out 5G services.

This creates a dilemma. We recognize, as did Congress in enacting Sections 253 and 332 of the Communications Act, that localities play an important role in preserving local interests such as aesthetics and safety. At the same time, the Commission has a statutory mandate to facilitate the deployment of network facilities needed to deliver more robust wireless services to consumers throughout the United States. It is our responsibility to ensure that this deployment of network facilities does not become subject to delay caused by unnecessarily time-consuming and costly siting review processes that may be in conflict with the Communications Act.

The stated purpose of the FCC’s request for comments is to develop a factual record to assess whether and to what extent the process of local land-use authorities’ review of siting applications is hindering, or is likely to hinder, the deployment of wireless infrastructure. Among the matters on which the FCC is seeking comment and guidance are questions specifically related to access to state and local government rights-of-way and the fees imposed for such access.²⁹ The FCC indicated that this “data-driven evaluation will make it possible to reach well-supported decisions

²⁶ *Id.* at p. 12, citing 47 U.S.C. §253(c).

²⁷ *Id.* at p. 13.

²⁸ *Id.*

²⁹ *Id.* at pp. 8-14.

on which further Commission actions, if any, would most effectively address any problem, while preserving local authorities' ability to protect interests within their purview."³⁰

Deployment of Small Wireless Facilities in Florida

Wireless service providers and wireless infrastructure providers have begun the deployment of small cell wireless infrastructure in various jurisdictions within Florida. These providers indicate that their efforts have been hampered to varying degrees by some local governments that have imposed conditions or moratoria on the siting of small cell facilities.³¹ In general, these moratoria indicate that they are temporary measures designed to allow the local government to review their standards, regulations, and requirements related to siting of wireless communications facilities to address small cell facilities.³² In one instance, the municipality has renewed its moratoria on multiple occasions, extending its effect from the original six months to over 30 months.³³

The Florida Fair Housing Act/Housing for Older Persons

The Florida Fair Housing Act (FFHA)³⁴ is modeled after the Federal Fair Housing Act.³⁵ The FFHA prohibits a person from refusing to sell or rent, or otherwise make unavailable a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion.³⁶ The Florida Commission on Human Relations (FCHR) is the state agency established to enforce Florida's anti-discrimination laws.³⁷

There are several exemptions to the FFHA, including "housing for older persons." Section 760.29(4)(a), F.S., exempts "housing for older persons" from the anti-discrimination provisions of the act relating to familial status.

Section 760.29(4)(b), F.S., provides, in part, that the term "housing for older persons" means housing:

1. Provided under any state or federal program that the commission (FCHR) determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program;
2. Intended for, and solely occupied by, persons 62 years of age or older; or
3. Intended and operated for occupancy by persons 55 years of age or older that meets the following requirements:
 - a. At least 80 percent of the occupied units are occupied by at least one person 55 years of age or older.
 - b. The housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph.

³⁰ *Id.* at p. 2.

³¹ Several municipalities and counties have adopted moratoria, including the City of Fort Lauderdale, the City of Tallahassee, and Pinellas County.

³² *See, e.g.*, City of Tallahassee, Resolution No. 16-R-42, December 2016.

³³ City of Fort Lauderdale, Resolution No. 17-30, February 21, 2017.

³⁴ Part II of Chapter 760, F.S., is the Florida Fair Housing Act.

³⁵ 42 U.S.C. s. 3601 *et seq.*

³⁶ Section 760.23(1), F.S.

³⁷ *See* ss. 760.01–760.11, F.S., and ss. 760.20–760.37, F.S.

c. The housing facility or community complies with rules made by the Secretary of the United States Department of Housing and Urban Development pursuant to 24 C.F.R. part 100 for verification of occupancy.

A facility or community claiming a “housing for older persons” exemption from the FFHA is required to register with the FCHR by sending a letter to the Commission stating that the facility or community is in compliance with the applicable requirements.³⁸ Failure to comply with the registration requirement does not disqualify a facility or community that otherwise qualifies for the exemption.³⁹

III. Effect of Proposed Changes:

The bill creates the Advanced Wireless Infrastructure Deployment Act, a new subsection s. 337.401(7), F.S.

Definitions

The bill creates definitions, including the following related to wireless entities:

- An “applicant” is a person who submits an application and is a wireless provider.
- An “application” is a request submitted by an applicant to an authority for a permit to collocate small wireless facilities.
- A “wireless provider” is a wireless services provider or a wireless infrastructure provider.
- A “wireless services provider” is a person who provides wireless services.
- “Wireless services” are any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.
- A “wireless infrastructure provider” is a person certificated to provide telecommunications service in the state and who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures, but is not a wireless services provider.

The bill defines four types of wireless infrastructure:

- A “wireless facility” is equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes small wireless facilities. The term does not include:
 - The structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated;
 - Wireline backhaul facilities; or
 - Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.
- A “small wireless facility” is a wireless facility that meets both the following qualifications:

³⁸ Section 760.29(4)(e), F.S.

³⁹ *Id.*

- Each antenna associated with the facility is located inside an enclosure of no more than six cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than six cubic feet in volume; and
- All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cut-off switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.
- A “micro wireless facility” is a small wireless facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, no longer than 11 inches.
- An “antenna” is communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

The bill defines three types of structures on which an applicant may seek to locate infrastructure:

- An “authority utility pole” is a utility pole owned by an authority in the right-of-way. The term does not include a utility pole owned by a municipal electric utility, any utility pole used to support municipally owned or operated electric distribution facilities, or a utility pole located in the right-of-way within a retirement community that:
 - Is deed-restricted as housing for older persons as defined in s. 760.29(4)(b), F.S.;
 - Has more than 5,000 residents; and
 - Has underground utilities for electric transmission or distribution.
- A “utility pole” is a pole or similar structure that is used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar function.
- A “wireless support structure” is a freestanding structure, such as a monopole, a guyed or self-supporting tower, a billboard, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole.

The bill also creates the following definitions:

- “Applicable codes” means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, or local amendments to those codes, enacted solely to address threats of destruction of property or injury to persons. The term also includes local government historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C s. 332(c)(7), the requirements for facility modifications under 47 U.S.C. s. 1455(a), or the National Historic Preservation Act of 1966, as amended, and the regulations adopted to implement these laws.
- “Authority” means a county or municipality having jurisdiction and control of the rights-of-way of any public road. The term does not include the DOT, and its rights-of-way are excluded from the bill.
- “Collocate” or “collocation” means to install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole.
- “FCC” means the Federal Communications Commission.

Application

The process necessarily begins with an application; however, the bill does not expressly authorize an authority to develop a form or to require that an applicant provide specific information, although it does contain statements that *imply* some level of authorization. For example, it prohibits an authority from requiring an applicant to provide more information to obtain a permit than is required of electric service providers and other communications service providers that are not wireless service providers.⁴⁰ A proponent has argued that this prohibition against requiring more information *indirectly authorizes* an authority to require an applicant to provide the same information as the listed providers. The bill also makes numerous references to a “complete” application. An application cannot be determined to be complete or incomplete without some standard by which to judge, which presumably would be set forth in requirements for the application and permit. However, this, too, is implied or indirect authority.

It *appears* that the application process is for small wireless facilities only, although the bill defines three other types of infrastructure:

- When the bill mentions infrastructure in substantive provisions, it is usually small wireless facilities, and the definition of “application” is a request submitted by an applicant to an authority for a permit to collocate small wireless facilities.⁴¹
- However, it is possible that an application could be for installation of a micro wireless facility. A micro wireless facility is a type of small wireless facility, so it could be included in the substantive provisions on small wireless facilities. Additionally, the only use of the term micro wireless facility is in a prohibition against authorities requiring approval or fees for specified activities involving micro wireless facilities,⁴² which does not necessarily rule out an application for other uses of these facilities.
- The term antenna is used most often in defining the components of other infrastructure and is used only once in a substantive provision, which prohibits an authority from requiring placement of multiple antenna systems on a single utility pole.⁴³
- The bill only used the term “wireless facility” in defining “small wireless facility.”

The bill requires wireless infrastructure providers include an attestation in their application to an authority that small wireless facilities will be collocated on the utility pole or structure and small wireless facilities will be used by a wireless services provider to provide service within 9 months after the application is granted. The authority must accept and process the application in accordance with the bill and any applicable local codes governing the placement of utility poles in the public right-of-way.

Application Review and Approval

The bill establishes the following process and time requirements for the application review and approval:

⁴⁰ Section 337.401(7)(d)2., F.S., as proposed by CS/CS/SB 596.

⁴¹ Definitions are not substantive law, so this only provides some level of guidance in interpreting the substantive provisions.

⁴² Section 337.401(7)(e)3., F.S., as proposed by CS/CS/SB 596.

⁴³ Section 337.401(7)(d)3., F.S., as proposed by CS/CS/SB 596.

- The authority must determine whether the application is complete⁴⁴ and notify the applicant by electronic mail within 10 days after receiving an application.⁴⁵ If an authority deems an application incomplete, the authority must specifically identify the missing information. The application is deemed complete when the applicant submits all documents, information, and fees specifically enumerated in the authority's permit application form or if the authority fails to provide notification to the applicant within 10 days.⁴⁶
- If the authority fails to approve or deny a complete application within 60 days after receipt of the application, the application is deemed approved.⁴⁷
- The authority must notify the applicant of approval or denial by electronic mail. The bill requires an authority to approve a complete application unless it does not meet the authority's applicable codes.⁴⁸ If the authority denies the application, the authority must specify in writing the basis for denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant by electronic mail on the day the authority denies the application. The applicant then has 30 days after notice of the denial is sent to the applicant to cure the identified deficiencies and resubmit the application. The authority then must approve or deny the revised application within 30 days after receipt or the application will be deemed approved. Any subsequent review is limited to the deficiencies cited in the denial.⁴⁹
- An applicant seeking to collocate small wireless facilities within the jurisdiction of a single authority may, at the applicant's discretion, file a consolidated application and receive a single permit for the collocation of multiple small wireless facilities.⁵⁰ Presumably, the above time limit requirements apply to such a consolidated application.

In reviewing an application, the authority must process applications on a nondiscriminatory basis.⁵¹ The bill prohibits the authority from doing the following:

- Directly or indirectly requiring an applicant to perform services unrelated to the collocation for which approval is sought, such as in-kind contributions to the authority, including reserving fiber, conduit, or pole space for the authority;⁵²
- Requiring an applicant to provide more information to obtain a permit than is required of electric service providers and other communications service providers that are not wireless service providers;⁵³

⁴⁴ The bill does not authorize authorities to establish requirements or standards by which completeness of an application may be determined.

⁴⁵ Ten days may be an inadequate time for a local government to make the engineering determination that a proposed location, installation, and resulting wind load comply with applicable codes.

⁴⁶ Section 337.401(7)(d)5., F.S., as proposed by CS/CS/SB 596.

⁴⁷ Section 337.401(7)(d)6., F.S., as proposed by CS/CS/SB 596.

⁴⁸ The term "applicable codes" is defined to include "uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, or local amendments to those codes, enacted solely to address threats of destruction of property or injury to persons." This excludes consideration and application of zoning, land use, and aesthetic ordinances and of any other source of public safety protections.

⁴⁹ Section 337.401(7)(d)7., F.S., as proposed by CS/CS/SB 596.

⁵⁰ Section 337.401(7)(d)8., F.S., as proposed by CS/CS/SB 596.

⁵¹ Section 337.401(7)(d)6., F.S., as proposed by CS/CS/SB 596.

⁵² Section 337.401(7)(d)1., F.S., as proposed by CS/CS/SB 596.

⁵³ Section 337.401(7)(d)2., F.S., as proposed by CS/CS/SB 596.

- Requiring the placement of small wireless facilities on any specific utility pole or category of poles or requiring multiple antenna systems on a single utility pole;⁵⁴
- Limit the placement of small wireless facilities by minimum separation distances or a maximum height limitation; however, an authority may limit the height of a small wireless facility to no more than 10 feet above the tallest existing utility pole, measured from grade in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet, the authority may limit the height of the small wireless facility to no more than 60 feet. The height limitations do not apply to the placement of any small wireless facility on a utility pole or wireless support structure constructed on or before June 30, 2017, if the small wireless facility does not extend more than 10 feet above the structure.⁵⁵ and
- Enter into an exclusive arrangement with any person for the right to attach equipment to authority utility poles.⁵⁶

The bill prohibits requiring either approval or fees for:

- Routine maintenance;
- Replacement of existing wireless facilities with wireless facilities that are substantially similar or the same size or smaller; or
- Installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes by a communications service provider authorized to occupy the rights-of-way and who is remitting taxes under chapter 202, F.S.⁵⁷

Fees

The bill addresses two types of fees. The first is an application or permit fee. The bill provides that an authority may charge a permit fee only in accordance with existing subsection (3) on fees for access to rights-of-way.⁵⁸ That subsection allows local governments to choose whether to charge permit fees. The local government can choose to require and collect permit fees from any providers of communications services that use or occupy municipal or county roads or rights-of-way, in which case the rate of the local communications services tax imposed by such jurisdiction, as computed under s. 202.20, F.S., shall automatically be reduced by a rate of 0.12 percent. Alternatively, the local government can elect not to require and collect permit fees in which case the rate for the local communications services tax as computed under s. 202.20, F.S., for that jurisdiction may be increased by ordinance or resolution by an amount not to exceed a rate of 0.12 percent.

The second type of fee is a pole attachment fee, or collocation fee, which includes any costs of make-ready work.⁵⁹ The rates and fees for collocations on authority utility poles must be

⁵⁴ Section 337.401(7)(d)3., F.S., as proposed by CS/CS/SB 596.

⁵⁵ Section 337.401(7)(d)4., F.S., as proposed by CS/CS/SB 596.

⁵⁶ Section 337.401(7)(f)1., F.S., as proposed by CS/CS/SB 596.

⁵⁷ Section 337.401(7)(e), F.S., as proposed by CS/CS/SB 596.

⁵⁸ Section 337.401(7)(d), F.S., as proposed by CS/CS/SB 596.

⁵⁹ “Make-ready” generally refers to the modification of poles or lines or the installation of guys and anchors to accommodate additional facilities. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC

nondiscriminatory, regardless of the services provided by the collocating person. The rate to collocate equipment on authority utility poles may not exceed the lesser of the annual recurring rate that would be permitted under rules adopted by the FCC under 47 U.S.C. s. 224(d) if the collocation rate were regulated by the FCC or \$15 per year per authority utility pole.⁶⁰

If the authority has an existing pole attachment rate, fee, or other term that does not comply with this subsection, the authority must, no later than January 1, 2018, revise the rate, fee, or term to comply with this subsection.

Persons owning or controlling authority utility poles must offer rates, fees, and other terms that comply with this subsection. By the later of January 1, 2018, or 3 months after receiving a request to collocate its first small wireless facility on a utility pole owned or controlled by an authority, the person owning or controlling the authority utility pole must make available, through ordinance or otherwise, rates, fees, and terms for the collocation of small wireless facilities on the authority utility pole which comply with this subsection.

The rates, fees, and terms must be nondiscriminatory, competitively neutral, and commercially reasonable and must comply with this subsection.

The bill provides procedures and timelines for make-ready work:

- If the authority utility pole supports aerial facilities used to provide communications services or electric service, the parties must comply with the process for make-ready work under 47 U.S.C. s. 224⁶¹ and implementing regulations.⁶² The good faith estimate of the person

Docket Nos. 96-98, 95-185, Order on Reconsideration, 14 FCC Rcd 18049, 18056 n.50 (1999) (Local Competition Reconsideration Order). https://apps.fcc.gov/edocs_public/attachmatch/FCC-11-50A1.pdf (Last accessed March 2, 2017).

⁶⁰ Section 337.401(7)(f)3., F.S., as proposed by CS/CS/SB 596.

⁶¹ Under this law, a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.

<https://www.law.cornell.edu/uscode/text/47/224> (Last accessed March 2, 2017.)

⁶² A utility that has received a complete application for pole attachment from a cable operator or telecommunications carrier must respond within 45 days of receipt of the application (or within 60 days, in the case of larger orders, defined as orders up to the lesser of 3000 poles or 5 percent of the utility's poles in a state). This response may be a notification that the utility has completed a survey of poles for which access has been requested. A complete application is an application that provides the utility with the information necessary under its procedures to begin to survey the poles. If the request for attachment is not denied, the utility must present an estimate of charges to perform all necessary make-ready work within 14 days of providing the response. A utility may withdraw an outstanding estimate of charges to perform make-ready work within 14 days after the estimate is presented. A cable operator or telecommunications carrier may accept a valid estimate and make payment any time after receipt of an estimate but before the estimate is withdrawn.

Upon receipt of payment of the estimate, the utility must immediately provide written notice to all known entities with existing attachments that may be affected by the make-ready:

- For attachments in the communications space, the utility must complete all make-ready work no later than 60 days after notification is sent (or 105 days in the case of larger orders). If the utility has not completed the make-ready work by within this time, the cable operator or telecommunications carrier requesting access may complete the specified make-ready.
- For wireless attachments above the communications space, the utility must complete all make-ready work no later than 90 days after notification is sent (or 135 days in the case of larger orders). The utility must complete the make-ready work by this date.

A utility may deviate from the time limits specified in this section:

owning or controlling the pole for any make-ready work necessary to enable the pole to support the requested collocation must include pole replacement if necessary.

- If the authority utility pole does not support aerial facilities used to provide communications services or electric service, the authority must provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation, including necessary pole replacement, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, must be completed within 60 days after written acceptance of the good faith estimate by the applicant.
- The authority may not require more make-ready work than is required to meet applicable codes or industry standards. Fees for make-ready work may not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including any pole replacement, may not exceed actual costs or the amount charged to communications service providers other than wireless service providers for similar work and may not include any consultant fees or expenses.

For many local government authorities, the technology, pole attachments, and siting process contemplated in the bill are relatively new, and it may take time and experience to determine what is necessary to support the wireless infrastructure safely. Consequently, initial implementation of the bill may require consultants to obtain reasonable assurances of public safety. However, the bill prohibits recovery of any consultant fees or expenses.⁶³

The bill provides that it does not authorize a person to collocate small wireless facilities on a privately owned utility pole, a utility pole owned by an electric cooperative or by a municipal electric utility, a privately owned wireless support structure, or other private property without the consent of the property owner.

The bill further provides that it does not authorize a person to collocate or attach small wireless facilities or micro wireless facilities on a utility pole or erect a wireless support structure in the right-of-way located within a retirement community that:

- Is deed-restricted as housing for older persons as defined in s. 760.29(4)(b), F.S.;
- Has more than 5,000 residents; and
- Has underground utilities for electric transmission or distribution.

The bill provides that the new subsection may not be construed to limit local governments' authority to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C s. 332(c)(7), the requirements for facility modifications

-
- Before offering an estimate of charges if the parties have no agreement specifying the rates, terms, and conditions of attachment.
 - During performance of make-ready for good and sufficient cause that renders it infeasible for the utility to complete the make-ready work within the prescribed time frame. A utility that so deviates shall immediately notify, in writing, the cable operator or telecommunications carrier requesting attachment and other affected entities with existing attachments, and shall include the reason for and date and duration of the deviation. The utility shall deviate from the time limits specified in this section for a period no longer than necessary and shall resume make-ready performance without discrimination when it returns to routine operations.

47 CFR § 1.1420 - Timeline for access to utility poles. <https://www.law.cornell.edu/cfr/text/47/1.1420> (Last accessed March 2, 2017).

⁶³ Section 337.401(7)(f)5.d., F.S., as proposed by CS/CS/SB 596.

under 47 U.S.C. s.1455(a), or the National Historic Preservation Act of 1966, as amended, and the regulations adopted to implement these laws.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (b) of section 18, Article VII of the Florida Constitution, provides that except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandate requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2016-2017 was \$2 million or less.^{64,65,66}

The county/municipality mandates provision of section 18, Article VII of the Florida Constitution, may apply because this bill prohibits governmental entities with authority over public roads and rights-of-way from recovering any consultant fees or expenses relating to preparing a pole for use by a wireless provider. Given the novelty of the infrastructure, pole attachments, and potential risks of liability, local government authorities may need to make frequent use of consultants to ensure public safety, and the bill prohibits recovery of these consultant costs. The Revenue Estimating Conference has not examined the fiscal impact of this bill, however, the bill's impact may exceed the \$2 million threshold.

The bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁶⁴ FLA. CONST. art. VII, s. 18(d).

⁶⁵ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Feb. 13, 2017).

⁶⁶ Based on the Demographic Estimating Conference's population adopted on November 1, 2016. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Feb. 13, 2017).

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

According to information provided by opponents of the bill, currently the amount of the pole attachment fee is subject only to market forces, and some authorities are charging considerable more than the bill's maximum of \$15.00 dollars per attachment per year; the Jacksonville Electric Authority's Small Cell Site Rental Schedule, for example, shows a charge of \$1,236.00 per year for each small cell site.

B. Private Sector Impact:

Wireless providers should be able to provide better service to customers.

C. Government Sector Impact:

Authorities may have difficulty and expenses in early implementation as the technology and installations involved are new uses of rights-of-way and the process includes engineering determinations of wind load, structural integrity, and safety.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not address any responsibility or liability of wireless providers relating to potential personal injury or property damage.

VIII. Statutes Affected:

This bill substantially amends section 337.401 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 27, 2017:

- Defines “authority” as a county or municipality having jurisdiction and control of the rights-of-way of any public road. This term does not include the DOT and that agency’s rights-of-way are excluded from the bill;
- Amends the definition of “authority utility pole” to provide that this term does not include a utility pole owned by a municipal electric utility, any utility pole used to support municipally owned or operated electric distribution facilities, or a utility pole located in the right-of-way of a retirement community that:
 - Is deed-restricted as housing for older persons as defined by s. 760.29(4)(b). F.S.;
 - Has more than 5,000 residents; and
 - Has underground utilities for electric distribution or transmission;

- Requires wireless infrastructure providers include an attestation in their application to an authority regarding the time-frame of collocating small wireless facilities on utility poles or structures and provision of services;
- Provides that an authority must accept and process the application for collocating small wireless facilities on utility poles or structures in accordance with the bill and any applicable local codes governing the placement of utility poles in the public right-of-way
- Provides that a person is not authorized to collocate small wireless facilities on a utility pole owned by a municipal electric utility;
- Provides that a person is not authorized to collocate or attach small wireless facilities or micro wireless facilities on a utility pole or erect a wireless support structure in the right-of-way located within a retirement community that:
 - Is deed-restricted as housing for older persons as defined by s. 760.29(4)(b). F.S.;
 - Has more than 5,000 residents; and
 - Has underground utilities for electric distribution or transmission.

CS by Communications, Energy, and Public Utilities on March 7, 2017:

- Amends the definition of “applicable codes” to include qualifying local government historic preservation zoning regulations;
- Amends the definition of “authority utility pole” to exclude a utility pole owned by a municipal electric company;
- Excludes from the definition of “wireless facility” wireline backhaul facilities and coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna;
- Makes the prohibition against an authority requiring approval or fees relating to micro wireless facilities that are suspended applicable to facilities suspended from any type of cable, not just “messenger” cables;
- Provides that the new subsection does not authorize collocation of small wireless facilities on a utility pole owned by an electric cooperative; and
- Provides that the new subsection may not be construed to limit local government’s authority to qualify enforce historic preservation zoning regulations.

B. Amendments:

None.



561176

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (a) of subsection (1) of section
337.401, Florida Statutes, is amended, and subsection (7) is
added to that section, to read:

337.401 Use of right-of-way for utilities subject to
regulation; permit; fees.—

(1) (a) The department and local governmental entities,



561176

11 referred to in this section and in ss. 337.402, 337.403, and
12 337.404 as the "authority," that have jurisdiction and control
13 of public roads or publicly owned rail corridors are authorized
14 to prescribe and enforce reasonable rules or regulations with
15 reference to the placing and maintaining across, on, or within
16 the right-of-way limits of any road or publicly owned rail
17 corridors under their respective jurisdictions any electric
18 transmission, voice telephone, telegraph, data, or other
19 communications services lines or wireless facilities; pole
20 lines; poles; railways; ditches; sewers; water, heat, or gas
21 mains; pipelines; fences; gasoline tanks and pumps; or other
22 structures referred to in this section and in ss. 337.402,
23 337.403, and 337.404 as the "utility." The department may enter
24 into a permit-delegation agreement with a governmental entity if
25 issuance of a permit is based on requirements that the
26 department finds will ensure the safety and integrity of
27 facilities of the Department of Transportation; however, the
28 permit-delegation agreement does not apply to facilities of
29 electric utilities as defined in s. 366.02(2).

30 (7) (a) This subsection may be cited as the "Advanced
31 Wireless Infrastructure Deployment Act."

32 (b) As used in this subsection, the term:

33 1. "Antenna" means communications equipment that transmits
34 or receives electromagnetic radio frequency signals used in
35 providing wireless services.

36 2. "Applicable codes" means uniform building, fire,
37 electrical, plumbing, or mechanical codes adopted by a
38 recognized national code organization, or local amendments to
39 those codes, enacted solely to address threats of destruction of



561176

40 property or injury to persons. The term includes local
41 government historic preservation zoning regulations consistent
42 with the preservation of local zoning authority under 47 U.S.C
43 s. 332(c)(7), the requirements for facility modifications under
44 47 U.S.C. s. 1455(a), or the National Historic Preservation Act
45 of 1966, as amended; and the regulations adopted to implement
46 these laws.

47 3. "Applicant" means a person who submits an application
48 and is a wireless provider.

49 4. "Application" means a request submitted by an applicant
50 to an authority for a permit to collocate small wireless
51 facilities.

52 5. "Authority" means a county or municipality having
53 jurisdiction and control of the rights-of-way of any public
54 road. The term does not include the Department of
55 Transportation. The Department of Transportation rights-of-way
56 are excluded from this subsection.

57 6. "Authority utility pole" means a utility pole owned by
58 an authority in the right-of-way. The term does not include a
59 utility pole owned by a municipal electric utility or any
60 utility pole used to support municipally owned or operated
61 electric distribution facilities.

62 7. "Collocate" or "collocation" means to install, mount,
63 maintain, modify, operate, or replace one or more wireless
64 facilities on, under, within, or adjacent to a wireless support
65 structure or utility pole.

66 8. "FCC" means the Federal Communications Commission.

67 9. "Micro wireless facility" means a small wireless
68 facility having dimensions no larger than 24 inches in length,



561176

69 15 inches in width, and 12 inches in height and an exterior
70 antenna, if any, no longer than 11 inches.

71 10. "Small wireless facility" means a wireless facility
72 that meets the following qualifications:

73 a. Each antenna associated with the facility is located
74 inside an enclosure of no more than 6 cubic feet in volume or,
75 in the case of antennas that have exposed elements, each antenna
76 and all of its exposed elements could fit within an enclosure of
77 no more than 6 cubic feet in volume; and

78 b. All other wireless equipment associated with the
79 facility is cumulatively no more than 28 cubic feet in volume.
80 The following types of associated ancillary equipment are not
81 included in the calculation of equipment volume: electric
82 meters, concealment elements, telecommunications demarcation
83 boxes, ground-based enclosures, grounding equipment, power
84 transfer switches, cutoff switches, vertical cable runs for the
85 connection of power and other services, and utility poles or
86 other support structures.

87 11. "Utility pole" means a pole or similar structure that
88 is used in whole or in part to provide communications services
89 or for electric distribution, lighting, traffic control,
90 signage, or a similar function.

91 12. "Wireless facility" means equipment at a fixed location
92 which enables wireless communications between user equipment and
93 a communications network, including radio transceivers,
94 antennas, wires, coaxial or fiber-optic cable or other cables,
95 regular and backup power supplies, and comparable equipment,
96 regardless of technological configuration, and equipment
97 associated with wireless communications. The term includes small



561176

98 wireless facilities. The term does not include:

99 a. The structure or improvements on, under, within, or
100 adjacent to the structure on which the equipment is collocated;

101 b. Wireline backhaul facilities; or

102 c. Coaxial or fiber-optic cable that is between wireless
103 structures or utility poles or that is otherwise not immediately
104 adjacent to or directly associated with a particular antenna.

105 13. "Wireless infrastructure provider" means a person who
106 is certificated to provide telecommunications service in the
107 state and who builds or installs wireless communication
108 transmission equipment, wireless facilities, or wireless support
109 structures, but is not a wireless services provider.

110 14. "Wireless provider" means a wireless infrastructure
111 provider or a wireless services provider.

112 15. "Wireless services" means any services provided using
113 licensed or unlicensed spectrum, whether at a fixed location or
114 mobile, using wireless facilities.

115 16. "Wireless services provider" means a person who
116 provides wireless services.

117 17. "Wireless support structure" means a freestanding
118 structure, such as a monopole, a guyed or self-supporting tower,
119 a billboard, or another existing or proposed structure designed
120 to support or capable of supporting wireless facilities. The
121 term does not include a utility pole.

122 (c) Except as provided in this subsection, an authority may
123 not prohibit, regulate, or charge for the collocation of small
124 wireless facilities in the public rights-of-way.

125 (d) An authority may require permit fees only in accordance
126 with subsection (3). An authority shall accept applications for



561176

127 permits and shall process and issue permits subject to the
128 following requirements:

129 1. An authority may not directly or indirectly require an
130 applicant to perform services unrelated to the collocation for
131 which approval is sought, such as in-kind contributions to the
132 authority, including reserving fiber, conduit, or pole space for
133 the authority.

134 2. An applicant may not be required to provide more
135 information to obtain a permit than is required of electric
136 service providers and other communications service providers
137 that are not wireless services providers.

138 3. An authority may not require the placement of small
139 wireless facilities on any specific utility pole or category of
140 poles or require multiple antenna systems on a single utility
141 pole.

142 4. An authority may not limit the placement of small
143 wireless facilities by minimum separation distances.

144 5. An authority may limit the height of a small wireless
145 facility to be no more than 10 feet above the tallest existing
146 utility pole within 500 feet, measured from grade in place, of
147 the proposed location of the small wireless facility. If there
148 is no utility pole within 500 feet, the authority may limit the
149 height of the small wireless facility to be no more than 60
150 feet. The height limitations do not apply to the placement of
151 any small wireless facility on a utility pole or wireless
152 support structure constructed on or before June 30, 2017, if the
153 small wireless facility does not extend more than 10 feet above
154 the structure.

155 6. A wireless infrastructure provider may apply to an



561176

156 authority to place utility poles or wireless support structures
157 in the public rights-of-way to support the collocation of small
158 wireless facilities. The application must include an attestation
159 that small wireless facilities will be collocated on the utility
160 pole or structure and small wireless facilities will be used by
161 a wireless services provider to provide service within 9 months
162 after the date the application is granted. An authority shall
163 accept and process the application in accordance with this
164 paragraph and any applicable local codes governing the placement
165 of utility poles in the public rights-of-way.

166 7. Within 10 days after receiving an application, an
167 authority must determine and notify the applicant by electronic
168 mail as to whether the application is complete. If an
169 application is deemed incomplete, the authority must
170 specifically identify the missing information. An application is
171 deemed complete if the authority fails to provide notification
172 to the applicant within 10 days or when all documents,
173 information, and fees specifically enumerated in the authority's
174 permit application form are submitted by the applicant to the
175 authority.

176 8. An application must be processed on a nondiscriminatory
177 basis. A complete application is deemed approved if an authority
178 fails to approve or deny the application within 60 days after
179 receipt of the application.

180 9. An authority must notify the applicant of approval or
181 denial by electronic mail. An authority shall approve a complete
182 application unless it does not meet the authority's applicable
183 codes. If the application is denied, the authority must specify
184 in writing the basis for denial, including the specific code



561176

185 provisions on which the denial was based, and send the
186 documentation to the applicant by electronic mail on the day the
187 authority denies the application. The applicant may cure the
188 deficiencies identified by the authority and resubmit the
189 application within 30 days after notice of the denial is sent to
190 the applicant. The authority shall approve or deny the revised
191 application within 30 days after receipt or the application is
192 deemed approved. Any subsequent review shall be limited to the
193 deficiencies cited in the denial.

194 10. An applicant seeking to collocate small wireless
195 facilities within the jurisdiction of a single authority may, at
196 the applicant's discretion, file a consolidated application and
197 receive a single permit for the collocation of multiple small
198 wireless facilities.

199 (e) An authority may not require approval, fees, or other
200 charges for:

201 1. Routine maintenance;

202 2. Replacement of existing wireless facilities with
203 wireless facilities that are substantially similar or of the
204 same or smaller size; or

205 3. Installation, placement, maintenance, or replacement of
206 micro wireless facilities that are suspended on cables strung
207 between existing utility poles in compliance with applicable
208 codes by a communications service provider that is authorized to
209 occupy the rights-of-way and that is remitting taxes under
210 chapter 202.

211 (f) An authority shall approve the collocation of small
212 wireless facilities on authority utility poles, subject to the
213 following requirements:



561176

214 1. An authority may not enter into an exclusive arrangement
215 with any person for the right to attach equipment to authority
216 utility poles.

217 2. The rates and fees for collocations on authority utility
218 poles must be nondiscriminatory, regardless of the services
219 provided by the collocating person.

220 3. The rate to collocate equipment on authority utility
221 poles may not exceed the lesser of the annual recurring rate
222 that would be permitted under rules adopted by the FCC under 47
223 U.S.C. s. 224(d) if the collocation rate were regulated by the
224 FCC or \$15 per year per authority utility pole.

225 4. If an authority has an existing pole attachment rate,
226 fee, or other term that does not comply with this subsection,
227 the authority shall, no later than January 1, 2018, revise such
228 rate, fee, or term to be in compliance with this subsection.

229 5. A person owning or controlling an authority utility pole
230 shall offer rates, fees, and other terms that comply with this
231 subsection. By the later of January 1, 2018, or 3 months after
232 receiving a request to collocate its first small wireless
233 facility on a utility pole owned or controlled by an authority,
234 the person owning or controlling the authority utility pole
235 shall make available, through ordinance or otherwise, rates,
236 fees, and terms for the collocation of small wireless facilities
237 on the authority utility pole which comply with this subsection.

238 a. The rates, fees, and terms must be nondiscriminatory,
239 competitively neutral, and commercially reasonable and must
240 comply with this subsection.

241 b. For an authority utility pole that supports an aerial
242 facility used to provide communications services or electric



561176

243 service, the parties shall comply with the process for make-
244 ready work under 47 U.S.C. s. 224 and implementing regulations.
245 The good faith estimate of the person owning or controlling the
246 pole for any make-ready work necessary to enable the pole to
247 support the requested collocation must include pole replacement
248 if necessary.

249 c. For an authority utility pole that does not support an
250 aerial facility used to provide communications services or
251 electric service, the authority shall provide a good faith
252 estimate for any make-ready work necessary to enable the pole to
253 support the requested collocation, including necessary pole
254 replacement, within 60 days after receipt of a complete
255 application. Make-ready work, including any pole replacement,
256 must be completed within 60 days after written acceptance of the
257 good faith estimate by the applicant.

258 d. An authority may not require more make-ready work than
259 is required to meet applicable codes or industry standards. Fees
260 for make-ready work may not include costs related to preexisting
261 damage or prior noncompliance. Fees for make-ready work,
262 including any pole replacement, may not exceed actual costs or
263 the amount charged to communications service providers other
264 than wireless services providers for similar work and may not
265 include any consultant fee or expense.

266 (g) Except as provided in this chapter or specifically
267 required by state law, an authority may not adopt or enforce any
268 regulation on the placement or operation of communications
269 facilities in the rights-of-way by a provider authorized by
270 state law to operate in the rights-of-way and may not regulate
271 any communications services or impose or collect any tax, fee,



561176

272 or charge not specifically authorized under state law.

273 (h) This subsection does not authorize a person to
274 collocate small wireless facilities on a privately owned utility
275 pole, a utility pole owned by an electric cooperative or by a
276 municipal electric utility, a privately owned wireless support
277 structure, or other private property without the consent of the
278 property owner.

279 (i) This subsection may not be construed to limit a local
280 government's authority to enforce historic preservation zoning
281 regulations consistent with the preservation of local zoning
282 authority under 47 U.S.C s. 332(c)(7), the requirements for
283 facility modifications under 47 U.S.C. s. 1455(a), or the
284 National Historic Preservation Act of 1966, as amended; and the
285 regulations adopted to implement these laws.

286 Section 2. This act shall take effect July 1, 2017.

287
288 ===== T I T L E A M E N D M E N T =====

289 And the title is amended as follows:

290 Delete everything before the enacting clause
291 and insert:

292 A bill to be entitled
293 An act relating to utilities; amending s. 337.401,
294 F.S.; authorizing the Department of Transportation and
295 certain local governmental entities to prescribe and
296 enforce reasonable rules or regulations with reference
297 to the placing and maintaining across, on, or within
298 the right-of-way limits of any road or publicly owned
299 rail corridors under their respective jurisdictions
300 any voice or data communications services lines or



561176

301 wireless facilities; providing a short title; defining
302 terms; prohibiting a county or municipality having
303 jurisdiction and control of the rights-of-way of any
304 public road, referred to as the "authority," from
305 prohibiting, regulating, or charging for the
306 collocation of small wireless facilities in public
307 rights-of-way under certain circumstances; authorizing
308 an authority to require permit fees only under certain
309 circumstances; requiring an authority to receive and
310 process applications for permits and to issue such
311 permits, subject to specified requirements; providing
312 that height limitations do not apply to the placement
313 of small wireless facilities on or before a specified
314 date under certain circumstances; prohibiting an
315 authority from requiring approval, fees, or other
316 charges for routine maintenance, the replacement of
317 certain wireless facilities, or the installation,
318 placement, maintenance, or replacement of certain
319 micro wireless facilities; requiring an authority to
320 approve the collocation of small wireless facilities
321 on authority utility poles, subject to certain
322 requirements; providing requirements for rates, fees,
323 and other terms related to authority utility poles;
324 prohibiting an authority from adopting or enforcing
325 any regulation on the placement or operation of
326 certain communications facilities, from regulating any
327 communications services, or from imposing or
328 collecting any tax, fee, or charge not specifically
329 authorized under state law; providing construction;



561176

330

providing an effective date.



266314

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/27/2017	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 64 - 269
and insert:
utility pole owned by a municipal electric company or a utility
pole located in the right-of-way within a retirement community
that:
a. Is deed-restricted as housing for older persons as
defined in s. 760.29(4)(b);



266314

- 10 b. Has more than 5,000 residents; and
11 c. Has underground utilities for electric transmission or
12 distribution.
- 13 6. "Collocate" or "collocation" means to install, mount,
14 maintain, modify, operate, or replace one or more wireless
15 facilities on, under, within, or adjacent to a wireless support
16 structure or utility pole.
- 17 7. "FCC" means the Federal Communications Commission.
- 18 8. "Micro wireless facility" means a small wireless
19 facility having dimensions no larger than 24 inches in length,
20 15 inches in width, and 12 inches in height and an exterior
21 antenna, if any, no longer than 11 inches.
- 22 9. "Small wireless facility" means a wireless facility that
23 meets the following qualifications:
- 24 a. Each antenna associated with the facility is located
25 inside an enclosure of no more than 6 cubic feet in volume or,
26 in the case of antennas that have exposed elements, each antenna
27 and all of its exposed elements could fit within an enclosure of
28 no more than 6 cubic feet in volume; and
- 29 b. All other wireless equipment associated with the
30 facility is cumulatively no more than 28 cubic feet in volume.
31 The following types of associated ancillary equipment are not
32 included in the calculation of equipment volume: electric
33 meters, concealment elements, telecommunications demarcation
34 boxes, ground-based enclosures, grounding equipment, power
35 transfer switches, cutoff switches, vertical cable runs for the
36 connection of power and other services, and utility poles or
37 other support structures.
- 38 10. "Utility pole" means a pole or similar structure that



266314

39 is used in whole or in part to provide communications services
40 or for electric distribution, lighting, traffic control,
41 signage, or a similar function.

42 11. "Wireless facility" means equipment at a fixed location
43 which enables wireless communications between user equipment and
44 a communications network, including radio transceivers,
45 antennas, wires, coaxial or fiber-optic cable or other cables,
46 regular and backup power supplies, and comparable equipment,
47 regardless of technological configuration, and equipment
48 associated with wireless communications. The term includes small
49 wireless facilities. The term does not include:

50 a. The structure or improvements on, under, within, or
51 adjacent to the structure on which the equipment is collocated;

52 b. Wireline backhaul facilities; or

53 c. Coaxial or fiber-optic cable that is between wireless
54 structures or utility poles or that is otherwise not immediately
55 adjacent to or directly associated with a particular antenna.

56 12. "Wireless infrastructure provider" means a person who
57 is certificated to provide telecommunications service in the
58 state and who builds or installs wireless communication
59 transmission equipment, wireless facilities, or wireless support
60 structures, but is not a wireless services provider.

61 13. "Wireless provider" means a wireless infrastructure
62 provider or a wireless services provider.

63 14. "Wireless services" means any services provided using
64 licensed or unlicensed spectrum, whether at a fixed location or
65 mobile, using wireless facilities.

66 15. "Wireless services provider" means a person who
67 provides wireless services.



266314

68 16. "Wireless support structure" means a freestanding
69 structure, such as a monopole, a guyed or self-supporting tower,
70 a billboard, or another existing or proposed structure designed
71 to support or capable of supporting wireless facilities. The
72 term does not include a utility pole.

73 (c) Except as provided in this subsection, an authority may
74 not prohibit, regulate, or charge for the collocation of small
75 wireless facilities in the public rights-of-way.

76 (d) An authority may require permit fees only in accordance
77 with subsection (3). An authority shall accept applications for
78 permits and shall process and issue permits subject to the
79 following requirements:

80 1. An authority may not directly or indirectly require an
81 applicant to perform services unrelated to the collocation for
82 which approval is sought, such as in-kind contributions to the
83 authority, including reserving fiber, conduit, or pole space for
84 the authority.

85 2. An applicant may not be required to provide more
86 information to obtain a permit than is required of electric
87 service providers and other communications service providers
88 that are not wireless services providers.

89 3. An authority may not require the placement of small
90 wireless facilities on any specific utility pole or category of
91 poles or require multiple antenna systems on a single utility
92 pole.

93 4. An authority may not limit the placement of small
94 wireless facilities by minimum separation distances or a maximum
95 height limitation; however, an authority may limit the height of
96 a small wireless facility to no more than 10 feet above the



266314

97 tallest existing utility pole, measured from grade in place
98 within 500 feet of the proposed location of the small wireless
99 facility. If there is no utility pole within 500 feet, the
100 authority may limit the height of the small wireless facility to
101 no more than 60 feet. The height limitations do not apply to the
102 placement of any small wireless facility on a utility pole or
103 wireless support structure constructed on or before June 30,
104 2017, if the small wireless facility does not extend more than
105 10 feet above the structure.

106 5. Within 10 days after receiving an application, an
107 authority must determine and notify the applicant by electronic
108 mail as to whether the application is complete. If an
109 application is deemed incomplete, the authority must
110 specifically identify the missing information. An application is
111 deemed complete if the authority fails to provide notification
112 to the applicant within 10 days or when all documents,
113 information, and fees specifically enumerated in the authority's
114 permit application form are submitted by the applicant to the
115 authority.

116 6. An application must be processed on a nondiscriminatory
117 basis. A complete application is deemed approved if an authority
118 fails to approve or deny the application within 60 days after
119 receipt of the application.

120 7. An authority must notify the applicant of approval or
121 denial by electronic mail. An authority shall approve a complete
122 application unless it does not meet the authority's applicable
123 codes. If the application is denied, the authority must specify
124 in writing the basis for denial, including the specific code
125 provisions on which the denial was based, and send the



266314

126 documentation to the applicant by electronic mail on the day the
127 authority denies the application. The applicant may cure the
128 deficiencies identified by the authority and resubmit the
129 application within 30 days after notice of the denial is sent to
130 the applicant. The authority shall approve or deny the revised
131 application within 30 days after receipt or the application is
132 deemed approved. Any subsequent review shall be limited to the
133 deficiencies cited in the denial.

134 8. An applicant seeking to collocate small wireless
135 facilities within the jurisdiction of a single authority may, at
136 the applicant's discretion, file a consolidated application and
137 receive a single permit for the collocation of multiple small
138 wireless facilities.

139 (e) An authority may not require approval or require fees
140 or other charges for:

141 1. Routine maintenance;

142 2. Replacement of existing wireless facilities with
143 wireless facilities that are substantially similar or of the
144 same or smaller size; or

145 3. Installation, placement, maintenance, or replacement of
146 micro wireless facilities that are suspended on cables strung
147 between existing utility poles in compliance with applicable
148 codes by a communications service provider authorized to occupy
149 the rights-of-way and who is remitting taxes under chapter 202.

150 (f) An authority shall approve the collocation of small
151 wireless facilities on authority utility poles, subject to the
152 following requirements:

153 1. An authority may not enter into an exclusive arrangement
154 with any person for the right to attach equipment to authority



266314

155 utility poles.

156 2. The rates and fees for collocations on authority utility
157 poles must be nondiscriminatory, regardless of the services
158 provided by the collocating person.

159 3. The rate to collocate equipment on authority utility
160 poles may not exceed the lesser of the annual recurring rate
161 that would be permitted under rules adopted by the FCC under 47
162 U.S.C. s. 224(d) if the collocation rate were regulated by the
163 FCC or \$15 per year per authority utility pole.

164 4. If an authority has an existing pole attachment rate,
165 fee, or other term that does not comply with this subsection,
166 the authority shall, no later than January 1, 2018, revise such
167 rate, fee, or term to be in compliance with this subsection.

168 5. A person owning or controlling an authority utility pole
169 shall offer rates, fees, and other terms that comply with this
170 subsection. By the later of January 1, 2018, or 3 months after
171 receiving a request to collocate its first small wireless
172 facility on a utility pole owned or controlled by an authority,
173 the person owning or controlling the authority utility pole
174 shall make available, through ordinance or otherwise, rates,
175 fees, and terms for the collocation of small wireless facilities
176 on the authority utility pole which comply with this subsection.

177 a. The rates, fees, and terms must be nondiscriminatory,
178 competitively neutral, and commercially reasonable and must
179 comply with this subsection.

180 b. For an authority utility pole that supports an aerial
181 facility used to provide communications services or electric
182 service, the parties shall comply with the process for make-
183 ready work under 47 U.S.C. s. 224 and implementing regulations.



266314

184 The good faith estimate of the person owning or controlling the
185 pole for any make-ready work necessary to enable the pole to
186 support the requested collocation must include pole replacement
187 if necessary.

188 c. For an authority utility pole that does not support an
189 aerial facility used to provide communications services or
190 electric service, the authority shall provide a good faith
191 estimate for any make-ready work necessary to enable the pole to
192 support the requested collocation, including necessary pole
193 replacement, within 60 days after receipt of a complete
194 application. Make-ready work, including any pole replacement,
195 must be completed within 60 days after written acceptance of the
196 good faith estimate by the applicant.

197 d. An authority may not require more make-ready work than
198 is required to meet applicable codes or industry standards. Fees
199 for make-ready work may not include costs related to preexisting
200 damage or prior noncompliance. Fees for make-ready work,
201 including any pole replacement, may not exceed actual costs or
202 the amount charged to communications service providers other
203 than wireless services providers for similar work and may not
204 include any consultant fee or expense.

205 (g) Except as provided in this chapter or specifically
206 required by state law, an authority may not adopt or enforce any
207 regulation on the placement or operation of communications
208 facilities in the rights-of-way by a provider authorized by
209 state law to operate in the rights-of-way and may not regulate
210 any communications services or impose or collect any tax, fee,
211 or charge not specifically authorized under state law.

212 (h) This subsection does not authorize a person to



266314

213 collocate small wireless facilities on a privately owned utility
214 pole, a utility pole owned by an electric cooperative, a
215 privately owned wireless support structure, or other private
216 property without the consent of the property owner.

217 (i) This subsection does not authorize a person to
218 collocate or attach small wireless facilities or micro wireless
219 facilities on a utility pole or erect a wireless support
220 structure in the right-of-way located within a retirement
221 community that:

222 1. Is deed-restricted as housing for older persons as
223 defined in s. 760.29(4) (b);

224 2. Has more than 5,000 residents; and

225 3. Has underground utilities for electric transmission or
226 distribution.

227 (j) This subsection may not be construed to limit local



634024

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2017	.	
	.	
	.	
	.	

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

Senate Amendment to Amendment (561176)

Delete lines 59 - 285
and insert:
utility pole owned by a municipal electric utility, any utility
pole used to support municipally owned or operated electric
distribution facilities, or a utility pole located in the right-
of-way within a retirement community that:
a. Is deed-restricted as housing for older persons as
defined in s. 760.29(4)(b);



634024

11 b. Has more than 5,000 residents; and

12 c. Has underground utilities for electric transmission or
13 distribution.

14 7. "Collocate" or "collocation" means to install, mount,
15 maintain, modify, operate, or replace one or more wireless
16 facilities on, under, within, or adjacent to a wireless support
17 structure or utility pole.

18 8. "FCC" means the Federal Communications Commission.

19 9. "Micro wireless facility" means a small wireless
20 facility having dimensions no larger than 24 inches in length,
21 15 inches in width, and 12 inches in height and an exterior
22 antenna, if any, no longer than 11 inches.

23 10. "Small wireless facility" means a wireless facility
24 that meets the following qualifications:

25 a. Each antenna associated with the facility is located
26 inside an enclosure of no more than 6 cubic feet in volume or,
27 in the case of antennas that have exposed elements, each antenna
28 and all of its exposed elements could fit within an enclosure of
29 no more than 6 cubic feet in volume; and

30 b. All other wireless equipment associated with the
31 facility is cumulatively no more than 28 cubic feet in volume.
32 The following types of associated ancillary equipment are not
33 included in the calculation of equipment volume: electric
34 meters, concealment elements, telecommunications demarcation
35 boxes, ground-based enclosures, grounding equipment, power
36 transfer switches, cutoff switches, vertical cable runs for the
37 connection of power and other services, and utility poles or
38 other support structures.

39 11. "Utility pole" means a pole or similar structure that



634024

40 is used in whole or in part to provide communications services
41 or for electric distribution, lighting, traffic control,
42 signage, or a similar function.

43 12. "Wireless facility" means equipment at a fixed location
44 which enables wireless communications between user equipment and
45 a communications network, including radio transceivers,
46 antennas, wires, coaxial or fiber-optic cable or other cables,
47 regular and backup power supplies, and comparable equipment,
48 regardless of technological configuration, and equipment
49 associated with wireless communications. The term includes small
50 wireless facilities. The term does not include:

51 a. The structure or improvements on, under, within, or
52 adjacent to the structure on which the equipment is collocated;

53 b. Wireline backhaul facilities; or

54 c. Coaxial or fiber-optic cable that is between wireless
55 structures or utility poles or that is otherwise not immediately
56 adjacent to or directly associated with a particular antenna.

57 13. "Wireless infrastructure provider" means a person who
58 is certificated to provide telecommunications service in the
59 state and who builds or installs wireless communication
60 transmission equipment, wireless facilities, or wireless support
61 structures, but is not a wireless services provider.

62 14. "Wireless provider" means a wireless infrastructure
63 provider or a wireless services provider.

64 15. "Wireless services" means any services provided using
65 licensed or unlicensed spectrum, whether at a fixed location or
66 mobile, using wireless facilities.

67 16. "Wireless services provider" means a person who
68 provides wireless services.



634024

69 17. "Wireless support structure" means a freestanding
70 structure, such as a monopole, a guyed or self-supporting tower,
71 a billboard, or another existing or proposed structure designed
72 to support or capable of supporting wireless facilities. The
73 term does not include a utility pole.

74 (c) Except as provided in this subsection, an authority may
75 not prohibit, regulate, or charge for the collocation of small
76 wireless facilities in the public rights-of-way.

77 (d) An authority may require permit fees only in accordance
78 with subsection (3). An authority shall accept applications for
79 permits and shall process and issue permits subject to the
80 following requirements:

81 1. An authority may not directly or indirectly require an
82 applicant to perform services unrelated to the collocation for
83 which approval is sought, such as in-kind contributions to the
84 authority, including reserving fiber, conduit, or pole space for
85 the authority.

86 2. An applicant may not be required to provide more
87 information to obtain a permit than is required of electric
88 service providers and other communications service providers
89 that are not wireless services providers.

90 3. An authority may not require the placement of small
91 wireless facilities on any specific utility pole or category of
92 poles or require multiple antenna systems on a single utility
93 pole.

94 4. An authority may not limit the placement of small
95 wireless facilities by minimum separation distances.

96 5. An authority may limit the height of a small wireless
97 facility to be no more than 10 feet above the tallest existing



634024

98 utility pole within 500 feet, measured from grade in place, of
99 the proposed location of the small wireless facility. If there
100 is no utility pole within 500 feet, the authority may limit the
101 height of the small wireless facility to be no more than 60
102 feet. The height limitations do not apply to the placement of
103 any small wireless facility on a utility pole or wireless
104 support structure constructed on or before June 30, 2017, if the
105 small wireless facility does not extend more than 10 feet above
106 the structure.

107 6. A wireless infrastructure provider may apply to an
108 authority to place utility poles or wireless support structures
109 in the public rights-of-way to support the collocation of small
110 wireless facilities. The application must include an attestation
111 that small wireless facilities will be collocated on the utility
112 pole or structure and small wireless facilities will be used by
113 a wireless services provider to provide service within 9 months
114 after the date the application is granted. An authority shall
115 accept and process the application in accordance with this
116 paragraph and any applicable local codes governing the placement
117 of utility poles in the public rights-of-way.

118 7. Within 10 days after receiving an application, an
119 authority must determine and notify the applicant by electronic
120 mail as to whether the application is complete. If an
121 application is deemed incomplete, the authority must
122 specifically identify the missing information. An application is
123 deemed complete if the authority fails to provide notification
124 to the applicant within 10 days or when all documents,
125 information, and fees specifically enumerated in the authority's
126 permit application form are submitted by the applicant to the



634024

127 authority.

128 8. An application must be processed on a nondiscriminatory
129 basis. A complete application is deemed approved if an authority
130 fails to approve or deny the application within 60 days after
131 receipt of the application.

132 9. An authority must notify the applicant of approval or
133 denial by electronic mail. An authority shall approve a complete
134 application unless it does not meet the authority's applicable
135 codes. If the application is denied, the authority must specify
136 in writing the basis for denial, including the specific code
137 provisions on which the denial was based, and send the
138 documentation to the applicant by electronic mail on the day the
139 authority denies the application. The applicant may cure the
140 deficiencies identified by the authority and resubmit the
141 application within 30 days after notice of the denial is sent to
142 the applicant. The authority shall approve or deny the revised
143 application within 30 days after receipt or the application is
144 deemed approved. Any subsequent review shall be limited to the
145 deficiencies cited in the denial.

146 10. An applicant seeking to collocate small wireless
147 facilities within the jurisdiction of a single authority may, at
148 the applicant's discretion, file a consolidated application and
149 receive a single permit for the collocation of multiple small
150 wireless facilities.

151 (e) An authority may not require approval, fees, or other
152 charges for:

153 1. Routine maintenance;

154 2. Replacement of existing wireless facilities with
155 wireless facilities that are substantially similar or of the



634024

156 same or smaller size; or

157 3. Installation, placement, maintenance, or replacement of
158 micro wireless facilities that are suspended on cables strung
159 between existing utility poles in compliance with applicable
160 codes by a communications service provider that is authorized to
161 occupy the rights-of-way and that is remitting taxes under
162 chapter 202.

163 (f) An authority shall approve the collocation of small
164 wireless facilities on authority utility poles, subject to the
165 following requirements:

166 1. An authority may not enter into an exclusive arrangement
167 with any person for the right to attach equipment to authority
168 utility poles.

169 2. The rates and fees for collocations on authority utility
170 poles must be nondiscriminatory, regardless of the services
171 provided by the collocating person.

172 3. The rate to collocate equipment on authority utility
173 poles may not exceed the lesser of the annual recurring rate
174 that would be permitted under rules adopted by the FCC under 47
175 U.S.C. s. 224(d) if the collocation rate were regulated by the
176 FCC or \$15 per year per authority utility pole.

177 4. If an authority has an existing pole attachment rate,
178 fee, or other term that does not comply with this subsection,
179 the authority shall, no later than January 1, 2018, revise such
180 rate, fee, or term to be in compliance with this subsection.

181 5. A person owning or controlling an authority utility pole
182 shall offer rates, fees, and other terms that comply with this
183 subsection. By the later of January 1, 2018, or 3 months after
184 receiving a request to collocate its first small wireless



634024

185 facility on a utility pole owned or controlled by an authority,
186 the person owning or controlling the authority utility pole
187 shall make available, through ordinance or otherwise, rates,
188 fees, and terms for the collocation of small wireless facilities
189 on the authority utility pole which comply with this subsection.

190 a. The rates, fees, and terms must be nondiscriminatory,
191 competitively neutral, and commercially reasonable and must
192 comply with this subsection.

193 b. For an authority utility pole that supports an aerial
194 facility used to provide communications services or electric
195 service, the parties shall comply with the process for make-
196 ready work under 47 U.S.C. s. 224 and implementing regulations.
197 The good faith estimate of the person owning or controlling the
198 pole for any make-ready work necessary to enable the pole to
199 support the requested collocation must include pole replacement
200 if necessary.

201 c. For an authority utility pole that does not support an
202 aerial facility used to provide communications services or
203 electric service, the authority shall provide a good faith
204 estimate for any make-ready work necessary to enable the pole to
205 support the requested collocation, including necessary pole
206 replacement, within 60 days after receipt of a complete
207 application. Make-ready work, including any pole replacement,
208 must be completed within 60 days after written acceptance of the
209 good faith estimate by the applicant.

210 d. An authority may not require more make-ready work than
211 is required to meet applicable codes or industry standards. Fees
212 for make-ready work may not include costs related to preexisting
213 damage or prior noncompliance. Fees for make-ready work,



634024

214 including any pole replacement, may not exceed actual costs or
215 the amount charged to communications service providers other
216 than wireless services providers for similar work and may not
217 include any consultant fee or expense.

218 (g) Except as provided in this chapter or specifically
219 required by state law, an authority may not adopt or enforce any
220 regulation on the placement or operation of communications
221 facilities in the rights-of-way by a provider authorized by
222 state law to operate in the rights-of-way and may not regulate
223 any communications services or impose or collect any tax, fee,
224 or charge not specifically authorized under state law.

225 (h) This subsection does not authorize a person to
226 collocate small wireless facilities on a privately owned utility
227 pole, a utility pole owned by an electric cooperative or by a
228 municipal electric utility, a privately owned wireless support
229 structure, or other private property without the consent of the
230 property owner.

231 (i) This subsection does not authorize a person to
232 collocate or attach small wireless facilities or micro wireless
233 facilities on a utility pole or erect a wireless support
234 structure in the right-of-way located within a retirement
235 community that:

236 a. Is deed-restricted as housing for older persons as
237 defined in s. 760.29(4) (b);

238 b. Has more than 5,000 residents; and

239 c. Has underground utilities for electric transmission or
240 distribution.

241 (j) This subsection may not be construed to limit a local
242 government's authority to enforce historic preservation zoning



634024

243 regulations consistent with the preservation of local zoning
244 authority under 47 U.S.C s. 332(c)(7), the requirements for
245 facility modifications under 47 U.S.C. s. 1455(a), or the
246 National Historic Preservation Act of 1966, as amended; and the
247 regulations adopted to implement these laws.



755080

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/27/2017	.	
	.	
	.	
	.	

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

1 **Senate Amendment to Amendment (561176) (with title**
2 **amendment)**

3
4 Delete lines 52 - 56
5 and insert:

6 5. "Authority" means the Department of Transportation
7 having jurisdiction and control of the rights-of-way of any
8 public road. The term does not include any county or
9 municipality rights-of-way.

10



755080

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

12 And the title is amended as follows:

13 Delete line 302

14 and insert:

15 terms; prohibiting the department having

By the Committee on Communications, Energy, and Public Utilities; and Senators Hutson and Young

579-02186-17

2017596c1

1 A bill to be entitled
 2 An act relating to utilities; amending s. 337.401,
 3 F.S.; providing a short title; defining terms;
 4 prohibiting the Department of Transportation and
 5 certain local governmental entities, collectively
 6 referred to as the "authority," from prohibiting,
 7 regulating, or charging for the collocation of small
 8 wireless facilities in public rights-of-way under
 9 certain circumstances; authorizing an authority to
 10 require permit fees only under certain circumstances;
 11 requiring an authority to receive and process
 12 applications for permits, and to issue such permits,
 13 subject to specified requirements; providing that
 14 height limitations do not apply to the placement of
 15 small wireless facilities on or before a specified
 16 date under certain circumstances; prohibiting an
 17 authority from requiring approval or charges for
 18 routine maintenance, the replacement of certain
 19 wireless facilities, or the installation, placement,
 20 maintenance, or replacement of certain micro wireless
 21 facilities; requiring an authority to approve the
 22 collocation of small wireless facilities on authority
 23 utility poles, subject to certain requirements;
 24 providing requirements for rates, fees, and other
 25 terms related to authority utility poles; prohibiting
 26 an authority from adopting or enforcing any regulation
 27 on the placement or operation of certain
 28 communications facilities and from regulating any
 29 communications services or imposing or collecting any

Page 1 of 10

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

579-02186-17

2017596c1

30 tax, fee, or charge not specifically authorized under
 31 state law; providing construction; providing an
 32 effective date.
 33
 34 Be It Enacted by the Legislature of the State of Florida:
 35
 36 Section 1. Subsection (7) is added to section 337.401,
 37 Florida Statutes, to read:
 38 337.401 Use of right-of-way for utilities subject to
 39 regulation; permit; fees.-
 40 (7) (a) This subsection may be cited as the "Advanced
 41 Wireless Infrastructure Deployment Act."
 42 (b) As used in this subsection, the term:
 43 1. "Antenna" means communications equipment that transmits
 44 or receives electromagnetic radio frequency signals used in
 45 providing wireless services.
 46 2. "Applicable codes" means uniform building, fire,
 47 electrical, plumbing, or mechanical codes adopted by a
 48 recognized national code organization, or local amendments to
 49 those codes, enacted solely to address threats of destruction of
 50 property or injury to persons. The term includes local
 51 government historic preservation zoning regulations consistent
 52 with the preservation of local zoning authority under 47 U.S.C
 53 s. 332(c)(7), the requirements for facility modifications under
 54 47 U.S.C. s. 1455(a), or the National Historic Preservation Act
 55 of 1966, as amended, and the regulations adopted to implement
 56 these laws.
 57 3. "Applicant" means a person who submits an application
 58 and is a wireless provider.

Page 2 of 10

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

579-02186-17

2017596c1

59 4. "Application" means a request submitted by an applicant
 60 to an authority for a permit to collocate small wireless
 61 facilities.

62 5. "Authority utility pole" means a utility pole owned by
 63 an authority in the right-of-way. The term does not include a
 64 utility pole owned by a municipal electric company.

65 6. "Collocate" or "collocation" means to install, mount,
 66 maintain, modify, operate, or replace one or more wireless
 67 facilities on, under, within, or adjacent to a wireless support
 68 structure or utility pole.

69 7. "FCC" means the Federal Communications Commission.

70 8. "Micro wireless facility" means a small wireless
 71 facility having dimensions no larger than 24 inches in length,
 72 15 inches in width, and 12 inches in height and an exterior
 73 antenna, if any, no longer than 11 inches.

74 9. "Small wireless facility" means a wireless facility that
 75 meets the following qualifications:

76 a. Each antenna associated with the facility is located
 77 inside an enclosure of no more than 6 cubic feet in volume or,
 78 in the case of antennas that have exposed elements, each antenna
 79 and all of its exposed elements could fit within an enclosure of
 80 no more than 6 cubic feet in volume; and

81 b. All other wireless equipment associated with the
 82 facility is cumulatively no more than 28 cubic feet in volume.
 83 The following types of associated ancillary equipment are not
 84 included in the calculation of equipment volume: electric
 85 meters, concealment elements, telecommunications demarcation
 86 boxes, ground-based enclosures, grounding equipment, power
 87 transfer switches, cutoff switches, vertical cable runs for the

579-02186-17

2017596c1

88 connection of power and other services, and utility poles or
 89 other support structures.

90 10. "Utility pole" means a pole or similar structure that
 91 is used in whole or in part to provide communications services
 92 or for electric distribution, lighting, traffic control,
 93 signage, or a similar function.

94 11. "Wireless facility" means equipment at a fixed location
 95 which enables wireless communications between user equipment and
 96 a communications network, including radio transceivers,
 97 antennas, wires, coaxial or fiber-optic cable or other cables,
 98 regular and backup power supplies, and comparable equipment,
 99 regardless of technological configuration, and equipment
 100 associated with wireless communications. The term includes small
 101 wireless facilities. The term does not include:

102 a. The structure or improvements on, under, within, or
 103 adjacent to the structure on which the equipment is collocated;

104 b. Wireline backhaul facilities; or

105 c. Coaxial or fiber-optic cable that is between wireless
 106 structures or utility poles or that is otherwise not immediately
 107 adjacent to or directly associated with a particular antenna.

108 12. "Wireless infrastructure provider" means a person who
 109 is certificated to provide telecommunications service in the
 110 state and who builds or installs wireless communication
 111 transmission equipment, wireless facilities, or wireless support
 112 structures, but is not a wireless services provider.

113 13. "Wireless provider" means a wireless infrastructure
 114 provider or a wireless services provider.

115 14. "Wireless services" means any services provided using
 116 licensed or unlicensed spectrum, whether at a fixed location or

579-02186-17

2017596c1

117 mobile, using wireless facilities.

118 15. "Wireless services provider" means a person who
119 provides wireless services.

120 16. "Wireless support structure" means a freestanding
121 structure, such as a monopole, a guyed or self-supporting tower,
122 a billboard, or another existing or proposed structure designed
123 to support or capable of supporting wireless facilities. The
124 term does not include a utility pole.

125 (c) Except as provided in this subsection, an authority may
126 not prohibit, regulate, or charge for the collocation of small
127 wireless facilities in the public rights-of-way.

128 (d) An authority may require permit fees only in accordance
129 with subsection (3). An authority shall accept applications for
130 permits and shall process and issue permits subject to the
131 following requirements:

132 1. An authority may not directly or indirectly require an
133 applicant to perform services unrelated to the collocation for
134 which approval is sought, such as in-kind contributions to the
135 authority, including reserving fiber, conduit, or pole space for
136 the authority.

137 2. An applicant may not be required to provide more
138 information to obtain a permit than is required of electric
139 service providers and other communications service providers
140 that are not wireless services providers.

141 3. An authority may not require the placement of small
142 wireless facilities on any specific utility pole or category of
143 poles or require multiple antenna systems on a single utility
144 pole.

145 4. An authority may not limit the placement of small

579-02186-17

2017596c1

146 wireless facilities by minimum separation distances or a maximum
147 height limitation; however, an authority may limit the height of
148 a small wireless facility to no more than 10 feet above the
149 tallest existing utility pole, measured from grade in place
150 within 500 feet of the proposed location of the small wireless
151 facility. If there is no utility pole within 500 feet, the
152 authority may limit the height of the small wireless facility to
153 no more than 60 feet. The height limitations do not apply to the
154 placement of any small wireless facility on a utility pole or
155 wireless support structure constructed on or before June 30,
156 2017, if the small wireless facility does not extend more than
157 10 feet above the structure.

158 5. Within 10 days after receiving an application, an
159 authority must determine and notify the applicant by electronic
160 mail as to whether the application is complete. If an
161 application is deemed incomplete, the authority must
162 specifically identify the missing information. An application is
163 deemed complete if the authority fails to provide notification
164 to the applicant within 10 days or when all documents,
165 information, and fees specifically enumerated in the authority's
166 permit application form are submitted by the applicant to the
167 authority.

168 6. An application must be processed on a nondiscriminatory
169 basis. A complete application is deemed approved if an authority
170 fails to approve or deny the application within 60 days after
171 receipt of the application.

172 7. An authority must notify the applicant of approval or
173 denial by electronic mail. An authority shall approve a complete
174 application unless it does not meet the authority's applicable

579-02186-17 2017596c1

175 codes. If the application is denied, the authority must specify
 176 in writing the basis for denial, including the specific code
 177 provisions on which the denial was based, and send the
 178 documentation to the applicant by electronic mail on the day the
 179 authority denies the application. The applicant may cure the
 180 deficiencies identified by the authority and resubmit the
 181 application within 30 days after notice of the denial is sent to
 182 the applicant. The authority shall approve or deny the revised
 183 application within 30 days after receipt or the application is
 184 deemed approved. Any subsequent review shall be limited to the
 185 deficiencies cited in the denial.

186 8. An applicant seeking to collocate small wireless
 187 facilities within the jurisdiction of a single authority may, at
 188 the applicant's discretion, file a consolidated application and
 189 receive a single permit for the collocation of multiple small
 190 wireless facilities.

191 (e) An authority may not require approval or require fees
 192 or other charges for:

193 1. Routine maintenance;

194 2. Replacement of existing wireless facilities with
 195 wireless facilities that are substantially similar or of the
 196 same or smaller size; or

197 3. Installation, placement, maintenance, or replacement of
 198 micro wireless facilities that are suspended on cables strung
 199 between existing utility poles in compliance with applicable
 200 codes by a communications service provider authorized to occupy
 201 the rights-of-way and who is remitting taxes under chapter 202.

202 (f) An authority shall approve the collocation of small
 203 wireless facilities on authority utility poles, subject to the

579-02186-17 2017596c1

204 following requirements:

205 1. An authority may not enter into an exclusive arrangement
 206 with any person for the right to attach equipment to authority
 207 utility poles.

208 2. The rates and fees for collocations on authority utility
 209 poles must be nondiscriminatory, regardless of the services
 210 provided by the collocating person.

211 3. The rate to collocate equipment on authority utility
 212 poles may not exceed the lesser of the annual recurring rate
 213 that would be permitted under rules adopted by the FCC under 47
 214 U.S.C. s. 224(d) if the collocation rate were regulated by the
 215 FCC or \$15 per year per authority utility pole.

216 4. If an authority has an existing pole attachment rate,
 217 fee, or other term that does not comply with this subsection,
 218 the authority shall, no later than January 1, 2018, revise such
 219 rate, fee, or term to be in compliance with this subsection.

220 5. A person owning or controlling an authority utility pole
 221 shall offer rates, fees, and other terms that comply with this
 222 subsection. By the later of January 1, 2018, or 3 months after
 223 receiving a request to collocate its first small wireless
 224 facility on a utility pole owned or controlled by an authority,
 225 the person owning or controlling the authority utility pole
 226 shall make available, through ordinance or otherwise, rates,
 227 fees, and terms for the collocation of small wireless facilities
 228 on the authority utility pole which comply with this subsection.

229 a. The rates, fees, and terms must be nondiscriminatory,
 230 competitively neutral, and commercially reasonable and must
 231 comply with this subsection.

232 b. For an authority utility pole that supports an aerial

579-02186-17

2017596c1

233 facility used to provide communications services or electric
 234 service, the parties shall comply with the process for make-
 235 ready work under 47 U.S.C. s. 224 and implementing regulations.
 236 The good faith estimate of the person owning or controlling the
 237 pole for any make-ready work necessary to enable the pole to
 238 support the requested collocation must include pole replacement
 239 if necessary.

240 c. For an authority utility pole that does not support an
 241 aerial facility used to provide communications services or
 242 electric service, the authority shall provide a good faith
 243 estimate for any make-ready work necessary to enable the pole to
 244 support the requested collocation, including necessary pole
 245 replacement, within 60 days after receipt of a complete
 246 application. Make-ready work, including any pole replacement,
 247 must be completed within 60 days after written acceptance of the
 248 good faith estimate by the applicant.

249 d. An authority may not require more make-ready work than
 250 is required to meet applicable codes or industry standards. Fees
 251 for make-ready work may not include costs related to preexisting
 252 damage or prior noncompliance. Fees for make-ready work,
 253 including any pole replacement, may not exceed actual costs or
 254 the amount charged to communications service providers other
 255 than wireless services providers for similar work and may not
 256 include any consultant fee or expense.

257 (g) Except as provided in this chapter or specifically
 258 required by state law, an authority may not adopt or enforce any
 259 regulation on the placement or operation of communications
 260 facilities in the rights-of-way by a provider authorized by
 261 state law to operate in the rights-of-way and may not regulate

579-02186-17

2017596c1

262 any communications services or impose or collect any tax, fee,
 263 or charge not specifically authorized under state law.

264 (h) This subsection does not authorize a person to
 265 collocate small wireless facilities on a privately owned utility
 266 pole, a utility pole owned by an electric cooperative, a
 267 privately owned wireless support structure, or other private
 268 property without the consent of the property owner.

269 (i) This subsection may not be construed to limit local
 270 governments' authority to enforce historic preservation zoning
 271 regulations consistent with the preservation of local zoning
 272 authority under 47 U.S.C s. 332(c)(7), the requirements for
 273 facility modifications under 47 U.S.C. s. 1455(a), or the
 274 National Historic Preservation Act of 1966, as amended, and the
 275 regulations adopted to implement these laws.

276 Section 2. This act shall take effect July 1, 2017.

THE FLORIDA SENATE
APPEARANCE RECORD

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

March 27, 2017
Meeting Date

596
Bill Number (if applicable)
Amdt 634024 to Amdt 561176
Amendment Barcode (if applicable)

Topic Utilities

Name Joseph Salzverg

Job Title Associate Attorney

Address 301 South Bronough Street, Suite 600
Street

Phone 850-577-9090

Tallahassee FL 32301
City *State* *Zip*

Email joseph.salzverg@gray-robinson.com

Speaking: For Against Information

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

Representing The Villages (Waive on Support of the Baxley Amendment Unless Needed)

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)

3/27/17

Meeting Date

596

Bill Number (if applicable)

634024 AA

Amendment Barcode (if applicable)

Topic SB 596 Support of AA 634024

Name Patrick Bell

Job Title Lobbyist

Address P.O. Box 10242

Phone 850-544-0784

Street

Tallahassee FL 32302

Email pbell@capitol.solutions.biz

City

State

Zip

Speaking: For Against Information

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

Representing Sumter County Commission of 634024 AA

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)

3/27/17

Meeting Date

596

Bill Number (if applicable)

Topic Utilities

Amendment Barcode (if applicable)

Name Diana Arteaga

Job Title Director of Govt Relations

Address 444 SW 2nd Ave, 10th floor

Phone 786-469-1644

Street

Miami

City

FL

State

33131

Zip

Email darteaga@miamigov.com

Speaking: For Against Information

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

Representing City of Miami

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)

3-27-17

Meeting Date

596

Bill Number (if applicable)

Topic Utilities

Amendment Barcode (if applicable)

Name Connie Vanasseche

Job Title

Address PO Box 35

Phone 561-572-0089

Street

Canal Point

FL

33438

Email casgouser@gmail.com

City

State

Zip

Speaking: [] For [] Against [] Information

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

Representing City of Wauchula

Appearing at request of Chair: [] Yes [x] No

Lobbyist registered with Legislature: [x] 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)

3-27-17

Meeting Date

596

Bill Number (if applicable)

Topic Utilities

Amendment Barcode (if applicable)

Name Connie Vanassche

Job Title

Address PO Box 35

Phone 561-512-0089

Street

Canal Point FL

Email casgouser@gmail.com

City

State

Zip

Speaking: [] For [] Against [] Information

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

Representing Okeechobee County

Appearing at request of Chair: [] Yes [x] No

Lobbyist registered with Legislature: [x] 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)

3/27/17
Meeting Date

596
Bill Number (if applicable)

Topic Small Cells

Amendment Barcode (if applicable)

Name JC Flores

Job Title VP Gov Affairs

Address 150 S. Monroe

Phone _____

Street

Tallahassee
City

FL
State

32312
Zip

Email JF323W@afl.com

Speaking: For Against Information

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

Representing AT&T

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)

3/21/17

Meeting Date

SB 596

Bill Number (if applicable)

Topic UTILITIES

Amendment Barcode (if applicable)

Name KEYNA CORY

Job Title LOBBYIST

Address 730 E. PARK AVE
Street

Phone 850-681-1065

TALLAHASSEE FL 32301
City State Zip

Email Keynacory@preconsultants.com

Speaking: For Against Information

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

Representing CITY OF JACKSONVILLE BEACH

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)

SB 596
Bill Number (if applicable)

Meeting Date _____

Amendment Barcode (if applicable) _____

Topic ~~IS~~ UTILITIES

Name CHRIS EMMANUEL

Job Title POLICY DIRECTOR

Address 136 S BRONOUAH
Street

Phone _____

TLH FL 32301
City State Zip

Email _____

Speaking: For Against Information

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

Representing FLORIDA CHAMBER OF COMMERCE

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)

3/27/2017

Meeting Date

SB 596

Bill Number (if applicable)

Topic Small Cell Deployment

Amendment Barcode (if applicable)

Name Woody Simmons

Job Title Contract Lobbyist

Address 8869 Glen Abby Dr

Phone 80-294-0700

Street

Tallahassee Fla 32312

City

State

Zip

Email woodyw.simmons@gmail.com

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

03.27.2017

SB596

Meeting Date

Bill Number (if applicable)

Topic Opposition to SB596

Amendment Barcode (if applicable)

Name Douglas Metzger

Job Title Senior Planner, City of Orlando

Address 400 S. Orange Ave.

Phone 407.491.0127

Street

Orlando

FL

32801

Email douglas.metzger@cityoforlando.net

City

State

Zip

Speaking: For Against Information

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

Representing City of Orlando

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)

03.27.2017

SB596

Meeting Date

Bill Number (if applicable)

Topic Opposition to SB596

Amendment Barcode (if applicable)

Name Douglas Metzger

Job Title Senior Planner, City of Orlando

Address 400 S. Orange Ave.

Phone 407.491.0127

Street

Orlando

FL

32801

Email douglas.metzger@cityoforlando.net

City

State

Zip

Speaking: For Against Information

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

Representing City of Orlando

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)

3/25/17
Meeting Date

596
Bill Number (if applicable)

Topic Wireless Facilities / 5m-11 Cell

Amendment Barcode (if applicable)

Name ERIC POOLE

Job Title ASST. LEGIS. DIRECTOR

Address 100 MUNroe St.

Phone 972-4300

T-11 FL 32311
City State Zip

Email _____

Speaking: For Against Information

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

Representing Florida Assn. Counties

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)

3.27.17

Meeting Date

CS/SB 596

Bill Number (if applicable)

Topic UTILITIES

Amendment Barcode (if applicable)

Name MEGAN SIRJANE-SAMPLES ^{Sierra}

Job Title LEGISLATIVE ADVOCATE

Address P.O. BOX 1757
Street

Phone 850.701.3455

TALLAHASSEE FL 32302
City State Zip

Email MSIRJANESAMPLES@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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/27/17

Meeting Date

SB 596

Bill Number (if applicable)

Topic Utilities

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking: For Against Information

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

Representing Associated Industries 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)

3/27

Meeting Date

596

Bill Number (if applicable)

Topic SMALL CELL

Amendment Barcode (if applicable)

Name JAMES TAYLOR

Job Title Executive Director

Address 115 PARK AVE

Phone 850-803-8324

Street

TALLY FL

City

State

Zip

Email James.Taylor@FLTechCouncil.com

Speaking: For Against Information

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

Representing FLORIDA TECHNOLOGY COUNCIL

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)

3/29/17
Meeting Date

596
Bill Number (if applicable)

Topic Wireless Communications

Amendment Barcode (if applicable)

Name Drinda Merritt

Job Title Mayor

Address 135 Hwy 40 W

Phone 352-229-0477

Englis
City State Zip

Email mayor@drindamerritt.com

Speaking: For Against Information

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

Representing Town of Englis

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)

3/27/17

Meeting Date

596

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Lauren Henderson

Job Title _____

Address 109 E. Jefferson St. Suite E

Phone 850 509 3610

Street

Tallahassee

City

FL

State

32301

Zip

Email lauren.claire.henderson@gmail.com

Speaking: For Against Information

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

Representing Wireless Infrastructure Association

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)

3/27/17

Meeting Date

596

Bill Number (if applicable)

Topic UTILITIES

Amendment Barcode (if applicable)

Name DAPHNEE SAINVIL

Job Title LEGISLATIVE COORDINATOR

Address 115 S. ANDREWS AVE

Phone 954-357-7577

Street

FT. LAUDERDALE FL 33301

Email dsainvil@gmail.com

City

State

Zip

Speaking: For Against Information

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

Representing BROWARD COUNTY

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)

3/27/17

Meeting Date

5B596

Bill Number (if applicable)

Topic Utilities - Small Wireless

Amendment Barcode (if applicable)

Name Rebecca Dela Rosa

Job Title Legislative Affairs Director

Address 301 N Olive Ave 1101

Phone 850.284.7235

Street

West Palm Beach

Email rdelarosa@pbcgov.org

City

State

Zip

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/27/17
Meeting Date

596
Bill Number (if applicable)

Topic Utilities

Amendment Barcode (if applicable)

Name Edward Briggs

Job Title Consultant

Address 113 E. College Ave.
Street

Phone 850-933-5994

Tallahassee FL 32301
City State Zip

Email edward@rsaconsultingllc.com

Speaking: For Against Information

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

Representing Mobilitie

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)

3-27-17
Meeting Date

SB596
Bill Number (if applicable)

Topic WIRELESS Infrastructure
Preemption of Local Govt. Regulatory
Right of Way Amendment Barcode (if applicable)

Name Chris Doolin

Job Title Consultant

Address 1118-B THOMASVILLE Rd. Phone _____

Street
Tallahassee City State Zip

Email _____

Speaking: For Against Information

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

Representing SMALL COUNTY COALITION

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

2/27/17
Meeting Date

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

596
Bill Number (if applicable)

Topic 56

Amendment Barcode (if applicable)

Name Douglas Mannheimer

Job Title Attorney

Address 215 S. Monroe St. Suite 400

Phone 850 519 1716

Tallahassee Fla 32301
City State Zip

Email dmannheimer@broadandcassel.com

Speaking: For Against Information

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

Representing Sprint

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)

3/27/17

Meeting Date

SB 596

Bill Number (if applicable)

Topic SB 596

Amendment Barcode (if applicable)

Name Corinne Nixon

Job Title

Address Street

Phone

City

State

Zip

Email

Speaking: For Against Information.

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

Representing T Mobile & FL wide telecommunications association

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 674

INTRODUCER: Governmental Oversight and Accountability Committee; Health Policy Committee and Senator Bean

SUBJECT: Public Records/Nonviable Birth Records

DATE: March 29, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HP	Fav/CS
2.	Kim	Ferrin	GO	Fav/CS
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 674 creates a public records exemption for information relating to cause of death and the parentage of the fetus, the parents' marital status, and medical information in all nonviable birth records. The bill permits the Department of Health (department) to provide copies of certificates of nonviable birth to parents, to government agencies and pursuant to a court order.

The bill includes a constitutionally required public necessity statement. The exemption will stand repealed on October 2, 2022, pursuant to the Open Government Sunset Review Act unless it is reenacted.

This bill requires a two-thirds vote from each chamber for passage.

The bill has no fiscal impact.

The bill takes effect on July 1, 2017, contingent upon SB 672 or similar legislation becoming a law.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ 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.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Id.*

exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹³ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹⁴

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.¹⁵ 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.¹⁶

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.¹⁷ 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;¹⁸
- 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;¹⁹ or
- It protects trade or business secrets.²⁰

The OGSR also requires specified questions to be considered during the review process.²¹ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

¹³ 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).

¹⁴ *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

¹⁵ 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.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(b)1., F.S.

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

²¹ Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²² 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.²³

Death and Fetal Death Certificates

Section 382.008, F.S., requires that a death certificate and fetal death certificate must be filed with the department or local registrar. Such a certificate must include specified information, such as the decedent's social security number, name, place of death and cause of death. In addition, the original death certificate or fetal death certificate "shall contain all information required by the department for legal, social and health research purposes," pursuant to s. 382.008(6), F.S.

Copies of Death and Fetal Death Certificates and Public Records Exemptions

Certified copies of death records and fetal death certificate are subject to public records exemptions. The department may issue certified copies of death and fetal death certificates, which exclude confidential and exempt information, to anyone who requests a certified copy and pays the appropriate fee.²⁴ Information related to the cause of death is confidential and exempt from for all death and fetal death records.²⁵ In addition, parentage, marital status, and medical information are confidential and exempt in fetal death records.²⁶

The department may issue certified copies of certificates of death or fetal death which include confidential and exempt information to certain family members and government agencies.²⁷ All of the information on a death certificate become public after 50 years.²⁸

The department may provide confidential and exempt information, vital records or data to government agencies for specified purposes, such as statistical analysis, or to a research entity, if the department reviews the research protocols. Records or data submitted to government agencies or research entities are exempt from public disclosure.²⁹

-
3. What is the identifiable public purpose or goal of the exemption?
 4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
 5. Is the record or meeting protected by another exemption?
 6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²² FLA. CONST. art. I, s. 24(c).

²³ Section 119.15(7), F.S.

²⁴ Section 382.025(2)(a), F.S.

²⁵ Section 382.008(6), F.S.

²⁶ *Id.*

²⁷ Section 382.025(2)(a), F.S.

²⁸ Section 382.025(2)(b), F.S.

²⁹ Section 382.025(3), F.S.

Nonviable Birth Records

SB 672 (2017) creates the “Grieving Families Act” which enables a parent to obtain, in certain situations, a certificate of nonviable birth following a miscarriage. The bill defines a “nonviable birth” as an unintentional, spontaneous fetal demise occurring after the completion of the 9th week of gestation but prior to the 20th week of gestation of a pregnancy that has been verified by a health care practitioner.

In response to a parent’s request, certain health care practitioners and facilities must submit information, as determined by rule by the Department of Health, Bureau of Vital Statistics (BVS), to the BVS in order to register a nonviable birth. This information will be used to issue a certificate of nonviable birth upon the parent’s request. Only a parent named on the nonviable birth registration may request the BVS to issue a certificate of nonviable birth. However, once the certificate has been issued, any person may request a copy of that certificate pursuant to a public records request.

The certificate of nonviable birth must contain:

- The date of the nonviable birth.
- The county in which the nonviable birth occurred.
- The name of the fetus, as indicated on the registration of nonviable birth. If a name was not provided on the original or amended registration and the parent chooses not to provide a name, the certificate will use “baby boy,” “baby girl,” or “baby” if the sex is unknown, and the last name of the parents.
- A statement on the front of the certificate: “This certificate is not proof of a live birth.”

III. Effect of Proposed Changes:

The bill provides that an original certificate of nonviable birth must contain all of the information required by the department for legal, social and health research purposes. This is the same information that the department collects for death certificates and fetal death certificates.³⁰

The bill makes the following information confidential and exemption in all nonviable birth records: cause of death and the parentage of the fetus, marital status of each parent, and all medical information.

The department may issue copies of a certificate of nonviable birth: to the parents, to government entities for official purposes and upon a court order. A parent, government entity, or court may request a copy of a certificate of nonviable birth that has the confidential and exempt information printed on the document. In the alternative, a parent, government entity or court may purchase a certificate, which does not contain the confidential and exempt information on its face. This provision is similar to current law which allows certain family members to have a copy of a death certificate with the cause of death documented on the certificate, and allows any member of the public (including the family) to order a copy of a death certificate without the cause of death on the face of the document.³¹

³⁰ Section 382.008(6), F.S.

³¹ Section 382.025(2), F.S.

The exemption will stand repealed on October 2, 2022, pursuant to the Open Government Sunset Review Act unless it is reenacted.

The bill includes a constitutionally required public necessity statement. The public necessity statement provides that the exemption is needed to protect the privacy rights of a woman who experiences a nonviable birth. Furthermore, the public disclosure of such information may discourage a woman from seeking medical care from a licensed health care practitioner or health care facility.

The bill takes effect on July 1, 2017, contingent upon SB 672 or similar legislation becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of each chamber for public records exemptions to pass.

Public Necessity Statement

Article I, Section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public-records exemption. The Florida Constitution provides that an exemption must state with specificity the public necessity of the exemption. The public necessity statement provides that the exemption is needed to protect sensitive personal information. Furthermore, the public disclosure of such information may discourage a parent from obtaining a certificate of nonviable birth if the public records exemption were not in place.

Breadth of Exemption

Article I, Section 24(c) of the Florida Constitution requires a newly created public records exemption to be “no broader than necessary to accomplish the stated purpose of the law.” This bill appears to meet this standard.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.³²

C. Government Sector Impact:

None.³³

VI. Technical Deficiencies:

None.

VII. Related Issues:

The underlying substantive bill, SB 672, may have to be amended so that these linked bills align with respect to section numbers and content.

VIII. Statutes Affected:

This bill substantially amends section 382.008 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 27, 2017:

The CS/CS does the following:

- Authorizes the department to collect information for legal, social, and health research purposes;
- Authorizes the department to put legal, social, and health research information on certificates of nonviable birth;
- Makes the names of the parents confidential and exempt;
- Clarifies and limits who may get a redacted copy of a certificate for nonviable birth; and
- Modifies the public necessity statement.

CS by Health Policy on March 14, 2017:

The bill number of the linked substantive bill was inserted into the 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.

³² 2017 Agency Legislative Bill Analysis, Department of Health, HB 103, December 16, 2017. Available on ABARS.

³³ *Id.*



630118

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 12 - 49

and insert:

Section 1. Subsection (7) is added to section 382.008,
Florida Statutes, to read:

382.008 Death, ~~and fetal death,~~ and nonviable birth
registration; exemption.—

(7) (a) An original certificate of nonviable birth shall



630118

10 contain all information required by the department for legal,
11 social, and health research purposes. The department may issue a
12 certified copy of an original certificate of nonviable birth
13 containing confidential and exempt information to:

14 1. The fetus' parents;

15 2. An agency of the state or local government or the
16 Federal Government for official purposes upon approval of the
17 department; or

18 3. Any person authorized to receive the certified copy upon
19 an order of any court of competent jurisdiction.

20 (b) All information relating to the cause of death of the
21 nonviable fetus, parentage of the fetus, marital status of each
22 parent, and any medical information included in all nonviable
23 birth records of this state are confidential and exempt from the
24 provisions of s. 119.07(1), and s. 24(a), Art. I of the State
25 Constitution, except for such information released for health
26 research purposes as approved by the department.

27 (c) The department must issue a certified copy of a
28 certificate of nonviable birth, excluding the portion containing
29 information that is confidential and exempt from s. 119.07(1)
30 and s. 24(a) Art. I of the State Constitution, as provided in
31 paragraph (b), to any person authorized by paragraph (a) to
32 receive it who requests a certified copy upon receipt of the
33 request and payment of the fee specified in s. 382.0255.

34 (d) This subsection is subject to the Open Government
35 Sunset Review Act in accordance with s. 119.15 and shall stand
36 repealed on October 2, 2022, unless reviewed and saved from
37 repeal.

38 Section 2. The Legislature finds that it is a public



630118

39 necessity that the cause of death and parentage of the fetus,
40 marital status of the parents, and medical information included
41 in nonviable birth records be held confidential and exempt from
42 s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the
43 State Constitution to protect the privacy rights of a parent who
44 experiences a nonviable birth. Medical information and the cause
45 of death of the fetus is sensitive and personal in nature and
46 the public disclosure of such information may lead to an
47 unwarranted invasion into the lives of parents experiencing a
48 nonviable birth. The public disclosure of information regarding
49 the parentage of the fetus and marital status of the parents may
50 discourage individuals from requesting a certificate of
51 nonviable birth because of an actual or perceived stigma
52 regarding the nonviability of the fetus, the fetus' parentage,
53 or the parents' marital status. Currently, such information is
54 confidential and exempt from public disclosure in death and
55 fetal death records. The Legislature further finds that the same
56 protections should be afforded to parents who wish to
57 memorialize a nonviable birth with a certificate of nonviable
58 birth as part of their grieving process.

59
60 ===== T I T L E A M E N D M E N T =====

61 And the title is amended as follows:

62 Delete lines 3 - 5

63 and insert:

64 382.008, F.S.; providing that a certificate of
65 nonviable birth must contain information as required
66 by the Department of Health; authorizing the
67 department to issue a certified copy of a certificate



630118

68 of nonviable birth to specified persons; providing
69 that certain information included in nonviable birth
70 records is confidential and exempt from public records
71 requirements; requiring the department to authorize
72 the issuance of a certified copy of a certificate of
73 nonviable birth subject to certain conditions;
74 providing

By the Committee on Health Policy; and Senator Bean

588-02416-17

2017674c1

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 382.008, F.S.; providing that certain information
 4 included in nonviable birth records is confidential
 5 and exempt from public records requirements; providing
 6 for future legislative review and repeal of the
 7 exemption; providing a statement of public necessity;
 8 providing a contingent effective date.
 9
 10 Be It Enacted by the Legislature of the State of Florida:
 11
 12 Section 1. Subsection (6) of section 382.008, Florida
 13 Statutes, is amended to read:
 14 382.008 Death, ~~and~~ fetal death, and nonviable birth
 15 registration.—
 16 (6) (a) The original certificate of death or fetal death
 17 shall contain all the information required by the department for
 18 legal, social, and health research purposes. All information
 19 relating to cause of death in all death and fetal death records
 20 and the parentage, marital status, and medical information
 21 included in all fetal death records of this state are
 22 confidential and exempt from the provisions of s. 119.07(1),
 23 except for health research purposes as approved by the
 24 department; nor may copies of the same be issued except as
 25 provided in s. 382.025.
 26 (b) All information relating to cause of death in all
 27 nonviable birth records and the parentage, marital status, and
 28 medical information included in all nonviable birth records of
 29 this state are confidential and exempt from the provisions of s.

Page 1 of 2

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

588-02416-17

2017674c1

30 119.07(1) and s. 24(a), Art. I of the State Constitution, except
 31 for health research purposes as approved by the department. The
 32 department may not issue copies of nonviable birth records
 33 except as provided in s. 382.025. This paragraph is subject to
 34 the Open Government Sunset Review Act in accordance with s.
 35 119.15 and shall stand repealed on October 2, 2022, unless
 36 reviewed and saved from repeal through reenactment by the
 37 Legislature.
 38 Section 2. The Legislature finds that it is a public
 39 necessity that cause of death, parentage, marital status, and
 40 medical information included in nonviable birth records be held
 41 confidential and exempt from s. 119.07(1), Florida Statutes, and
 42 s. 24(a), Article I of the State Constitution to protect the
 43 privacy rights of a woman who experiences a nonviable birth.
 44 Currently, death and fetal death records containing such
 45 information are confidential and exempt from s. 119.07(1),
 46 Florida Statutes. The Legislature further finds that the public
 47 disclosure of such information may discourage such an individual
 48 from seeking medical care from a licensed health care
 49 practitioner or health care facility.
 50 Section 3. This act shall take effect on the same date that
 51 SB 672 or similar legislation takes effect, if such legislation
 52 is adopted in the same legislative session or an extension
 53 thereof and becomes a law.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Dennis Baxley, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: March 15, 2017

I respectfully request that **Senate Bill # 674**, relating to Public Records/Nonviable Birth Records, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in blue ink that reads "Aaron Bean".

Senator Aaron Bean
Florida Senate, District 4

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 738

INTRODUCER: Governmental Oversight and Accountability Committee; Banking and Insurance Committee; and Senators Mayfield and Steube

SUBJECT: Public Records/International Financial Institutions

DATE: March 29, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>Ferrin</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 738 creates public records exemptions for records related to international trust entities and limited service affiliates. The Office of Financial Regulation (OFR) must hold the following information confidential and exempt:

- Personal identifying information of the customer or prospective customers of affiliated international trust entities that appear in regulatory records of an international trust company representative office or a limited services affiliate;
- The names of shareholders or members of an affiliated international trust entity or limited services affiliate; and
- Information received by the OFR from a person from another state or country or the Federal Government that is confidential, or exempt pursuant to the laws of that state or country or pursuant to federal law.

The bill authorizes the OFR to disclose otherwise confidential and exempt information in specified circumstances.

The bill also revises the public records exemption for OFR records and information related to investigations and examinations of financial institutions, and confidential documents supplied by other state and federal agencies, to specify that such records are exempt from s. 24(a), Art. I of the Florida Constitution. The revision is necessary because CS/SB 736 expands the definition of

“financial institution” to include an “international trust entity” and “limited services affiliate,” thus expanding the existing public records exemption.

The public records exemptions created and amended by this bill are subject to the Open Government Sunset Review Act and repeal on October 2, 2022, unless the Legislature reviews and saves them from repeal through reenactment.

This bill requires a two-thirds vote from each chamber for passage because the bill creates a series of public records exemptions.

The bill will be effective on the same date CS/SB 736 takes effect, should that bill be adopted in the same legislative session or an extension thereof and becomes a law.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ 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.”

agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹³ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹⁴

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.¹⁵ 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.¹⁶

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.¹⁷ 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;¹⁸

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

¹³ 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).

¹⁴ *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

¹⁵ 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.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(b)1., F.S.

- 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;¹⁹ or
- It protects trade or business secrets.²⁰

The OGSR also requires specified questions to be considered during the review process.²¹ 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.²² 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.²³

Regulation of the International Financial Services Market

Miami, the gateway to Latin America, is home to the second-largest banking and finance hub in the United States.²⁴ Estate, tax, and asset protection planning are important components of the region's financial sector, attracting international financial institutions from Europe, Latin America, and Canada serving individual, family, and business customers.

The OFR regulates state-chartered depository and non-depository financial institutions and financial service companies. One of the OFR's primary goals is to protect consumers while preserving the integrity of Florida's markets and financial service industries. To achieve this goal, Florida law provides the OFR with regulatory authority over entities regulated under the Financial Institutions Codes (codes).²⁵

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

²¹ Section 119.15(6)(a), F.S. The specified questions are:

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

²² FLA. CONST. art. I, s. 24(c).

²³ Section 119.15(7), F.S.

²⁴ See http://bus.miami.edu/magazine/fall2014/features/miami_the_global_hub.html (Fall 2014) (last viewed Feb. 27, 2017).

²⁵ Financial Institutions Codes include chs. 655 relating to financial institutions generally, 657 relating to banks and trust companies, 660 relating to trust business, 662 family trust companies, 663 relating to international banking, 665 relating to associations, and 657 relating to savings banks.

International Banking Corporations

The OFR licenses and regulates international banking corporations²⁶ that transact business in Florida.²⁷ International banking entities enable depository institutions in the United States to offer deposit and loan services to foreign residents and institutions, and are subject to the jurisdiction of the Board of Governors of the Federal Reserve. The OFR does not regulate institutions that are chartered and regulated by foreign jurisdictions, except to the extent that those foreign institutions seek to engage in the banking or trust business in Florida. If foreign institutions do so, they must obtain a Florida charter and comply with the provisions of ch. 663, F.S., and the applicable codes.

An international banking corporation may operate through a variety of business models, all of which are subject to licensure by the OFR.²⁸ These models include international bank agencies, international representative offices, international trust company representative offices (ITCRO), international administrative offices, and international branches. The definition of “financial institution”²⁹ includes an international banking corporation and all of these entities. As of February 2017, there were no ITCROs licensed with the OFR; however, two international administrative offices, nine international bank agencies, six international representative offices, and six international bank branches were licensed with the OFR.³⁰ In addition, the OFR qualified six entities for the moratorium on the OFR’s enforcement of licensing requirements for an international trust entity or related parties pursuant to s. 663.0441, F.S.³¹

If an international banking corporation (IBC) wants to operate an office in Florida, which includes an ITCRO, the IBC is required to meet minimum licensure requirements, and is subject to the examination and enforcement authority of the OFR. The OFR may not issue a license to an international banking corporation unless it:

- Holds an unrestricted license to conduct trust business in the foreign country under the law of which it is organized and chartered;
- Has been authorized by the foreign country's trust business regulatory authority to establish the proposed international trust representative office;
- Is adequately supervised by the central bank or trust regulatory agency in the foreign country in which it is organized and chartered;³²

²⁶ An international banking corporation, such as a foreign commercial bank, foreign merchant bank, or other foreign institution that engages in banking activities usual in connection with the business of banking in the country where such foreign institution is organized or operating. The term also includes foreign trust companies, or any similar business entities, including, but not limited to, foreign banks with fiduciary powers, that conduct trust business as defined in the codes. See s. 663.01(6), F.S.

²⁷ Sections 663.04 and 663.05, F.S.

²⁸ Section 663.06(1), F.S.

²⁹ Section 655.005(i), F.S.

³⁰ Office of Financial Regulation, *Financial Institution Search*, at <https://real.flofr.com/ConsumerServices/FinancialInstitutions/InstSrch.aspx> (last visited February 25, 2017).

³¹ The following entities qualified for the moratorium: JTC Miami Corporation, Citco Corporate Services, Inc., Amicorp Services Ltd., Corpag Services USA, Inc., Integritas Inc., and Cisa Latam LLC. Email correspondence from the OFR (Feb. 27, 2017) (on file with Senate Committee on Banking and Insurance).

³² Section 663.05(8), F.S., requires the OFR to establish general principles to evaluate the adequacy of supervision of an international banking corporation’s foreign establishments, and must address at a minimum, the capital adequacy, asset quality, management, earnings, liquidity, internal controls, audits, and foreign exchange operations and positions of the

- Meets all requirements under the Financial Institutions Codes for the operation of a trust company or trust department as if it was a state-chartered trust company or bank authorized to exercise fiduciary powers; and
- Meets a minimum capital requirement of \$20 million.

Section 663.02, F.S., provides that international banking corporations with offices in Florida are subject to the provisions of ch. 655, F.S., as though such corporations were state banks or trust companies.³³ Further, s. 663.02, F.S., provides that neither an international bank agency nor an international branch shall have any greater right under, or by virtue of s. 663.02, F.S., than is granted to banks organized under the laws of this state.

International Bank Agencies and International Branches

International bank agencies and international branches are permitted to conduct activities similar to those of a state-chartered financial institution. These activities include making and servicing loans, acting as a custodian, furnishing investment advice, conducting foreign exchange activities and trading in securities and commercial paper.³⁴ An international branch has the same rights and privileges as a federally licensed international branch.³⁵

International Representative Offices and International Administrative Offices

International representative offices and international administrative offices perform activities that are more limited, such as soliciting business for the IBC, providing information to customers concerning their accounts, receiving applications for services, transmitting documents for customers, and arranging for customers to transact business on their accounts.³⁶ In addition to the powers delineated above, an administrative office may administer personnel and operations, engage in data processing and recordkeeping, and negotiate, approve, or service loans or extensions of credit and investments.³⁷

International Trust Company Representative Offices

An ITCRO is an office of an international banking corporation or trust company organized and licensed under the laws of a foreign country, which is established or maintained in Florida for engaging in nonfiduciary activities described in s. 663.0625, F.S.³⁸ An ITCRO may also include

international banking corporation. See Rule 69U-140.003, F.A.C., *Principles of Adequate Supervision of an International Banking Corporation's Foreign Establishment*.

³³ Section 663.02, F.S., provides that it is the intent of the Legislature that the following provisions apply to such entities: s. 655.031, F.S., relating to administrative enforcement guidelines; s. 655.032, F.S., relating to investigations, subpoenas, hearings, and witnesses; s. 655.0321, F.S., relating to hearings, proceedings, related documents, and restricted access; s. 655.033, F.S., relating to cease and desist orders; s. 655.037, F.S., relating to removal by the office of an officer, director, committee member, employee, or other person; s. 655.041, F.S., relating to administrative fines and enforcement; and s. 655.50, F.S., relating to the control of money laundering and terrorist financing; and any law for which the penalty is increased under s. 775.31, F.S., for facilitating or furthering terrorism.

³⁴ Section 663.061, F.S.

³⁵ Section 663.064, F.S.

³⁶ Section 663.062, F.S.

³⁷ Section 663.063, F.S.

³⁸ In 2010, legislation was enacted to establish OFR's oversight responsibilities of "offshore" international non-depository trust companies that wanted to maintain an ITCRO in Florida [ch. 2010-9, Laws of Fla.]. The legislation defined the ITCRO entity and established the licensing and regulatory requirements for these entities under the OFR. This legislation was in

any affiliate, subsidiary, or other person that engages in such activities on behalf of such international banking corporation or trust company from an office located in Florida.³⁹ An ITCRO is not a bank and may not accept deposits or make loans. The activities of a licensed ITCRO are limited to engaging in the following non-fiduciary activities that are ancillary to the trust business of the international banking corporation, such as:

- Advertising, marketing, and soliciting for fiduciary business on behalf of an international banking corporation or trust company;
- Contacting existing or potential customers and answering questions and providing information about matters related to customer accounts;
- Serving as a liaison in Florida between the international banking corporation or trust company and its existing or potential customers; and
- Such other activities as may be approved by the OFR or rules of the Financial Services Commission (commission).⁴⁰

In 2016, the Legislature imposed a moratorium on the OFR's enforcement with respect to the licensure of an entity in Florida providing services to an international trust entity (ITE) that engages in ITCRO activities described in s. 663.0625, F.S., if certain conditions are met. The moratorium expires June 30, 2017, and applies to the ITE, which is the offshore entity and the Florida entity that is providing marketing and customer assistance on behalf of the ITE. An "international trust entity," is defined to mean any international trust company, international business, international business organization, or affiliated or subsidiary entities that are licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws of which it is organized and supervised.

Senate Bill 736 (2017)

CS/SB 738 provides public records exemptions that accompany the classification of international trust entities and limited service affiliates as financial institutions in CS/SB 736 (2017).

CS/SB 736 modernizes the regulatory framework of international financial services under the OFR, which will promote the growth of international financial services market in Florida. The bill revises provisions relating to the regulation of international banking corporations and international trust company representative offices (ITCROs) of international trust entities and creates a regulatory framework for limited service affiliates (LSAs). The LSAs are marketing and liaison offices that engage in activities for the benefit of an international trust entity (ITE). An ITE is an international trust company, an international business, an international business organization, or an affiliated or subsidiary entities that is licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws of which it is organized and supervised. An ITCRO may conduct any nonfiduciary activities that are ancillary

response to the exposure of the \$8 billion dollar Ponzi scheme perpetrated by Allen Stanford. Because Florida law did not address representative offices of international non-depository trust companies at that time, Mr. Stanford was able to facilitate his scheme in Florida through the establishment of a representative office in Miami, Florida.

³⁹ Section 663.01(9), F.S.

⁴⁰ Section 663.0625, F.S.

to the fiduciary business of its international trust entity, such as marketing and soliciting for fiduciary business on behalf of the ITE. The bill provides the following changes:

- Establishes oversight of limited service affiliates and offices of international trust entities.
- Provides an abbreviated application process to establish additional locations of an entity that meets certain conditions.
- Authorizes the OFR to implement a risk-based approach for capital requirements, which will allow the OFR to calculate capital requirements that reflect an entity's business model and its particular inherent risk profile.
- Provides the OFR with discretion to allow an after-the-fact licensure process of an entity in the event of an acquisition, merger, or consolidation, which would allow continuity of operations.
- Clarifies permissible activities of entities regulated under ch. 663, F.S.

III. Effect of Proposed Changes:

International Trust Entity Member and Customer Public Records Exemption Created in Section 633.416, F.S.

Section 1 creates a public records exemption that requires the OFR to hold confidential and exempt from disclosure specified information relating to international trust entities. The bill exempts the following from the requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution:

- Personal identifying information of the customer or prospective customers of an affiliated international trust entity. The exemption applies to all such information that appears in books and records relating to reports and working papers regarding examinations, the operations, or the condition of an international trust company representative office.
- The names of shareholders or members of an affiliated international trust entity.
- Information received by the OFR from a person from another state or country or the Federal Government that is confidential, or exempt pursuant to the laws of that state or country or pursuant to federal law.

The OFR may disclose information governed by the public records exemption to the following persons and in the following situations:

- The authorized representative of the international trust company representative office under examination, if identified by resolution or written consent of the board of directors, or the equivalent, of the international trust entity.
- A fidelity insurance company, upon written consent of the board of directors, or the equivalent, of the international trust entity.
- An independent auditor, upon written consent of the board of directors, or the equivalent, of the international trust entity.
- The liquidator, receiver, or conservator for the international trust entity, if the OFR redacts the personal identifying information of customers, prospective customers, shareholders, and members of the international trust entity.
- A law enforcement agency in furtherance of its official duties and responsibilities.
- Law enforcement or a prosecutorial agency, to report suspected criminal activity.

- Pursuant to a legislative subpoena. The legislative body or committee must maintain confidentiality. Disclosure may be made to the extent the legislative body or committee deems necessary in a case involving the investigation of charges against a public official subject to impeachment or removal.

The public records exemption does not prevent or restrict publication of a report required by federal law.

The willful disclosure of information made confidential and exempt by the bill is a third-degree felony punishable as provided in s. 775.082, F.S., 775.083, F.S., or s. 775.084, F.S.

The public records exemption is subject to the Open Government Sunset Review Act and is repealed effective October 2, 2022, unless the Legislature reviews and reenacts it.

Section 2 provides legislative findings that the public records exemption is a public necessity.

The bill justifies the public records exemption for personal identifying information of customers, prospective customers, shareholders, or members of the affiliated international trust entity because disclosure could defame or jeopardize the personal and financial safety of those individuals and their family members. Such individuals are often of high net worth and the target of criminal predators seeking their assets through extortion, kidnapping, and other crimes.

The bill justifies the public records exemption for public disclosure of information received by OFR from a person from another state or country or the Federal Government because disclosure may hinder the OFR's ability to receive information from other regulatory bodies and to engage in joint examinations with federal regulators.

Limited Service Affiliate Public Records Exemption Created in Section 633.540, F.S.

Section 3 creates a public records exemption that requires the OFR to hold confidential and exempt from disclosure specified information relating to limited service affiliates. The bill exempts the following from the requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution:

- Personal identifying information of the customers and prospective customers of an affiliated international trust entity. The exemption applies to all such information that appears in books and records relating to reports and working papers regarding examinations, the operations, or the condition of a limited service affiliate.
- The names of shareholders or members of a limited service affiliate.
- Information received by the OFR from a person from another state or country or the Federal Government that is confidential or exempt pursuant to the laws of that state or country or pursuant to federal law.

The OFR may disclose information governed by the public records exemption to the following persons and in the following situations:

- The authorized representative of the limited service affiliate under examination, if identified by resolution or written consent of the board of directors or managers of the limited service affiliate.

- A fidelity insurance company, upon written consent of the board of directors or managers of the limited service affiliate.
- An independent auditor, upon written consent of the board of directors or managers of the limited service affiliate.
- The liquidator, receiver, or conservator for the limited service affiliate, if the OFR redacts the personal identifying information of customers, shareholders, and members of the limited service affiliate.
- A law enforcement agency in furtherance of its official duties and responsibilities.
- A law enforcement or a prosecutorial agency, to report suspected criminal activity.
- Pursuant to a legislative subpoena. The legislative body or committee must maintain confidentiality. Disclosure may be made to the extent the legislative body or committee deems necessary in a case involving the investigation of charges against a public official subject to impeachment or removal.

The public records exemption does not prevent or restrict publication of a report required by federal law.

The willful disclosure of information made confidential and exempt by the bill is a third-degree felony punishable as provided in s. 775.082, F.S., 775.083, F.S., or s. 775.084, F.S.

The public records exemption is subject to the Open Government Sunset Review Act and is repealed effective October 2, 2022, unless the Legislature reviews and reenacts it.

Section 4 provides legislative findings that the public records exemption is a public necessity.

The bill justifies the public records exemption for personal identifying information of customers, prospective customers, shareholders, or members of a limited service affiliate because disclosure could defame or jeopardize the personal and financial safety of those individuals and their family members. Such individuals are often of high net worth and the target of criminal predators seeking their assets through extortion, kidnapping, and other crimes.

The bill justifies the public records exemption for public disclosure of information received by OFR from a person from another state or country or the Federal Government because disclosure may hinder the OFR's ability to receive information from other regulatory bodies and to engage in joint examinations with federal regulators.

**Expansion of Public Records Exemption for Investigations of Financial Institutions
Amended in Sections 655.057(1), (2), (5), (9), and (15), F.S.**

Section 5 specifies that the existing public records exemption for records and information of an OFR investigation or examination of a financial institution, and confidential documents supplied by other state and federal agencies, are exempt from s. 24(a), Art. I of the State Constitution. The amendment is necessary because CS/SB 736 expands the definition of "financial institution" to include an "international trust entity" and "limited services affiliate," thus expanding the existing public records exemption. Expanding the public records exemptions also subjects them to an Open Government Sunset Review and repeal on October 2, 2022, unless the Legislature reviews and saves the exemptions from repeal by reenacting them.

Section 6 provides legislative findings that expanding the public records exemptions to international trust entities and limited services affiliates is a public necessity. Such entities should receive the same protections afforded to other financial institutions to prevent them from being disadvantaged. The exemption for reports of examinations, operations, or condition and associated working papers is needed to allow the OFR to administer its duties, which deter fraud and ensure the safety and soundness of the financial system. Disclosure of such records could cause unwarranted damage to the good name or reputation of a financial institution and impair its, and the financial system's, safety and soundness. Disclosure of records and information relating to an investigation could jeopardize the integrity of another investigation or reveal investigative techniques, to the detriment of the OFR's ability to administer its duties. Revealing personal financial information or a confidential source's identity could damage those persons or jeopardize their safety.

Effective Date

Section 7 makes the bill effective on the date CS/SB 736 or similar legislation takes effect during 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:

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

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 section 655.057 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 663.416 and 663.540.

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 27, 2017:

This CS/CS does the following:

- adds “books and records” of an international trust company representative office to the public records exemption for personal identifying information contained in affiliated international trust entity records;
- clarifies language about the criminal penalty for willful disclosure of confidential and exempt information;
- removes “books and records” from the definition of “working papers” for limited service affiliates;
- adds “books and records” of an limited service affiliate to the public records exemption for personal identifying information contained in limited services affiliate records;
- removes the public records exemption for reports of examinations or operations of limited service affiliates;
- modifies the public necessity statement to reflect these changes; and
- adds a reference to ch. 119 and Art. 1 s. 24(a) of the Florida Constitution to one of the public necessity statements to clarify that it supports the expansions in the definitions in the bill.

CS by Banking and Insurance on March 6, 2017:

Links the bill to SB 736 and creates an effective date.

- B. **Amendments:**

None.



244480

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 663.416, Florida Statutes, is created
and incorporated into part III of chapter 663, Florida Statutes,
as created by CS/SB 738, 2017 Regular Session, to read:

663.416 Public records exemption.—

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

(a) "Reports of examinations, operations, or condition"



244480

11 means records submitted to or prepared by the office as part of
12 the office's duties performed pursuant to s. 655.012 or s.
13 655.045.

14 (b) "Working papers" means the records of the procedure
15 followed, the tests performed, the information obtained, and the
16 conclusions reached in an investigation or examination performed
17 under s. 655.032 or s. 655.045. The term includes planning
18 documentation, work programs, analyses, memoranda, letters of
19 confirmation and representation, abstracts of the books and
20 records of a financial institution, as defined in s. 655.005,
21 and schedules or commentaries prepared or obtained in the course
22 of such investigation or examination.

23 (2) PUBLIC RECORDS EXEMPTION.—The following information
24 held by the office is confidential and exempt from s. 119.07(1)
25 and s. 24(a), Art. I of the State Constitution:

26 (a) Any personal identifying information of the customers
27 or prospective customers of an affiliated international trust
28 entity which appears in the books and records of an
29 international trust company representative office or in records
30 relating to reports of examinations, operations, or condition of
31 an international trust company representative office, including
32 working papers.

33 (b) Any portion of a list of names of the shareholders or
34 members of an affiliated international trust entity.

35 (c) Information received by the office from a person from
36 another state or country or the Federal Government which is
37 otherwise confidential or exempt pursuant to the laws of that
38 state or country or pursuant to federal law.

39 (3) AUTHORIZED RELEASE OF CONFIDENTIAL AND EXEMPT



244480

40 INFORMATION.—Information made confidential and exempt under
41 subsection (2) may be disclosed by the office:

42 (a) To the authorized representative or representatives of
43 the international trust company representative office under
44 examination. The authorized representative or representatives
45 must be identified in a resolution or by written consent of the
46 board of directors, or the equivalent, of the international
47 trust entity.

48 (b) To a fidelity insurance company, upon written consent
49 of the board of directors, or the equivalent, of the
50 international trust entity.

51 (c) To an independent auditor, upon written consent of the
52 board of directors, or the equivalent, of the international
53 trust entity.

54 (d) To the liquidator, receiver, or conservator for the
55 international trust entity, if a liquidator, receiver, or
56 conservator is appointed. However, any portion of the
57 information which discloses the identity of a customer or
58 prospective customer of the international trust entity, or a
59 shareholder or member of the international trust entity, must be
60 redacted by the office before releasing such portion to the
61 liquidator, receiver, or conservator.

62 (e) To a law enforcement agency in furtherance of the
63 agency's official duties and responsibilities.

64 (f) To the appropriate law enforcement or prosecutorial
65 agency for the purpose of reporting any suspected criminal
66 activity.

67 (g) Pursuant to a legislative subpoena. A legislative body
68 or committee that receives records or information pursuant to



244480

69 such a subpoena must maintain the confidential status of the
70 records or information, except in a case involving the
71 investigation of charges against a public official subject to
72 impeachment or removal, in which case the records or information
73 may be disclosed only to the extent necessary as determined by
74 such legislative body or committee.

75 (4) PUBLICATION OF INFORMATION.—This section does not
76 prevent or restrict the publication of a report required by
77 federal law.

78 (5) PENALTY.—A person who willfully, in violation of this
79 section, discloses information made confidential and exempt by
80 this section commits a felony of the third degree, punishable as
81 provided in s. 775.082, s. 775.083, or s. 775.084.

82 (6) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject
83 to the Open Government Sunset Review Act in accordance with s.
84 119.15 and is repealed on October 2, 2022, unless reviewed and
85 saved from repeal through reenactment by the Legislature.

86 Section 2. The Legislature finds that it is a public
87 necessity to make confidential and exempt from s. 119.07(1),
88 Florida Statutes, and s. 24(a), Article I of the State
89 Constitution personal identifying information of the customers
90 or prospective customers of an affiliated international trust
91 entity which appears in the books and records of an
92 international trust company representative office or in records
93 relating to reports of examinations, operations, or condition of
94 an international trust company representative office, including
95 working papers; any portion of a list of names of the
96 shareholders or members of an affiliated international trust
97 entity which is held by the office; and information received by



98 the Office of Financial Regulation from a person from another
99 state or country or the Federal Government which is otherwise
100 confidential or exempt pursuant to the laws of that state or
101 country or pursuant to federal law.

102 (1) An exemption from public records requirements is
103 necessary for such records and information because the Office of
104 Financial Regulation may receive sensitive personal and
105 financial information, including personal identifying
106 information relating to such entities, in the course of its
107 investigation and examination duties. Public disclosure of the
108 personal identifying information of existing customers,
109 prospective customers, shareholders, or members of the
110 affiliated international trust entity could defame or jeopardize
111 the personal and financial safety of those individuals and their
112 family members. The individuals served by the affiliated
113 international trust entity are often individuals of high net
114 worth. Individuals of high net worth and shareholders or members
115 of financial institutions are frequently the targets of criminal
116 predators seeking access to their assets. It is important that
117 the exposure of such individuals and their family members to
118 threats of extortion, kidnapping, and other crimes not be
119 increased. Placing the personal identifying information of these
120 individuals within the public domain would increase the security
121 risk that those individuals or their families could become the
122 target of criminal activity.

123 (2) Public disclosure of information received by the Office
124 of Financial Regulation from a person from another state or
125 country or the Federal Government which is otherwise
126 confidential or exempt pursuant to the laws of that state or



244480

127 country or pursuant to federal law may deteriorate the office's
128 relationships with other regulatory bodies. The office
129 frequently engages in joint examinations with federal
130 regulators. If such information were subject to disclosure to
131 the public, not only would such disclosure deter other
132 regulatory bodies from communicating vital information to the
133 office, but the office would violate existing information-
134 sharing agreements governing the sharing of confidential
135 supervisory information.

136 Section 3. Section 663.540, Florida Statutes, is created
137 and incorporated into part IV of chapter 663, Florida Statutes,
138 as created by CS/SB 738, 2017 Regular Session, to read:

139 663.540 Public records exemption.-

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

141 (a) "Reports of examinations, operations, or condition"
142 means records submitted to or prepared by the office as part of
143 the office's duties performed pursuant to s. 655.012 or s.
144 663.537.

145 (b) "Working papers" means the records of the procedure
146 followed, the tests performed, the information obtained, and the
147 conclusions reached in an investigation or examination performed
148 under s. 655.032 or s. 663.537. The term includes planning
149 documentation, work programs, analyses, memoranda, letters of
150 confirmation and representation, abstracts of the books and
151 records of a financial institution, as defined in s. 655.005,
152 and schedules or commentaries prepared or obtained in the course
153 of such investigation or examination.

154 (2) PUBLIC RECORDS EXEMPTION.-The following information
155 held by the office is confidential and exempt from s. 119.07(1)



244480

156 and s. 24(a), Art. I of the State Constitution:

157 (a) Any personal identifying information of the customers
158 or prospective customers of an affiliated international trust
159 entity which appears in the books and records of a limited
160 service affiliate or in records relating to reports of
161 examinations, operations, or condition of a limited service
162 affiliate, including working papers.

163 (b) Any portion of a list of names of the shareholders or
164 members of a limited service affiliate.

165 (c) Information received by the office from a person from
166 another state or country or the Federal Government which is
167 otherwise confidential or exempt pursuant to the laws of that
168 state or country or pursuant to federal law.

169 (3) AUTHORIZED RELEASE OF CONFIDENTIAL AND EXEMPT
170 INFORMATION.—Information made confidential and exempt under
171 subsection (2) may be disclosed by the office:

172 (a) To the authorized representative or representatives of
173 the limited service affiliate under examination. The authorized
174 representative or representatives must be identified in a
175 resolution or by written consent of the board of directors, if
176 the limited service affiliate is a corporation, or of the
177 managers, if the limited service affiliate is a limited
178 liability company.

179 (b) To a fidelity insurance company, upon written consent
180 of the limited service affiliate's board of directors, if the
181 limited service affiliate is a corporation, or of the managers,
182 if the limited service affiliate is a limited liability company.

183 (c) To an independent auditor, upon written consent of the
184 limited service affiliate's board of directors, if the limited



244480

185 service affiliate is a corporation, or of the managers, if the
186 limited service affiliate is a limited liability company.

187 (d) To the liquidator, receiver, or conservator for a
188 limited service affiliate, if a liquidator, receiver, or
189 conservator is appointed. However, any portion of the
190 information which discloses the identity of a customer of the
191 affiliated international trust entity, or a shareholder or
192 member of the limited service affiliate, must be redacted by the
193 office before releasing such portion to the liquidator,
194 receiver, or conservator.

195 (e) To a law enforcement agency in furtherance of the
196 agency's official duties and responsibilities.

197 (f) To the appropriate law enforcement or prosecutorial
198 agency for the purpose of reporting any suspected criminal
199 activity.

200 (g) Pursuant to a legislative subpoena. A legislative body
201 or committee that receives records or information pursuant to
202 such a subpoena must maintain the confidential status of the
203 records or information, except in a case involving the
204 investigation of charges against a public official subject to
205 impeachment or removal, in which case the records or information
206 may be disclosed only to the extent necessary as determined by
207 such legislative body or committee.

208 (4) PUBLICATION OF INFORMATION.—This section does not
209 prevent or restrict the publication of a report required by
210 federal law.

211 (5) PENALTY.—A person who willfully, in violation of this
212 section, discloses information made confidential and exempt by
213 this section commits a felony of the third degree, punishable as



244480

214 provided in s. 775.082, s. 775.083, or s. 775.084.

215 (6) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject
216 to the Open Government Sunset Review Act in accordance with s.
217 119.15 and is repealed on October 2, 2022, unless reviewed and
218 saved from repeal through reenactment by the Legislature.

219 Section 4. The Legislature finds that it is a public
220 necessity to make confidential and exempt from s. 119.07(1),
221 Florida Statutes, and s. 24(a), Article I of the State
222 Constitution personal identifying information of the customers
223 or prospective customers of an affiliated international trust
224 entity which appears in the books and records of a limited
225 service affiliate or in records relating to reports of
226 examinations, operations, or condition of a limited service
227 affiliate, including working papers; any portion of a list of
228 names of the shareholders or members of a limited service
229 affiliate which is held by the office; and information received
230 by the office from a person from another state or country or the
231 Federal Government which is otherwise confidential or exempt
232 pursuant to the laws of that state or country or pursuant to
233 federal law.

234 (1) An exemption from public records requirements is
235 necessary for personal identifying information of existing and
236 prospective customers of an affiliated international trust
237 entity or shareholders or members of a limited service
238 affiliate, because if such information is available for public
239 access, such access could defame or jeopardize the personal and
240 financial safety of those individuals. The individuals served by
241 the affiliated international trust entity are often individuals
242 of high net worth. Individuals of high net worth and



244480

243 shareholders or members of financial institutions are frequently
244 the targets of criminal predators seeking access to their
245 assets. It is important that the exposure of such individuals
246 and their family members to threats of extortion, kidnapping,
247 and other crimes not be increased. Placing the personal
248 identifying information of these individuals within the public
249 domain would increase the security risk that those individuals
250 or their families could become the target of criminal activity.

251 (2) An exemption from public records requirements is
252 necessary for information received by the Office of Financial
253 Regulation from a person from another state or country or the
254 Federal Government which is otherwise confidential or exempt
255 pursuant to the laws of that state or country or pursuant to
256 federal law, as public disclosure may deteriorate the office's
257 relationships with other regulatory bodies. The office
258 frequently engages in joint examinations with federal
259 regulators. If such information were subject to disclosure to
260 the public, not only would this disclosure deter other
261 regulatory bodies from communicating vital information to the
262 office, but the office would violate existing information-
263 sharing agreements governing the sharing of confidential
264 supervisory information.

265 Section 5. Subsections (1), (2), (5), and (9) of section
266 655.057, Florida Statutes, are amended, and subsection (15) is
267 added to that section, to read:

268 655.057 Records; limited restrictions upon public access.—

269 (1) Except as otherwise provided in this section and except
270 for such portions thereof which are otherwise public record, all
271 records and information relating to an investigation by the



244480

272 office are confidential and exempt from s. 119.07(1) and s.
273 24(a), Art. I of the State Constitution until such investigation
274 is completed or ceases to be active. For purposes of this
275 subsection, an investigation is considered "active" while such
276 investigation is being conducted by the office with a
277 reasonable, good faith belief that it may lead to the filing of
278 administrative, civil, or criminal proceedings. An investigation
279 does not cease to be active if the office is proceeding with
280 reasonable dispatch, and there is a good faith belief that
281 action may be initiated by the office or other administrative or
282 law enforcement agency. After an investigation is completed or
283 ceases to be active, portions of the records relating to the
284 investigation are confidential and exempt from s. 119.07(1) and
285 s. 24(a), Art. I of the State Constitution to the extent that
286 disclosure would:

287 (a) Jeopardize the integrity of another active
288 investigation;

289 (b) Impair the safety and soundness of the financial
290 institution;

291 (c) Reveal personal financial information;

292 (d) Reveal the identity of a confidential source;

293 (e) Defame or cause unwarranted damage to the good name or
294 reputation of an individual or jeopardize the safety of an
295 individual; or

296 (f) Reveal investigative techniques or procedures.

297 (2) Except as otherwise provided in this section and except
298 for such portions thereof which are public record, reports of
299 examinations, operations, or condition, including working
300 papers, or portions thereof, prepared by, or for the use of, the



244480

301 office or any state or federal agency responsible for the
302 regulation or supervision of financial institutions in this
303 state are confidential and exempt from s. 119.07(1) and s.
304 24(a), Art. I of the State Constitution. However, such reports
305 or papers or portions thereof may be released to:

306 (a) The financial institution under examination;

307 (b) Any holding company of which the financial institution
308 is a subsidiary;

309 (c) Proposed purchasers if necessary to protect the
310 continued financial viability of the financial institution, upon
311 prior approval by the board of directors of such institution;

312 (d) Persons proposing in good faith to acquire a
313 controlling interest in or to merge with the financial
314 institution, upon prior approval by the board of directors of
315 such financial institution;

316 (e) Any officer, director, committee member, employee,
317 attorney, auditor, or independent auditor officially connected
318 with the financial institution, holding company, proposed
319 purchaser, or person seeking to acquire a controlling interest
320 in or merge with the financial institution; or

321 (f) A fidelity insurance company, upon approval of the
322 financial institution's board of directors. However, a fidelity
323 insurance company may receive only that portion of an
324 examination report relating to a claim or investigation being
325 conducted by such fidelity insurance company.

326 (g) Examination, operation, or condition reports of a
327 financial institution shall be released by the office within 1
328 year after the appointment of a liquidator, receiver, or
329 conservator to the financial institution. However, any portion



244480

330 of such reports which discloses the identities of depositors,
331 bondholders, members, borrowers, or stockholders, other than
332 directors, officers, or controlling stockholders of the
333 institution, shall remain confidential and exempt from s.
334 119.07(1) and s. 24(a), Art. I of the State Constitution.

335
336 Any confidential information or records obtained from the office
337 pursuant to this paragraph shall be maintained as confidential
338 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
339 Constitution.

340 (5) This section does not prevent or restrict:

341 (a) Publishing reports that are required to be submitted to
342 the office pursuant to s. 655.045(2) or required by applicable
343 federal statutes or regulations to be published.

344 (b) Furnishing records or information to any other state,
345 federal, or foreign agency responsible for the regulation or
346 supervision of financial institutions.

347 (c) Disclosing or publishing summaries of the condition of
348 financial institutions and general economic and similar
349 statistics and data, provided that the identity of a particular
350 financial institution is not disclosed.

351 (d) Reporting any suspected criminal activity, with
352 supporting documents and information, to appropriate law
353 enforcement and prosecutorial agencies.

354 (e) Furnishing information upon request to the Chief
355 Financial Officer or the Division of Treasury of the Department
356 of Financial Services regarding the financial condition of any
357 financial institution that is, or has applied to be, designated
358 as a qualified public depository pursuant to chapter 280.



359 (f) Furnishing information to Federal Home Loan Banks
360 regarding its member institutions pursuant to an information
361 sharing agreement between the Federal Home Loan Banks and the
362 office.

363

364 Any confidential information or records obtained from the office
365 pursuant to this subsection shall be maintained as confidential
366 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
367 Constitution.

368 (9) Materials supplied to the office or to employees of any
369 financial institution by other state or federal governmental
370 agencies remain the property of the submitting agency or the
371 corporation, and any document request must be made to the
372 appropriate agency. Any confidential documents supplied to the
373 office or to employees of any financial institution by other
374 state or federal governmental agencies are confidential and
375 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
376 Constitution. Such information shall be made public only with
377 the consent of such agency or the corporation.

378 (15) Subsections (1), (2), (5), and (9) are subject to the
379 Open Government Sunset Review Act in accordance with s. 119.15
380 and are repealed on October 2, 2022, unless reviewed and saved
381 from repeal through reenactment by the Legislature.

382 Section 6. The Legislature finds that it is a public
383 necessity to make confidential and exempt from s. 119.07(1),
384 Florida Statutes, and s. 24(a), Article I of the State
385 Constitution records and information relating to an
386 investigation by the Office of Financial Regulation; portions of
387 records relating to a completed or inactive investigation by the



244480

388 office which would jeopardize the integrity of another active
389 investigation, impair the safety and soundness of the financial
390 institution, reveal personal financial information, reveal the
391 identity of a confidential source, defame or cause unwarranted
392 damage to the good name or reputation of an individual or
393 jeopardize the safety of an individual, or reveal investigative
394 techniques or procedures; reports of examinations, operations,
395 or condition, including working papers, or portions thereof,
396 prepared by, or for the use of, the office or any state or
397 federal agency responsible for the regulation or supervision of
398 financial institutions in this state; any portion of such
399 reports which discloses the identities of depositors,
400 bondholders, members, borrowers, or stockholders, other than
401 directors, officers, or controlling stockholders of the
402 institution; and materials supplied to the office or to
403 employees of any financial institution by other state or federal
404 governmental agencies.

405 (1) The terms "international trust entity" and "limited
406 service affiliate" referenced in newly created parts III and IV
407 of chapter 663, Florida Statutes, are added to the definition of
408 the term "financial institution" in s. 655.005(1)(i), Florida
409 Statutes, in CS/SB 738. The international trust company
410 representative offices and limited service affiliates servicing
411 international trust entities are thus subject to examination by
412 the Office of Financial Regulation. As a result, the office may
413 receive sensitive personal and financial information relating to
414 such entities in conjunction with its duties under chapters 655
415 and 663, Florida Statutes. An exemption from public records
416 requirements prevents gaps in the law by providing the same



244480

417 protections to international trust entities and limited service
418 affiliates which are afforded to other financial institutions,
419 thereby preventing any disadvantage to these similarly regulated
420 entities in comparison to other entities currently defined as
421 "financial institutions." An exemption from public records
422 requirements for reports of examinations, operations, or
423 condition, including working papers, is necessary to ensure the
424 office's ability to effectively and efficiently administer its
425 examination and investigation duties. Examination and
426 investigation are essential components of financial institutions
427 regulation. They deter fraud and ensure the safety and soundness
428 of the financial system. Examinations also provide a means of
429 early detection of violations, allowing for corrective action to
430 be taken before any harm can be done.

431 (2) The Legislature finds that it is a public necessity
432 that information and records relating to an examination or
433 investigation by the office be held confidential and exempt from
434 s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the
435 State Constitution. Public disclosure of records and information
436 relating to an examination or investigation by the office could
437 expose the subject financial institution to unwarranted damage
438 to its good name or reputation and impair its safety and
439 soundness, as well as the safety and soundness of the financial
440 system in the state. Public disclosure of records and
441 information relating to an investigation by the office which
442 could jeopardize the integrity of another active investigation
443 or reveal investigative techniques or procedures of the office
444 would impair the office's ability to effectively and efficiently
445 administer its duties under ss. 655.032 and 655.045, Florida



244480

446 Statutes. Any portion of a record or information relating to an
447 investigation or examination which reveals personal financial
448 information or the identity of a confidential source may defame,
449 or cause unwarranted damage to the good name or reputation of,
450 those individuals, or jeopardize their safety.

451 Section 7. This act shall take effect on the same date that
452 CS/SB 738 or similar legislation takes effect, if such
453 legislation is adopted in the same legislative session or an
454 extension thereof and becomes a law.

455
456 ===== T I T L E A M E N D M E N T =====

457 And the title is amended as follows:

458 Delete everything before the enacting clause
459 and insert:

460 A bill to be entitled
461 An act relating to public records; creating ss.
462 663.416 and 663.540, F.S.; defining terms; providing
463 exemptions from public records requirements for
464 certain information held by the Office of Financial
465 Regulation relating to international trust company
466 representative offices or limited service affiliates,
467 respectively, and relating to affiliated international
468 trust entities; authorizing the disclosure of the
469 information by the office to specified persons;
470 providing construction; providing criminal penalties;
471 providing future legislative review and repeal of the
472 exemptions; providing statements of public necessity;
473 amending s. 655.057, F.S.; providing that certain
474 exemptions from public records requirements for



244480

475 information relating to investigations, reports of
476 examinations, operations, or condition, including
477 working papers, and certain materials supplied by
478 governmental agencies are exempt from s. 24(a) of
479 Article I of the State Constitution, as a result of
480 the expansion of such exemptions to include the
481 records of international trust entities and limited
482 service affiliates, as made by CS/SB 738, 2017 Regular
483 Session; providing a statement of public necessity;
484 providing a contingent effective date.

By the Committee on Banking and Insurance; and Senators Mayfield
and Steube

597-02147-17

2017738c1

1 A bill to be entitled
2 An act relating to public records; creating ss.
3 663.416 and 663.540, F.S.; defining terms; providing
4 exemptions from public records requirements for
5 certain information held by the Office of Financial
6 Regulation relating to international trust company
7 representative offices or limited service affiliates,
8 respectively, and relating to affiliated international
9 trust entities; authorizing the disclosure of the
10 information by the office to specified persons;
11 providing construction; providing criminal penalties;
12 providing future legislative review and repeal of the
13 exemptions; providing statements of public necessity;
14 amending s. 655.057, F.S.; providing that certain
15 exemptions from public records requirements for
16 information relating to investigations; reports of
17 examinations, operations, or condition, including
18 working papers; and certain materials supplied by
19 governmental agencies are exempt from s. 24(a) of
20 Article I of the State Constitution, as a result of
21 the expansion of such exemptions to include the
22 records of international trust entities and limited
23 service affiliates, as made by SB 736, 2017 Regular
24 Session; providing a statement of public necessity;
25 providing a contingent effective date.

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

28
29 Section 1. Section 663.416, Florida Statutes, is created

Page 1 of 18

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

597-02147-17

2017738c1

30 and incorporated into part III of chapter 663, Florida Statutes,
31 as created by SB 736, 2017 Regular Session, to read:
32 663.416 Public records exemption.—
33 (1) DEFINITIONS.—As used in this section, the term:
34 (a) "Reports of examinations, operations, or condition"
35 means records submitted to or prepared by the office as part of
36 the office's duties performed pursuant to s. 655.012 or s.
37 655.045.
38 (b) "Working papers" means the records of the procedure
39 followed, the tests performed, the information obtained, and the
40 conclusions reached in an investigation or examination performed
41 under s. 655.032 or s. 655.045. The term includes planning
42 documentation, work programs, analyses, memoranda, letters of
43 confirmation and representation, abstracts of the books and
44 records of a financial institution, as defined in s. 655.005,
45 and schedules or commentaries prepared or obtained in the course
46 of such investigation or examination.
47 (2) PUBLIC RECORDS EXEMPTION.—The following information
48 held by the office is confidential and exempt from s. 119.07(1)
49 and s. 24(a), Art. I of the State Constitution:
50 (a) Any personal identifying information of the customers
51 or prospective customers of an affiliated international trust
52 entity which appears in records relating to reports of
53 examinations, operations, or condition of an international trust
54 company representative office, including working papers.
55 (b) Any portion of a list of names of the shareholders or
56 members of an affiliated international trust entity.
57 (c) Information received by the office from a person from
58 another state or country or the Federal Government which is

Page 2 of 18

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

597-02147-17

2017738c1

59 otherwise confidential or exempt pursuant to the laws of that
60 state or country or pursuant to federal law.

61 (3) AUTHORIZED RELEASE OF CONFIDENTIAL AND EXEMPT
62 INFORMATION.—Information made confidential and exempt under
63 subsection (2) may be disclosed by the office:

64 (a) To the authorized representative or representatives of
65 the international trust company representative office under
66 examination. The authorized representative or representatives
67 must be identified in a resolution or by written consent of the
68 board of directors, or the equivalent, of the international
69 trust entity.

70 (b) To a fidelity insurance company, upon written consent
71 of the board of directors, or the equivalent, of the
72 international trust entity.

73 (c) To an independent auditor, upon written consent of the
74 board of directors, or the equivalent, of the international
75 trust entity.

76 (d) To the liquidator, receiver, or conservator for the
77 international trust entity, if a liquidator, receiver, or
78 conservator is appointed. However, any portion of the
79 information which discloses the identity of a customer or
80 prospective customer of the international trust entity, or a
81 shareholder or member of the international trust entity, must be
82 redacted by the office before releasing such portion to the
83 liquidator, receiver, or conservator.

84 (e) To a law enforcement agency in furtherance of the
85 agency's official duties and responsibilities.

86 (f) To the appropriate law enforcement or prosecutorial
87 agency for the purpose of reporting any suspected criminal

597-02147-17

2017738c1

88 activity.

89 (g) Pursuant to a legislative subpoena. A legislative body
90 or committee that receives records or information pursuant to
91 such a subpoena must maintain the confidential status of the
92 records or information, except in a case involving the
93 investigation of charges against a public official subject to
94 impeachment or removal, in which case the records or information
95 may be disclosed only to the extent necessary as determined by
96 such legislative body or committee.

97 (4) PUBLICATION OF INFORMATION.—This section does not
98 prevent or restrict the publication of a report required by
99 federal law.

100 (5) PENALTY.—A person who willfully discloses information
101 made confidential and exempt by this section commits a felony of
102 the third degree, punishable as provided in s. 775.082, s.
103 775.083, or s. 775.084.

104 (6) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject
105 to the Open Government Sunset Review Act in accordance with s.
106 119.15 and is repealed on October 2, 2022, unless reviewed and
107 saved from repeal through reenactment by the Legislature.

108 Section 2. The Legislature finds that it is a public
109 necessity to make confidential and exempt from s. 119.07(1),
110 Florida Statutes, and s. 24(a), Article I of the State
111 Constitution personal identifying information of the customers
112 or prospective customers of an affiliated international trust
113 entity which appears in records that are held by the Office of
114 Financial Regulation and that relate to reports of examinations,
115 operations, or condition of an international trust company
116 representative office, including working papers; any portion of

597-02147-17

2017738c1

117 a list of names of the shareholders or members of an affiliated
 118 international trust entity which is held by the office; and
 119 information received by the Office of Financial Regulation from
 120 a person from another state or country or the Federal Government
 121 which is otherwise confidential or exempt pursuant to the laws
 122 of that state or country or pursuant to federal law.

123 (1) An exemption from public records requirements is
 124 necessary for such records and information because the Office of
 125 Financial Regulation may receive sensitive personal and
 126 financial information, including personal identifying
 127 information relating to such entities, in the course of its
 128 investigation and examination duties. Public disclosure of the
 129 personal identifying information of existing customers,
 130 prospective customers, shareholders, or members of the
 131 affiliated international trust entity could defame or jeopardize
 132 the personal and financial safety of those individuals and their
 133 family members. The individuals served by the affiliated
 134 international trust entity are often individuals of high net
 135 worth. Individuals of high net worth and shareholders of
 136 financial institutions are frequently the targets of criminal
 137 predators seeking access to their assets. It is important that
 138 the exposure of such individuals and their family members to
 139 threats of extortion, kidnapping, and other crimes not be
 140 increased. Placing the personal identifying information of these
 141 individuals within the public domain would increase the security
 142 risk that those individuals or their families could become the
 143 target of criminal activity.

144 (2) Public disclosure of information received by the Office
 145 of Financial Regulation from a person from another state or

597-02147-17

2017738c1

146 country or the Federal Government which is otherwise
 147 confidential or exempt pursuant to the laws of that state or
 148 country or pursuant to federal law may deteriorate the office's
 149 relationships with other regulatory bodies. The office
 150 frequently engages in joint examinations with federal
 151 regulators. If such information were subject to disclosure to
 152 the public, not only would such disclosure deter other
 153 regulatory bodies from communicating vital information to the
 154 office, but the office would violate existing information-
 155 sharing agreements governing the sharing of confidential
 156 supervisory information.

157 Section 3. Section 663.540, Florida Statutes, is created
 158 and incorporated into part IV of chapter 663, Florida Statutes,
 159 as created by SB 736, 2017 Regular Session, to read:

160 663.540 Public records exemption.—

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

162 (a) "Reports of examinations, operations, or condition"
 163 means records submitted to or prepared by the office as part of
 164 the office's duties performed pursuant to s. 655.012 or s.
 165 663.537.

166 (b) "Working papers" means the records of the procedure
 167 followed, the tests performed, the information obtained, and the
 168 conclusions reached in an investigation or examination performed
 169 under s. 655.032 or s. 663.537. The term also includes books and
 170 records. The term includes planning documentation, work
 171 programs, analyses, memoranda, letters of confirmation and
 172 representation, abstracts of the books and records of a
 173 financial institution, as defined in s. 655.005, and schedules
 174 or commentaries prepared or obtained in the course of such

597-02147-17

2017738c1

175 investigation or examination.

176 (2) PUBLIC RECORDS EXEMPTION.—The following information
 177 held by the office is confidential and exempt from s. 119.07(1)
 178 and s. 24(a), Art. I of the State Constitution:

179 (a) Reports of examinations, operations, or condition of a
 180 limited service affiliate, including working papers.

181 (b) Any personal identifying information of the customers
 182 or prospective customers of an affiliated international trust
 183 entity which appears in records relating to reports of
 184 examinations, operations, or condition of a limited service
 185 affiliate, including working papers.

186 (c) Any portion of a list of names of the shareholders or
 187 members of a limited service affiliate.

188 (d) Information received by the office from a person from
 189 another state or country or the Federal Government which is
 190 otherwise confidential or exempt pursuant to the laws of that
 191 state or country or pursuant to federal law.

192 (3) AUTHORIZED RELEASE OF CONFIDENTIAL AND EXEMPT
 193 INFORMATION.—Information made confidential and exempt under
 194 subsection (2) may be disclosed by the office:

195 (a) To the authorized representative or representatives of
 196 the limited service affiliate under examination. The authorized
 197 representative or representatives must be identified in a
 198 resolution or by written consent of the board of directors, if
 199 the limited service affiliate is a corporation, or of the
 200 managers, if the limited service affiliate is a limited
 201 liability company.

202 (b) To a fidelity insurance company, upon written consent
 203 of the limited service affiliate's board of directors, if the

Page 7 of 18

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

597-02147-17

2017738c1

204 limited service affiliate is a corporation, or of the managers,
 205 if the limited service affiliate is a limited liability company.

206 (c) To an independent auditor, upon written consent of the
 207 limited service affiliate's board of directors, if the limited
 208 service affiliate is a corporation, or of the managers, if the
 209 limited service affiliate is a limited liability company.

210 (d) To the liquidator, receiver, or conservator for a
 211 limited service affiliate, if a liquidator, receiver, or
 212 conservator is appointed. However, any portion of the
 213 information which discloses the identity of a customer of the
 214 affiliated international trust entity, or a shareholder or
 215 member of the limited service affiliate, must be redacted by the
 216 office before releasing such portion to the liquidator,
 217 receiver, or conservator.

218 (e) To a law enforcement agency in furtherance of the
 219 agency's official duties and responsibilities.

220 (f) To the appropriate law enforcement or prosecutorial
 221 agency for the purpose of reporting any suspected criminal
 222 activity.

223 (g) Pursuant to a legislative subpoena. A legislative body
 224 or committee that receives records or information pursuant to
 225 such a subpoena must maintain the confidential status of the
 226 records or information, except in a case involving the
 227 investigation of charges against a public official subject to
 228 impeachment or removal, in which case the records or information
 229 may be disclosed only to the extent necessary as determined by
 230 such legislative body or committee.

231 (4) PUBLICATION OF INFORMATION.—This section does not
 232 prevent or restrict the publication of a report required by

Page 8 of 18

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

597-02147-17

2017738c1

233 federal law.

234 (5) PENALTY.—A person who willfully discloses information
 235 made confidential and exempt by this section commits a felony of
 236 the third degree, punishable as provided in s. 775.082, s.
 237 775.083, or s. 775.084.

238 (6) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject
 239 to the Open Government Sunset Review Act in accordance with s.
 240 119.15 and is repealed on October 2, 2022, unless reviewed and
 241 saved from repeal through reenactment by the Legislature.

242 Section 4. The Legislature finds that it is a public
 243 necessity to make confidential and exempt from s. 119.07(1),
 244 Florida Statutes, and s. 24(a), Article I of the State
 245 Constitution reports of examinations, operations, or condition
 246 of a limited service affiliate, including working papers, held
 247 by the Office of Financial Regulation; personal identifying
 248 information, held by the office, of the customers or prospective
 249 customers of an affiliated international trust entity which
 250 appears in records relating to reports of examinations,
 251 operations, or condition of a limited service affiliate,
 252 including working papers; any portion of a list of names of the
 253 shareholders or members of a limited service affiliate which is
 254 held by the office; and information received by the office from
 255 a person from another state or country or the Federal Government
 256 which is otherwise confidential or exempt pursuant to the laws
 257 of that state or country or pursuant to federal law.

258 (1) An exemption from public records requirements is
 259 necessary for reports of examinations, operations, or condition,
 260 including working papers, relating to limited service affiliates
 261 to ensure the Office of Financial Regulation's ability to

597-02147-17

2017738c1

262 effectively and efficiently administer the examination and
 263 investigation duties of the office under ss. 655.012, 655.032,
 264 and 663.537, Florida Statutes. Examination and investigation are
 265 essential components of financial institutions regulation. These
 266 processes deter fraud and ensure the safety and soundness of the
 267 financial system. Examinations also provide a means of early
 268 detection of violations, allowing for corrective action to be
 269 taken before any harm can be done. In the course of these
 270 duties, the office may receive sensitive personal and financial
 271 information. Public disclosure of this information would
 272 significantly impair the office's ability to perform these
 273 duties and may also impair the reputation of the limited service
 274 affiliate and the safety and soundness of the affiliated
 275 international trust entity by exposing those institutions to
 276 unwarranted reputational risk.

277 (2) An exemption from public records requirements is
 278 necessary for personal identifying information of existing and
 279 prospective customers of an affiliated international trust
 280 entity or shareholders or members of a limited service
 281 affiliate, because if such information is available for public
 282 access, such access could defame or jeopardize the personal and
 283 financial safety of those individuals. The individuals served by
 284 the affiliated international trust entity are often individuals
 285 of high net worth. Individuals of high net worth and
 286 shareholders or members of financial institutions are frequently
 287 the targets of criminal predators seeking access to their
 288 assets. It is important that the exposure of such individuals
 289 and their family members to threats of extortion, kidnapping,
 290 and other crimes not be increased. Placing the personal

597-02147-17

2017738c1

291 identifying information of these individuals within the public
 292 domain would increase the security risk that those individuals
 293 or their families could become the target of criminal activity.

294 (3) An exemption from public records requirements is
 295 necessary for information received by the Office of Financial
 296 Regulation from a person from another state or country or the
 297 Federal Government which is otherwise confidential or exempt
 298 pursuant to the laws of that state or country or pursuant to
 299 federal law, as public disclosure may deteriorate the office's
 300 relationships with other regulatory bodies. The office
 301 frequently engages in joint examinations with federal
 302 regulators. If such information were subject to disclosure to
 303 the public, not only would this disclosure deter other
 304 regulatory bodies from communicating vital information to the
 305 office, but the office would violate existing information-
 306 sharing agreements governing the sharing of confidential
 307 supervisory information.

308 Section 5. Subsections (1), (2), (5), and (9) of section
 309 655.057, Florida Statutes, are amended, and subsection (15) is
 310 added to that section, to read:

311 655.057 Records; limited restrictions upon public access.—

312 (1) Except as otherwise provided in this section and except
 313 for such portions thereof which are otherwise public record, all
 314 records and information relating to an investigation by the
 315 office are confidential and exempt from s. 119.07(1) and s.
 316 24(a), Art. I of the State Constitution until such investigation
 317 is completed or ceases to be active. For purposes of this
 318 subsection, an investigation is considered "active" while such
 319 investigation is being conducted by the office with a

Page 11 of 18

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

597-02147-17

2017738c1

320 reasonable, good faith belief that it may lead to the filing of
 321 administrative, civil, or criminal proceedings. An investigation
 322 does not cease to be active if the office is proceeding with
 323 reasonable dispatch, and there is a good faith belief that
 324 action may be initiated by the office or other administrative or
 325 law enforcement agency. After an investigation is completed or
 326 ceases to be active, portions of the records relating to the
 327 investigation are confidential and exempt from s. 119.07(1) and
 328 s. 24(a), Art. I of the State Constitution to the extent that
 329 disclosure would:

330 (a) Jeopardize the integrity of another active
 331 investigation;

332 (b) Impair the safety and soundness of the financial
 333 institution;

334 (c) Reveal personal financial information;

335 (d) Reveal the identity of a confidential source;

336 (e) Defame or cause unwarranted damage to the good name or
 337 reputation of an individual or jeopardize the safety of an
 338 individual; or

339 (f) Reveal investigative techniques or procedures.

340 (2) Except as otherwise provided in this section and except
 341 for such portions thereof which are public record, reports of
 342 examinations, operations, or condition, including working
 343 papers, or portions thereof, prepared by, or for the use of, the
 344 office or any state or federal agency responsible for the
 345 regulation or supervision of financial institutions in this
 346 state are confidential and exempt from s. 119.07(1) and s.
 347 24(a), Art. I of the State Constitution. However, such reports
 348 or papers or portions thereof may be released to:

Page 12 of 18

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

597-02147-17

2017738c1

349 (a) The financial institution under examination;

350 (b) Any holding company of which the financial institution

351 is a subsidiary;

352 (c) Proposed purchasers if necessary to protect the

353 continued financial viability of the financial institution, upon

354 prior approval by the board of directors of such institution;

355 (d) Persons proposing in good faith to acquire a

356 controlling interest in or to merge with the financial

357 institution, upon prior approval by the board of directors of

358 such financial institution;

359 (e) Any officer, director, committee member, employee,

360 attorney, auditor, or independent auditor officially connected

361 with the financial institution, holding company, proposed

362 purchaser, or person seeking to acquire a controlling interest

363 in or merge with the financial institution; or

364 (f) A fidelity insurance company, upon approval of the

365 financial institution's board of directors. However, a fidelity

366 insurance company may receive only that portion of an

367 examination report relating to a claim or investigation being

368 conducted by such fidelity insurance company.

369 (g) Examination, operation, or condition reports of a

370 financial institution shall be released by the office within 1

371 year after the appointment of a liquidator, receiver, or

372 conservator to the financial institution. However, any portion

373 of such reports which discloses the identities of depositors,

374 bondholders, members, borrowers, or stockholders, other than

375 directors, officers, or controlling stockholders of the

376 institution, shall remain confidential and exempt from s.

377 119.07(1) and s. 24(a), Art. I of the State Constitution.

Page 13 of 18

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

597-02147-17

2017738c1

378

379 Any confidential information or records obtained from the office

380 pursuant to this paragraph shall be maintained as confidential

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

382 Constitution.

383 (5) This section does not prevent or restrict:

384 (a) Publishing reports that are required to be submitted to

385 the office pursuant to s. 655.045(2) or required by applicable

386 federal statutes or regulations to be published.

387 (b) Furnishing records or information to any other state,

388 federal, or foreign agency responsible for the regulation or

389 supervision of financial institutions.

390 (c) Disclosing or publishing summaries of the condition of

391 financial institutions and general economic and similar

392 statistics and data, provided that the identity of a particular

393 financial institution is not disclosed.

394 (d) Reporting any suspected criminal activity, with

395 supporting documents and information, to appropriate law

396 enforcement and prosecutorial agencies.

397 (e) Furnishing information upon request to the Chief

398 Financial Officer or the Division of Treasury of the Department

399 of Financial Services regarding the financial condition of any

400 financial institution that is, or has applied to be, designated

401 as a qualified public depository pursuant to chapter 280.

402 (f) Furnishing information to Federal Home Loan Banks

403 regarding its member institutions pursuant to an information

404 sharing agreement between the Federal Home Loan Banks and the

405 office.

406

Page 14 of 18

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

597-02147-17

2017738c1

407 Any confidential information or records obtained from the office
 408 pursuant to this subsection shall be maintained as confidential
 409 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 410 Constitution.

411 (9) Materials supplied to the office or to employees of any
 412 financial institution by other state or federal governmental
 413 agencies remain the property of the submitting agency or the
 414 corporation, and any document request must be made to the
 415 appropriate agency. Any confidential documents supplied to the
 416 office or to employees of any financial institution by other
 417 state or federal governmental agencies are confidential and
 418 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 419 Constitution. Such information shall be made public only with
 420 the consent of such agency or the corporation.

421 (15) Subsections (1), (2), (5), and (9) are subject to the
 422 Open Government Sunset Review Act in accordance with s. 119.15
 423 and are repealed on October 2, 2022, unless reviewed and saved
 424 from repeal through reenactment by the Legislature.

425 Section 6. The Legislature finds that it is a public
 426 necessity to make confidential and exempt from s. 119.07(1),
 427 Florida Statutes, and s. 24(a), Article I of the State
 428 Constitution records and information relating to an
 429 investigation by the Office of Financial Regulation; portions of
 430 records relating to a completed or inactive investigation by the
 431 office which would jeopardize the integrity of another active
 432 investigation, impair the safety and soundness of the financial
 433 institution, reveal personal financial information, reveal the
 434 identity of a confidential source, defame or cause unwarranted
 435 damage to the good name or reputation of an individual or

Page 15 of 18

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

597-02147-17

2017738c1

436 jeopardize the safety of an individual, or reveal investigative
 437 techniques or procedures; reports of examinations, operations,
 438 or condition, including working papers, or portions thereof,
 439 prepared by, or for the use of, the office or any state or
 440 federal agency responsible for the regulation or supervision of
 441 financial institutions in this state; any portion of such
 442 reports which discloses the identities of depositors,
 443 bondholders, members, borrowers, or stockholders, other than
 444 directors, officers, or controlling stockholders of the
 445 institution; and materials supplied to the office or to
 446 employees of any financial institution by other state or federal
 447 governmental agencies. This exemption is necessary because:

448 (1) The terms "international trust entity" and "limited
 449 service affiliate" referenced in newly created parts III and IV
 450 of chapter 663, Florida Statutes, are added to the definition of
 451 the term "financial institution" in s. 655.005(1)(i), Florida
 452 Statutes, in SB 736, 2017 Regular Session. The international
 453 trust company representative offices and limited service
 454 affiliates servicing international trust entities are thus
 455 subject to examination by the Office of Financial Regulation. As
 456 a result, the office may receive sensitive personal and
 457 financial information relating to such entities in conjunction
 458 with its duties under chapters 655 and 663, Florida Statutes. An
 459 exemption from public records requirements prevents gaps in the
 460 law by providing the same protections to international trust
 461 entities and limited service affiliates which are afforded to
 462 other financial institutions, thereby preventing any
 463 disadvantage to these similarly regulated entities in comparison
 464 to other entities currently defined as "financial institutions."

Page 16 of 18

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

597-02147-17

2017738c1

465 An exemption from public records requirements for reports of
 466 examinations, operations, or condition, including working
 467 papers, is necessary to ensure the office's ability to
 468 effectively and efficiently administer its examination and
 469 investigation duties. Examination and investigation are
 470 essential components of financial institutions regulation. They
 471 deter fraud and ensure the safety and soundness of the financial
 472 system. Examinations also provide a means of early detection of
 473 violations, allowing for corrective action to be taken before
 474 any harm can be done.

475 (2) Public disclosure of records and information relating
 476 to an examination or investigation by the office could expose
 477 the subject financial institution to unwarranted damage to its
 478 good name or reputation and impair its safety and soundness, as
 479 well as the safety and soundness of the financial system in the
 480 state. Public disclosure of records and information relating to
 481 an investigation by the office which could jeopardize the
 482 integrity of another active investigation or reveal
 483 investigative techniques or procedures of the office would
 484 impair the office's ability to effectively and efficiently
 485 administer its duties under ss. 655.032 and 655.045, Florida
 486 Statutes. Any portion of a record or information relating to an
 487 investigation or examination which reveals personal financial
 488 information or the identity of a confidential source may defame,
 489 or cause unwarranted damage to the good name or reputation of,
 490 those individuals, or jeopardize their safety.

491 Section 7. This act shall take effect on the same date that
 492 SB 736 or similar legislation takes effect, if such legislation
 493 is adopted in the same legislative session or an extension

Page 17 of 18

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

597-02147-17

2017738c1

494 thereof and becomes a law.

Page 18 of 18

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/27/17

Meeting Date

SB 738

Bill Number (if applicable)

244480

Amendment Barcode (if applicable)

Topic SB 738 amendment

Name Courtney Larkin

Job Title Government Relations - OFR

Address 200 E. Gaines St.
Street

Phone 850-209-0061

Tallahassee FL 32301
City State Zip

Email Courtney.Larkin@flor.gov

Speaking: For Against Information

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

Representing Fl. Office of Financial Regulation

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)

3/27/17
Meeting Date

730
Bill Number (if applicable)

Topic PUBLIC RECORDS

Amendment Barcode (if applicable)

Name SIATER BATLISS

Job Title _____

Address 204 S. MONROE ST
Street

Phone 222 8900

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing FLORIDA INTERNATIONAL ADMINISTRATORS ASSOC

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)

3/27/17

Meeting Date

SB 738

Bill Number (if applicable)

Topic SB 738

Amendment Barcode (if applicable)

Name Courtney Larkin

Job Title Government Relations - OPR

Address 250 A. Gaines St.

Phone 850-209-0061

Street

Tallahassee

City

FL

State

32301

Zip

Email Courtney.larkin@flor.com

Speaking: For Against Information

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

Representing Fl. Office of Financial Regulation

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: SB 1024

INTRODUCER: Senator Stewart

SUBJECT: Public Records/Homeless Management Information System

DATE: March 24, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	Favorable
2.	<u>Kim</u>	<u>Ferrin</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1024 creates an exemption from the public records requirements for individual identifying information on homeless persons. Such data is collected pursuant to federal and state law and if made public, could lead to discrimination, injury, and pose a barrier to homeless persons receiving services. The bill provides the exemption is subject to the Open Government Sunset Review Act and unless reviewed and saved from repeal through reenactment by the Legislature shall be repealed on October 2, 2022.

This bill requires a two-thirds vote from each chamber for passage because the bill creates a public records exemption.

This bill has no fiscal impact on the state and will become effective upon becoming law.

II. Present Situation:

Homelessness

Although recent progress has been made in reducing the number of homeless individuals and families, ending homelessness remains a priority in communities across the country. According to a Point-in-Time Count from January 2015, 564,708 people were homeless on a given night in the United States.¹ This number includes both homeless individuals and homeless families. Less than 20% of the homeless population are chronically homeless, defined as someone who has experienced homelessness for a year or longer, or who has experienced at least four episodes of homelessness in the last three years, and has a disability.² Other sub-populations that are a key focus include veterans, youth aging out of foster care, and LGBTQ youth. At the federal level,

¹ Department of Housing and Urban Development. <https://www.hudexchange.info/programs/policy-areas/#homelessness>. Last visited March 8, 2017.

² *Id.*

the Department of Housing and Urban Development (HUD) oversees efforts to reduce and eliminate homelessness.

In Florida, responsibility for addressing homelessness is shared between the Department of Children and Families (DCF) and the Department of Economic Opportunity (DEO). The State Office on Homelessness is housed within DCF to coordinate efforts relating to homelessness.³ DCF supports the Council on Homelessness (council) that oversees services and funding the homeless.⁴ The council develops policy and advises the State Office on Homelessness. The council members include: the secretary of DCF, the executive director of DEO, the State Surgeon General, the executive director of Veterans' Affairs, the secretary of the Department of Corrections, the secretary of the Agency for Health Care Administration, the commissioner of Education, the director of CareerSource Florida, Inc., one representative of the Florida Association of Counties, one representative of the Florida League of Cities, one representative of the Florida Supportive Housing Coalition, the executive director of the Florida Housing Finance Corporation, one representative of the Florida Coalition for the Homeless, and four members appointed by the Governor.⁵ The council coordinates among state, local, and private agencies and providers to produce a statewide inventory for the state's system of homeless programs which incorporates regionally developed plans.

DEO establishes local coalitions to plan, network, coordinate, and monitor the delivery of services to the homeless.⁶ The local coalitions develop the local homeless continuum of care plan⁷, for the area of the county or region served by the local homeless coalition. Unless otherwise specified in the plan, the local coalition serves as the lead agency for the local homeless assistance continuum of care. The local coalitions receive funding from a grant program to provide services to the homeless.⁸ The amount of these grants, referred to as "challenge" grants, totaled \$5 million statewide for fiscal year 2016-2017.⁹ In addition, the state provided \$3.3 million for homeless housing assistance.¹⁰ These funds were appropriated to DCF to distribute to local homeless coalitions throughout the state.

Local communities must establish a homeless assistance continuum of care.¹¹ This continuum is a framework for a comprehensive and seamless array of emergency, transitional, and permanent housing, and services to address the various needs of homeless persons and persons at risk for homelessness. Each local continuum of care plan must designate a lead agency that will serve as the point of contact and accountability to the State Office on Homelessness. The lead agency may be a local homeless coalition, municipal or county government, or other public agency or private, not-for-profit corporation.

³ Section 420.622, F.S.

⁴ *Id.*

⁵ *Id.*

⁶ Section 420.623, F.S.

⁷ Section 420.624, F.S., provides that a local homeless assistance continuum of care is a framework for a comprehensive and seamless array of emergency, transitional, and permanent housing, and services to address the various needs of homeless persons and persons at risk for homelessness.

⁸ Section 420.625, F.S.

⁹ Specific Appropriation 361, General Appropriations Act, Chapter 2016-66, Laws of Florida.

¹⁰ Specific Appropriation 363, General Appropriations Act, Chapter 2016-66, Laws of Florida.

¹¹ Section 420.624, F.S.

Data on Homelessness

In Florida, the council collects, maintains, and makes available information concerning persons who are homeless or at risk for homelessness, including demographics information, current services and resources available, the cost and availability of services and programs, and the met and unmet needs of this population. All entities that receive state funding must provide access to all data they maintain to the council. This data is provided to the council in summary form, with no individual identifying information. The State Office on Homelessness, in consultation with the council and lead agencies for a local homeless continuum of care, specifies the system and process of data collection. All lead agencies provide data for the purpose of analyzing trends and assessing impacts in the statewide homeless delivery system. Any statewide homelessness survey and database system must comply with all state and federal statutory and regulatory confidentiality requirements.

The U.S. Department of Housing and Urban Development (HUD) maintains Homeless Management Information Systems (HMIS) to better inform homeless policy and decision making at the federal, state, and local levels.¹² HUD collects national-level data on the extent and nature of homelessness over time. Specifically, a HMIS can be used to produce an unduplicated count of homeless persons, understand patterns of service use, and measure the effectiveness of homeless programs. Data on homeless persons is collected and maintained at the local level. HMIS implementations can encompass geographic areas ranging from a single county to an entire state.

The HEARTH Act, enacted into law on May 20, 2009, requires that all communities have an HMIS with the capacity to collect unduplicated counts of individuals and families experiencing homelessness.¹³ These data systems must collect the following data elements for the homeless:

- Name
- Social Security Number
- Date of Birth
- Race
- Ethnicity
- Gender
- Veteran Status
- Disabling Condition
- Residence Prior to Project Entry
- Project Entry Date
- Project Exit Date
- Destination
- Personal ID
- Household ID
- Relationship to Head of Household

¹² Department of Housing and Urban Development. <https://www.hudexchange.info/programs/hmis/>. Last visited March 8, 2017.

¹³ *Id.*

- Client Location Code
- Length of Time on Street, in an Emergency Shelter or Safe Haven

HUD is currently developing rules for basic privacy and security requirements for client-level data.¹⁴

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹⁵ This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.¹⁶

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.¹⁷ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.¹⁸ The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.¹⁹

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.²⁰ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”²¹ A violation of the Public Records Act may result in civil or criminal liability.²²

¹⁴ *Id.*

¹⁵ FLA. CONST., art. I, s. 24(a).

¹⁶ *Id.*

¹⁷ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

¹⁸ Public records laws are found throughout the Florida Statutes.

¹⁹ Section 119.01(1), F.S.

²⁰ 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.”

²¹ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

²² Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

The Legislature may create an exemption to public records requirements.²³ An exemption must pass by a two-thirds vote of the House and the Senate.²⁴ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.²⁵ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.²⁶

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”²⁷ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.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 or open meetings 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

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.³¹ 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;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

²³ FLA. CONST., art. I, s. 24(c).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

²⁷ 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).

²⁸ *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

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 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.

³⁰ Section 119.15(3), F.S.

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.

The OGSR also requires specified questions to be considered during the review process.³⁵ 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.³⁶ 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.³⁷

III. Effect of Proposed Changes:

The bill creates s. 420.6231, F.S., to create an exemption to the public records requirements for individual identifying information in homelessness surveys and databases. The bill defines “individual identifying information” as any information that directly or indirectly identifies a person. The bill would exempt information held before and after the effective date of the bill. The bill allows the release of aggregate information on homelessness. The bill states that the exemption is subject to the Open Government Sunset Review Act and unless reenacted by the Legislature, expires October 2, 2022.

The bill finds that it is a public necessity to exempt this information from the public records requirements because the release of such information could lead to discrimination, injury, and pose a barrier to homeless persons receiving services.

The bill shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of each

³⁵ Section 119.15(6)(a), F.S. The specified questions are:

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

³⁶ FLA. CONST. art. I, s. 24(c).

³⁷ Section 119.15(7), F.S.

chamber for public records exemptions to pass.

Breadth of Exemption

Article I, Section 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the state purpose of the law. The bill exempts certain identifying information of homeless persons. This bill appears to be no broader than necessary to accomplish the public necessity for this public records exemption.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private agencies and organizations will have to ensure that identifying information on homeless persons is held in confidence.

C. Government Sector Impact:

Governmental agencies and organizations will have to ensure that identifying information on homeless persons is held in confidence.

VI. Technical Deficiencies:

The bill's effective date is July 1. Most public records exemptions have an effective date of October 1, which gives agencies time to learn and prepare for public records exemptions after the laws are published.³⁸

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 420.6231 of the Florida Statutes.

³⁸ *Manual for Drafting Legislation, Sixth Edition*, Office of Bill Drafting Service, The Florida Senate, p. 66.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Stewart

13-01266-17

20171024__

A bill to be entitled

An act relating to public records; creating s. 420.6231, F.S.; creating a public records exemption for individual identifying information of a person contained in a Point-in-Time Count and Survey or data in a Homeless Management Information System; defining the term "individual identifying information"; providing for retroactive application of the exemption; specifying that the exemption does not preclude the release of aggregate information; 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 420.6231, Florida Statutes, is created to read:

420.6231 Individual identifying information in specified homelessness surveys and databases; public records exemption.-

(1) As used in this section, the term "individual identifying information" means information that directly or indirectly identifies a specific person, can be manipulated to identify a specific person, or can be linked with other available information to identify a specific person.

(2) Individual identifying information of a person contained in a Point-in-Time Count and Survey or data in a Homeless Management Information System collected pursuant to 42 U.S.C. chapter 119, subchapter IV, and related regulations

Page 1 of 3

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

13-01266-17

20171024__

provided in 24 C.F.R. part 91, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to individual identifying information held before, on, or after the effective date of this section.

(3) This section does not preclude the release of aggregate information in a Point-in-Time Count and Survey or data in a Homeless Management Information System that does not disclose individual identifying information of a person.

(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, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that individual identifying information of a person contained in a Point-in-Time Count and Survey or data in a Homeless Management Information System collected pursuant to 42 U.S.C. chapter 119, subchapter IV, and related regulations provided in 24 C.F.R. part 91, be made exempt from public records requirements. Pursuant to 42 U.S.C. s. 11363, the United States Secretary of Housing and Urban Development is required to instruct service providers that they are prohibited from disclosing individual identifying information about any client for purposes of the Homeless Management Information System, which includes information in a Point-in-Time Count and Survey. The public release of such sensitive information could lead to discrimination against or ridicule of such individuals and could make them reluctant to seek assistance for themselves or their family members. The public release of such information may put affected individuals at greater risk of injury as a significant

Page 2 of 3

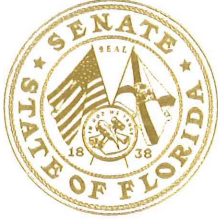
CODING: Words ~~stricken~~ are deletions; words underlined are additions.

13-01266-17

20171024__

59 proportion of such individuals are survivors of domestic
60 violence or suffer from mental illness or substance abuse.
61 Additionally, public access to such information may put affected
62 individuals at a heightened risk for fraud and identity theft.
63 The harm from disclosing such information outweighs any public
64 benefit that can be derived from widespread and unfettered
65 access to such information. This exemption is narrowly drawn so
66 that aggregate information may be disclosed but does not
67 authorize the disclosure of individual identifying information
68 of a person contained in a Point-in-Time Count and Survey or
69 data in a Homeless Management Information System collected
70 pursuant to 42 U.S.C. chapter 119, subchapter IV, and related
71 regulations provided in 24 C.F.R. part 91.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on the Environment
and Natural Resources
Education
Environmental Preservation and Conservation
Governmental Oversight and Accountability

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR LINDA STEWART

13th District

March 14, 2017

Chair Baxley:

I am writing to request SB1024, an act relating to public record exemptions and homelessness, be heard in the Government Oversight and Accountability Committee. This bill would provide an exemption for individuals who provide personal information in surveys conducted by state and local governmental entities, continuum of care organizations, as well as the federal Department of Housing and Urban Development when allocating funds.

SB1024 seeks to maximize the response rate from a population of Floridians that are particularly concerned with their privacy, having frequently suffered from mental illness, or undergone the trauma of domestic violence, or substance abuse. I believe accurate collecting this data for funding purposes and ensuring individual concerns about privacy are satisfied is one, very small thing we can do to help combat a problem that impacts every community in our state.

I look forward to working with you and members of your committee on this important issue.

Thank you for your kind consideration. I am,

Sincerely Yours,

A handwritten signature in cursive script that reads "Linda Stewart".

Linda Stewart
District 13

REPLY TO:

- 1726 S. Bumby Avenue, Orlando, Florida 32806 (407) 893-2422 FAX: (888) 263-3680
- 224 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5013

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore



The Florida Senate

Committee Agenda Request

To: Senator Dennis Baxley, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: March 14, 2017

I respectfully request that **Senate Bill # 1024**, relating to Homelessness and Public Records, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script that reads "Linda Stewart".

Senator Linda Stewart
Florida Senate, District 13

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/27/17
Meeting Date

SB 1024
Bill Number (if applicable)

Topic Homeless Management Information

Amendment Barcode (if applicable)

Name Rebecca Delarosa

Job Title Legislative Affairs Director

Address 304 N Olive Ave, 1101

Phone 850.284.7235

Street West Palm Beach, FL 33401

Email rdelarosa@pb.gov.org

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.

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 Artilles

SUBJECT: Public Records/Firefighters and their Spouses and Children

DATE: March 29, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2.	<u>Kim</u>	<u>Ferrin</u>	<u>GO</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1108 expands an existing public records exemption in s. 119.071(4)(d)2.b., F.S., for the personal identifying information of current firefighters, their spouses, and children. The expansion will extend the public records exemption to former firefighters and their families. The records exempted are the names of the spouses and children, home addresses, telephone numbers, dates of birth, photographs, places of employment, and the names and locations of schools and day care facilities attended by the children of firefighters.

The public records exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S. The exemption will stand repealed on October 2, 2022, unless the Legislature reviews the exemption and saves it from repeal through reenactment.

This bill requires a two-thirds vote of each chamber because it expands a public records exemption.

The bill becomes effective on October 1, 2017.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ 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.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Id.*

exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹³ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹⁴

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.¹⁵ 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.¹⁶

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.¹⁷ 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;¹⁸
- 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;¹⁹ or
- It protects trade or business secrets.²⁰

The OGSR also requires specified questions to be considered during the review process.²¹ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

¹³ 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).

¹⁴ *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

¹⁵ 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.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(b)1., F.S.

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

²¹ Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²² 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.²³

Public Records Exemptions for Agency Personnel Information

Section 119.071, F.S., exempts, or holds confidential and exempt, specified records held by various state entities from the disclosure requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution. One category of record that is exempt, or confidential and exempt, from public disclosure is specific governmental agency personnel information. The public records exemptions include:²⁴

- Social security numbers of all current and former agency employees held by the employing agency is confidential and exempt.
- Medical information pertaining to a prospective, current, or former officer or employee of an agency that would identify that person is exempt.
- Personal identifying information of a dependent child of a current or former officer or employee, if the child is insured by an agency group insurance plan, is exempt.
- Information revealing undercover personnel of any criminal justice agency is exempt.
- The personal identifying information of:²⁵
 - Active or former specified law enforcement personnel.
 - Firefighters.
 - Current or former justices of the Florida Supreme Court, district court of appeal judges, circuit court judges, and county court judges.
 - Current or former state attorneys, assistant state attorneys, statewide prosecutors, and assistant statewide prosecutors.
 - General magistrates, special magistrates, judges of compensation claims, administrative law judges, and child support enforcement hearing officers.
 - Current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district who have specified duties.
 - Current or former code enforcement officers.
 - Current or former guardians ad litem.
 - Current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, and other specified, related persons.

-
3. What is the identifiable public purpose or goal of the exemption?
 4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?
If so, how?
 5. Is the record or meeting protected by another exemption?
 6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²² FLA. CONST. art. I, s. 24(c).

²³ Section 119.15(7), F.S.

²⁴ Section 119.171(4), F.S.

²⁵ These exemptions often include personal identifying information of spouses and children.

- Current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel.
- Current or former investigators or inspectors of the Department of Business and Professional Regulation.
- County tax collectors.
- Current or former specified personnel of the Department of Health.
- Current or former impaired practitioner consultants and their employees retained by an agency to determine a person's skill and safety to practice a profession.
- Current or former emergency medical technicians or certified paramedics.
- Current or former employees of an agency's office of inspector general or internal audit department.

Firefighters

A firefighter certified in compliance with s. 633.408, F.S., has satisfactorily completed the Minimum Standards Course, or equivalent course in another state, and passed the Minimum Standards Course examination within 12 months after completing the required courses.²⁶ Firefighters must also have high school degrees, meet certain criminal history requirements, have good moral character, and be physically fit.²⁷

A public records exemption for firefighters and their families was created in Ch. 1991-149, Laws of Fla., but did not include dates of birth or former firefighters. Public records exemptions were not required to include public necessity statements at that time, so the Legislative intent was not expressed in a separate statement.²⁸ Chapter 2012-149, Laws of Fla., expanded this exemption to include the dates of birth of the enumerated personnel as well as their family members. The public necessity statement provided that dates of birth can be used to perpetrate fraud and that releasing dates of birth can cause great financial harm to an individual.

This public records exemption applies to current firefighters, but does not extend to firefighters after they change careers.

III. Effect of Proposed Changes:

Section 1 expands to former firefighters the existing public records exemption in s. 119.071(4)(d)2.b., F.S., for personal identifying information of firefighters, their spouses, and children. The bill makes the following information about current and former firefighters exempt from public disclosure: home addresses, telephone numbers, dates of birth, and photographs. The bill also makes exempt from public disclosure requirements the following information about current or former firefighters' spouses and their children: names, home addresses, telephone numbers, photographs, dates of birth, and places of employment. Finally, the bill exempts the names and locations of schools and day care facilities attended by the children of firefighters.

²⁶ Section 633.408(4), F.S.

²⁷ Section 633.412, F.S.

²⁸ Public necessity statements were required for public records exemptions after 1992, when Article I, section 24, Florida Constitution was adopted.

The bill also makes the records exempt from the public records requirements of the State Constitution. This would require that the Legislature and the Judiciary to keep the records exempt from public disclosure.

The public records exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S. The exemption will stand repealed on October 2, 2022, unless the Legislature reviews and saves it from repeal through reenactment.

Section 2 contains legislative findings that the expansion of the public records exemption is a public necessity. The findings note that personal identifying information of other types of former first responders, such as law enforcement, are currently exempt from public disclosure. The bill also states firefighters often respond to emergency situations such as domestic violence and homicide, and the release of their personal identifying and location information may place former firefighters and their families in danger of physical or emotional harm by hostile individuals.

The public necessity statement provides that the names of spouses and children should be exempt because people may seek revenge against firefighters by targeting their spouses or children.

The public necessity statement also provides that it is necessary to at a reference to s. 24(a) Art. I of the Florida Constitution to ensure that a firefighter's records are exempt in all three branches of government.

The public necessity statement appears to justify the need for the public records exemption, and the exemption appears to be no broader than necessary.²⁹

Section 3 provides the bill is effective on October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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

C. Trust Funds Restrictions:

None.

²⁹ FLA CONST. art I, s. 24(c).

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 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 by Governmental Oversight and Accountability on March 27, 2017:

- adds the names of spouses and children to the public records exemption;
- adds a public necessity statement for the names of spouses and children;
- adds a public necessity statement for the addition of s. 24(a) Art. I of the Constitution;
and
- changes the effective date to October 1, 2017.

B. Amendments:

None.



312804

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

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

(4) AGENCY PERSONNEL INFORMATION.—

(d)1. For purposes of this paragraph, the term "telephone



312804

11 numbers" includes home telephone numbers, personal cellular
12 telephone numbers, personal pager telephone numbers, and
13 telephone numbers associated with personal communications
14 devices.

15 2.a.(I) The home addresses, telephone numbers, social
16 security numbers, dates of birth, and photographs of active or
17 former sworn or civilian law enforcement personnel, including
18 correctional and correctional probation officers, personnel of
19 the Department of Children and Families whose duties include the
20 investigation of abuse, neglect, exploitation, fraud, theft, or
21 other criminal activities, personnel of the Department of Health
22 whose duties are to support the investigation of child abuse or
23 neglect, and personnel of the Department of Revenue or local
24 governments whose responsibilities include revenue collection
25 and enforcement or child support enforcement; the home
26 addresses, telephone numbers, social security numbers,
27 photographs, dates of birth, and places of employment of the
28 spouses and children of such personnel; and the names and
29 locations of schools and day care facilities attended by the
30 children of such personnel are exempt from s. 119.07(1).

31 (II) The names of the spouses and children of active or
32 former sworn or civilian law enforcement personnel and the other
33 specified agency personnel identified in sub-sub-subparagraph
34 (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the
35 State Constitution.

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



312804

40 (IV) The home addresses, telephone numbers, dates of birth,
41 and photographs of current or former nonsworn investigative
42 personnel of the Department of Financial Services whose duties
43 include the investigation of fraud, theft, workers' compensation
44 coverage requirements and compliance, other related criminal
45 activities, or state regulatory requirement violations; the
46 names, home addresses, telephone numbers, dates of birth, and
47 places of employment of the spouses and children of such
48 personnel; and the names and locations of schools and day care
49 facilities attended by the children of such personnel are exempt
50 from s. 119.07(1) and s. 24(a), Art. I of the State
51 Constitution. This sub-sub-subparagraph is subject to the Open
52 Government Sunset Review Act in accordance with s. 119.15 and
53 shall stand repealed on October 2, 2021, unless reviewed and
54 saved from repeal through reenactment by the Legislature.

55 b. The home addresses, telephone numbers, dates of birth,
56 and photographs of current or former firefighters certified in
57 compliance with s. 633.408; the names, home addresses, telephone
58 numbers, photographs, dates of birth, and places of employment
59 of the spouses and children of such firefighters; and the names
60 and locations of schools and day care facilities attended by the
61 children of such firefighters are exempt from s. 119.07(1) and
62 s. 24(a), Art. I of the State Constitution. This sub-
63 subparagraph is subject to the Open Government Sunset Review Act
64 in accordance with s. 119.15, and shall stand repealed on
65 October 2, 2022, unless reviewed and saved from repeal through
66 reenactment by the Legislature.

67 c. The home addresses, dates of birth, and telephone
68 numbers of current or former justices of the Supreme Court,



312804

69 district court of appeal judges, circuit court judges, and
70 county court judges; the home addresses, telephone numbers,
71 dates of birth, and places of employment of the spouses and
72 children of current or former justices and judges; and the names
73 and locations of schools and day care facilities attended by the
74 children of current or former justices and judges are exempt
75 from s. 119.07(1).

76 d.(I) The home addresses, telephone numbers, social
77 security numbers, dates of birth, and photographs of current or
78 former state attorneys, assistant state attorneys, statewide
79 prosecutors, or assistant statewide prosecutors; the home
80 addresses, telephone numbers, social security numbers,
81 photographs, dates of birth, and places of employment of the
82 spouses and children of current or former state attorneys,
83 assistant state attorneys, statewide prosecutors, or assistant
84 statewide prosecutors; and the names and locations of schools
85 and day care facilities attended by the children of current or
86 former state attorneys, assistant state attorneys, statewide
87 prosecutors, or assistant statewide prosecutors are exempt from
88 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

89 (II) The names of the spouses and children of current or
90 former state attorneys, assistant state attorneys, statewide
91 prosecutors, or assistant statewide prosecutors are exempt from
92 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

97 e. The home addresses, dates of birth, and telephone



312804

98 numbers of general magistrates, special magistrates, judges of
99 compensation claims, administrative law judges of the Division
100 of Administrative Hearings, and child support enforcement
101 hearing officers; the home addresses, telephone numbers, dates
102 of birth, and places of employment of the spouses and children
103 of general magistrates, special magistrates, judges of
104 compensation claims, administrative law judges of the Division
105 of Administrative Hearings, and child support enforcement
106 hearing officers; and the names and locations of schools and day
107 care facilities attended by the children of general magistrates,
108 special magistrates, judges of compensation claims,
109 administrative law judges of the Division of Administrative
110 Hearings, and child support enforcement hearing officers are
111 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
112 Constitution if the general magistrate, special magistrate,
113 judge of compensation claims, administrative law judge of the
114 Division of Administrative Hearings, or child support hearing
115 officer provides a written statement that the general
116 magistrate, special magistrate, judge of compensation claims,
117 administrative law judge of the Division of Administrative
118 Hearings, or child support hearing officer has made reasonable
119 efforts to protect such information from being accessible
120 through other means available to the public.

121 f. The home addresses, telephone numbers, dates of birth,
122 and photographs of current or former human resource, labor
123 relations, or employee relations directors, assistant directors,
124 managers, or assistant managers of any local government agency
125 or water management district whose duties include hiring and
126 firing employees, labor contract negotiation, administration, or



312804

127 other personnel-related duties; the names, home addresses,
128 telephone numbers, dates of birth, and places of employment of
129 the spouses and children of such personnel; and the names and
130 locations of schools and day care facilities attended by the
131 children of such personnel are exempt from s. 119.07(1) and s.
132 24(a), Art. I of the State Constitution.

133 g. The home addresses, telephone numbers, dates of birth,
134 and photographs of current or former code enforcement officers;
135 the names, home addresses, telephone numbers, dates of birth,
136 and places of employment of the spouses and children of such
137 personnel; and the names and locations of schools and day care
138 facilities attended by the children of such personnel are exempt
139 from s. 119.07(1) and s. 24(a), Art. I of the State
140 Constitution.

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

152 i. The home addresses, telephone numbers, dates of birth,
153 and photographs of current or former juvenile probation
154 officers, juvenile probation supervisors, detention
155 superintendents, assistant detention superintendents, juvenile



312804

156 justice detention officers I and II, juvenile justice detention
157 officer supervisors, juvenile justice residential officers,
158 juvenile justice residential officer supervisors I and II,
159 juvenile justice counselors, juvenile justice counselor
160 supervisors, human services counselor administrators, senior
161 human services counselor administrators, rehabilitation
162 therapists, and social services counselors of the Department of
163 Juvenile Justice; the names, home addresses, telephone numbers,
164 dates of birth, and places of employment of spouses and children
165 of such personnel; and the names and locations of schools and
166 day care facilities attended by the children of such personnel
167 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
168 Constitution.

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

179 (II) The names of the spouses and children of the specified
180 agency personnel identified in sub-sub-subparagraph (I) are
181 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
182 Constitution. This sub-sub-subparagraph is subject to the Open
183 Government Sunset Review Act in accordance with s. 119.15 and
184 shall stand repealed on October 2, 2019, unless reviewed and



312804

185 saved from repeal through reenactment by the Legislature.

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

201 1. The home addresses and telephone numbers of county tax
202 collectors; the names, home addresses, telephone numbers, and
203 places of employment of the spouses and children of such tax
204 collectors; and the names and locations of schools and day care
205 facilities attended by the children of such tax collectors are
206 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
207 Constitution if the county tax collector has made reasonable
208 efforts to protect such information from being accessible
209 through other means available to the public. This sub-
210 subparagraph is subject to the Open Government Sunset Review Act
211 in accordance with s. 119.15 and shall stand repealed on October
212 2, 2017, unless reviewed and saved from repeal through
213 reenactment by the Legislature.



312804

214 m. The home addresses, telephone numbers, dates of birth,
215 and photographs of current or former personnel of the Department
216 of Health whose duties include, or result in, the determination
217 or adjudication of eligibility for social security disability
218 benefits, the investigation or prosecution of complaints filed
219 against health care practitioners, or the inspection of health
220 care practitioners or health care facilities licensed by the
221 Department of Health; the names, home addresses, telephone
222 numbers, dates of birth, and places of employment of the spouses
223 and children of such personnel; and the names and locations of
224 schools and day care facilities attended by the children of such
225 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
226 the State Constitution if the personnel have made reasonable
227 efforts to protect such information from being accessible
228 through other means available to the public. This sub-
229 subparagraph is subject to the Open Government Sunset Review Act
230 in accordance with s. 119.15 and shall stand repealed on October
231 2, 2019, unless reviewed and saved from repeal through
232 reenactment by the Legislature.

233 n. The home addresses, telephone numbers, dates of birth,
234 and photographs of current or former impaired practitioner
235 consultants who are retained by an agency or current or former
236 employees of an impaired practitioner consultant whose duties
237 result in a determination of a person's skill and safety to
238 practice a licensed profession; the names, home addresses,
239 telephone numbers, dates of birth, and places of employment of
240 the spouses and children of such consultants or their employees;
241 and the names and locations of schools and day care facilities
242 attended by the children of such consultants or employees are



312804

243 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
244 Constitution if a consultant or employee has made reasonable
245 efforts to protect such information from being accessible
246 through other means available to the public. This sub-
247 subparagraph is subject to the Open Government Sunset Review Act
248 in accordance with s. 119.15 and shall stand repealed on October
249 2, 2020, unless reviewed and saved from repeal through
250 reenactment by the Legislature.

251 o. The home addresses, telephone numbers, dates of birth,
252 and photographs of current or former emergency medical
253 technicians or paramedics certified under chapter 401; the
254 names, home addresses, telephone numbers, dates of birth, and
255 places of employment of the spouses and children of such
256 emergency medical technicians or paramedics; and the names and
257 locations of schools and day care facilities attended by the
258 children of such emergency medical technicians or paramedics are
259 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
260 Constitution if the emergency medical technicians or paramedics
261 have made reasonable efforts to protect such information from
262 being accessible through other means available to the public.
263 This sub-subparagraph is subject to the Open Government Sunset
264 Review Act in accordance with s. 119.15 and shall stand repealed
265 on October 2, 2021, unless reviewed and saved from repeal
266 through reenactment by the Legislature.

267 p. The home addresses, telephone numbers, dates of birth,
268 and photographs of current or former personnel employed in an
269 agency's office of inspector general or internal audit
270 department whose duties include auditing or investigating waste,
271 fraud, abuse, theft, exploitation, or other activities that



312804

272 could lead to criminal prosecution or administrative discipline;
273 the names, home addresses, telephone numbers, dates of birth,
274 and places of employment of spouses and children of such
275 personnel; and the names and locations of schools and day care
276 facilities attended by the children of such personnel are exempt
277 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution
278 if the personnel have made reasonable efforts to protect such
279 information from being accessible through other means available
280 to the public. This sub-subparagraph is subject to the Open
281 Government Sunset Review Act in accordance with s. 119.15 and
282 shall stand repealed on October 2, 2021, unless reviewed and
283 saved from repeal through reenactment by the Legislature.

284 3. An agency that is the custodian of the information
285 specified in subparagraph 2. and that is not the employer of the
286 officer, employee, justice, judge, or other person specified in
287 subparagraph 2. shall maintain the exempt status of that
288 information only if the officer, employee, justice, judge, other
289 person, or employing agency of the designated employee submits a
290 written request for maintenance of the exemption to the
291 custodial agency.

292 4. The exemptions in this paragraph apply to information
293 held by an agency before, on, or after the effective date of the
294 exemption.

295 5. Except as otherwise expressly provided in this
296 paragraph, this paragraph is subject to the Open Government
297 Sunset Review Act in accordance with s. 119.15, and shall stand
298 repealed on October 2, 2017, unless reviewed and saved from
299 repeal through reenactment by the Legislature.

300 Section 2. (1) The Legislature finds that it is a public



312804

301 necessity to expand the exemption from public records
302 requirements currently applicable to the home addresses,
303 telephone numbers, dates of birth, and photographs of
304 firefighters certified under s. 633.408, Florida Statutes; the
305 home addresses, telephone numbers, photographs, dates of birth,
306 and places of employment of the spouses and children of such
307 firefighters; and the names and locations of schools and day
308 care facilities attended by the children of such firefighters to
309 also include former firefighters and their spouses and children.
310 The personal identifying and location information of other
311 former first responders, such as former law enforcement
312 officers, and their family members, are currently exempt from
313 public records requirements. Firefighters often respond to
314 serious emergency situations, ranging from domestic violence to
315 homicide, and the release of personal identifying and location
316 information may place former firefighters and their family
317 members in danger of serious physical or emotional harm by
318 hostile individuals. This danger continues after a firefighter
319 leaves employment.

320 (2) The Legislature also finds that it is a public
321 necessity to exempt the names of the spouses and children of
322 current and former firefighters from public records
323 requirements. A disgruntled individual may seek revenge against
324 a firefighter by targeting his or her the spouse or child.
325 Releasing the names of a spouses and children makes it easier to
326 locate and target them for acts of revenge.

327 (3) The Legislature finds that it is a public necessity to
328 exempt the personal identifying and location information of
329 current and former firefighters, and their spouses and children,



312804

330 including the names of their spouses and children, from s.
331 24(a), Article I of the State Constitution in order to prevent
332 disclosure of information that can be used to identify or locate
333 current and former firefighters and their spouses and children.
334 It is in the public interest to fully protect these governmental
335 employees and their families and ensure that their identifying
336 and location information is exempt from public disclosure when
337 it is held by an entity in the executive, legislative, or
338 judicial branch of government.

339 (4) The harm that may result from the release of personal
340 identifying and location information of current and former
341 firefighters and their families, as well as the names of the
342 spouses and children of current and former firefighters,
343 outweighs any public benefit that may be derived from the
344 disclosure of such information. Therefore, the Legislature finds
345 that it is a public necessity that the home addresses, telephone
346 numbers, dates of birth, and photographs of current or former
347 firefighters certified under s. 633.408, Florida Statutes; the
348 names, home addresses, telephone numbers, photographs, dates of
349 birth, and places of employment of the spouses and children of
350 such firefighters; and the names and locations of schools and
351 day care facilities attended by the children of such
352 firefighters be made exempt from s. 119.07(1), Florida Statutes,
353 and s. 24(a), Article I of the State Constitution.

354 Section 3. This act shall take effect October 1, 2017.

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

356 And the title is amended as follows:

357 Delete everything before the enacting clause



312804

359 and insert:

360 A bill to be entitled
361 An act relating to public records; amending s.
362 119.071, F.S.; expanding an exemption from public
363 records requirements for the personal identifying and
364 location information of certain firefighters and their
365 spouses and children to include the personal
366 identifying and location information of former
367 firefighters and their spouses and children, and the
368 names of spouses and children of current and former
369 firefighters; specifying the application of s. 24(a),
370 Article I of the State Constitution to the exemption;
371 providing for future legislative review and repeal of
372 the exemption; providing a statement of public
373 necessity; providing an effective date.

By Senator Artiles

40-01176A-17

20171108__

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; expanding an exemption from public
 4 records requirements for the personal identifying and
 5 location information of certain firefighters and their
 6 spouses and children to include the personal
 7 identifying and location information of former
 8 firefighters and their spouses and children; providing
 9 for future legislative review and repeal of the
 10 exemption; providing a statement of public necessity;
 11 providing an effective date.
 12
 13 Be It Enacted by the Legislature of the State of Florida:
 14
 15 Section 1. Paragraph (d) of subsection (4) of section
 16 119.071, Florida Statutes, is amended to read:
 17 119.071 General exemptions from inspection or copying of
 18 public records.—
 19 (4) AGENCY PERSONNEL INFORMATION.—
 20 (d)1. For purposes of this paragraph, the term “telephone
 21 numbers” includes home telephone numbers, personal cellular
 22 telephone numbers, personal pager telephone numbers, and
 23 telephone numbers associated with personal communications
 24 devices.
 25 2.a.(I) The home addresses, telephone numbers, social
 26 security numbers, dates of birth, and photographs of active or
 27 former sworn or civilian law enforcement personnel, including
 28 correctional and correctional probation officers, personnel of
 29 the Department of Children and Families whose duties include the

Page 1 of 12

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

40-01176A-17

20171108__

30 investigation of abuse, neglect, exploitation, fraud, theft, or
 31 other criminal activities, personnel of the Department of Health
 32 whose duties are to support the investigation of child abuse or
 33 neglect, and personnel of the Department of Revenue or local
 34 governments whose responsibilities include revenue collection
 35 and enforcement or child support enforcement; the home
 36 addresses, telephone numbers, social security numbers,
 37 photographs, dates of birth, and places of employment of the
 38 spouses and children of such personnel; and the names and
 39 locations of schools and day care facilities attended by the
 40 children of such personnel are exempt from s. 119.07(1).
 41 (II) The names of the spouses and children of active or
 42 former sworn or civilian law enforcement personnel and the other
 43 specified agency personnel identified in sub-sub-subparagraph
 44 (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the
 45 State Constitution.
 46 (III) Sub-sub-subparagraph (II) is subject to the Open
 47 Government Sunset Review Act in accordance with s. 119.15, and
 48 shall stand repealed on October 2, 2018, unless reviewed and
 49 saved from repeal through reenactment by the Legislature.
 50 (IV) The home addresses, telephone numbers, dates of birth,
 51 and photographs of current or former nonsworn investigative
 52 personnel of the Department of Financial Services whose duties
 53 include the investigation of fraud, theft, workers' compensation
 54 coverage requirements and compliance, other related criminal
 55 activities, or state regulatory requirement violations; the
 56 names, home addresses, telephone numbers, dates of birth, and
 57 places of employment of the spouses and children of such
 58 personnel; and the names and locations of schools and day care

Page 2 of 12

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

40-01176A-17 20171108__
 59 facilities attended by the children of such personnel are exempt
 60 from s. 119.07(1) and s. 24(a), Art. I of the State
 61 Constitution. This sub-sub-subparagraph is subject to the Open
 62 Government Sunset Review Act in accordance with s. 119.15 and
 63 shall stand repealed on October 2, 2021, unless reviewed and
 64 saved from repeal through reenactment by the Legislature.

b. The home addresses, telephone numbers, dates of birth,
 66 and photographs of current or former firefighters certified in
 67 compliance with s. 633.408; the home addresses, telephone
 68 numbers, photographs, dates of birth, and places of employment
 69 of the spouses and children of such firefighters; and the names
 70 and locations of schools and day care facilities attended by the
 71 children of such firefighters are exempt from s. 119.07(1) and
 72 s. 24(a), Art. I of the State Constitution. This sub-
 73 subparagraph is subject to the Open Government Sunset Review Act
 74 in accordance with s. 119.15, and shall stand repealed on
 75 October 2, 2022, unless reviewed and saved from repeal through
 76 reenactment by the Legislature.

c. The home addresses, dates of birth, and telephone
 78 numbers of current or former justices of the Supreme Court,
 79 district court of appeal judges, circuit court judges, and
 80 county court judges; the home addresses, telephone numbers,
 81 dates of birth, and places of employment of the spouses and
 82 children of current or former justices and judges; and the names
 83 and locations of schools and day care facilities attended by the
 84 children of current or former justices and judges are exempt
 85 from s. 119.07(1).

d.(I) The home addresses, telephone numbers, social
 87 security numbers, dates of birth, and photographs of current or

40-01176A-17 20171108__
 88 former state attorneys, assistant state attorneys, statewide
 89 prosecutors, or assistant statewide prosecutors; the home
 90 addresses, telephone numbers, social security numbers,
 91 photographs, dates of birth, and places of employment of the
 92 spouses and children of current or former state attorneys,
 93 assistant state attorneys, statewide prosecutors, or assistant
 94 statewide prosecutors; and the names and locations of schools
 95 and day care facilities attended by the children of current or
 96 former state attorneys, assistant state attorneys, statewide
 97 prosecutors, or assistant statewide prosecutors are exempt from
 98 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

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

e. The home addresses, dates of birth, and telephone
 108 numbers of general magistrates, special magistrates, judges of
 109 compensation claims, administrative law judges of the Division
 110 of Administrative Hearings, and child support enforcement
 111 hearing officers; the home addresses, telephone numbers, dates
 112 of birth, and places of employment of the spouses and children
 113 of general magistrates, special magistrates, judges of
 114 compensation claims, administrative law judges of the Division
 115 of Administrative Hearings, and child support enforcement
 116 hearing officers; and the names and locations of schools and day

40-01176A-17 20171108__

117 care facilities attended by the children of general magistrates,
 118 special magistrates, judges of compensation claims,
 119 administrative law judges of the Division of Administrative
 120 Hearings, and child support enforcement hearing officers are
 121 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 122 Constitution if the general magistrate, special magistrate,
 123 judge of compensation claims, administrative law judge of the
 124 Division of Administrative Hearings, or child support hearing
 125 officer provides a written statement that the general
 126 magistrate, special magistrate, judge of compensation claims,
 127 administrative law judge of the Division of Administrative
 128 Hearings, or child support hearing officer has made reasonable
 129 efforts to protect such information from being accessible
 130 through other means available to the public.

131 f. The home addresses, telephone numbers, dates of birth,
 132 and photographs of current or former human resource, labor
 133 relations, or employee relations directors, assistant directors,
 134 managers, or assistant managers of any local government agency
 135 or water management district whose duties include hiring and
 136 firing employees, labor contract negotiation, administration, or
 137 other personnel-related duties; the names, home addresses,
 138 telephone numbers, dates of birth, and places of employment of
 139 the spouses and children of such personnel; and the names and
 140 locations of schools and day care facilities attended by the
 141 children of such personnel are exempt from s. 119.07(1) and s.
 142 24(a), Art. I of the State Constitution.

143 g. The home addresses, telephone numbers, dates of birth,
 144 and photographs of current or former code enforcement officers;
 145 the names, home addresses, telephone numbers, dates of birth,

40-01176A-17 20171108__

146 and places of employment of the spouses and children of such
 147 personnel; and the names and locations of schools and day care
 148 facilities attended by the children of such personnel are exempt
 149 from s. 119.07(1) and s. 24(a), Art. I of the State
 150 Constitution.

151 h. The home addresses, telephone numbers, places of
 152 employment, dates of birth, and photographs of current or former
 153 guardians ad litem, as defined in s. 39.820; the names, home
 154 addresses, telephone numbers, dates of birth, and places of
 155 employment of the spouses and children of such persons; and the
 156 names and locations of schools and day care facilities attended
 157 by the children of such persons are exempt from s. 119.07(1) and
 158 s. 24(a), Art. I of the State Constitution, if the guardian ad
 159 litem provides a written statement that the guardian ad litem
 160 has made reasonable efforts to protect such information from
 161 being accessible through other means available to the public.

162 i. The home addresses, telephone numbers, dates of birth,
 163 and photographs of current or former juvenile probation
 164 officers, juvenile probation supervisors, detention
 165 superintendents, assistant detention superintendents, juvenile
 166 justice detention officers I and II, juvenile justice detention
 167 officer supervisors, juvenile justice residential officers,
 168 juvenile justice residential officer supervisors I and II,
 169 juvenile justice counselors, juvenile justice counselor
 170 supervisors, human services counselor administrators, senior
 171 human services counselor administrators, rehabilitation
 172 therapists, and social services counselors of the Department of
 173 Juvenile Justice; the names, home addresses, telephone numbers,
 174 dates of birth, and places of employment of spouses and children

40-01176A-17 20171108__

175 of such personnel; and the names and locations of schools and
 176 day care facilities attended by the children of such personnel
 177 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 178 Constitution.

179 j. (I) The home addresses, telephone numbers, dates of
 180 birth, and photographs of current or former public defenders,
 181 assistant public defenders, criminal conflict and civil regional
 182 counsel, and assistant criminal conflict and civil regional
 183 counsel; the home addresses, telephone numbers, dates of birth,
 184 and places of employment of the spouses and children of such
 185 defenders or counsel; and the names and locations of schools and
 186 day care facilities attended by the children of such defenders
 187 or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 188 the State Constitution.

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

196 k. The home addresses, telephone numbers, and photographs
 197 of current or former investigators or inspectors of the
 198 Department of Business and Professional Regulation; the names,
 199 home addresses, telephone numbers, and places of employment of
 200 the spouses and children of such current or former investigators
 201 and inspectors; and the names and locations of schools and day
 202 care facilities attended by the children of such current or
 203 former investigators and inspectors are exempt from s. 119.07(1)

40-01176A-17 20171108__

204 and s. 24(a), Art. I of the State Constitution if the
 205 investigator or inspector has made reasonable efforts to protect
 206 such information from being accessible through other means
 207 available to the public. This sub-subparagraph is subject to the
 208 Open Government Sunset Review Act in accordance with s. 119.15
 209 and shall stand repealed on October 2, 2017, unless reviewed and
 210 saved from repeal through reenactment by the Legislature.

211 l. The home addresses and telephone numbers of county tax
 212 collectors; the names, home addresses, telephone numbers, and
 213 places of employment of the spouses and children of such tax
 214 collectors; and the names and locations of schools and day care
 215 facilities attended by the children of such tax collectors are
 216 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 217 Constitution if the county tax collector has made reasonable
 218 efforts to protect such information from being accessible
 219 through other means available to the public. This sub-
 220 subparagraph is subject to the Open Government Sunset Review Act
 221 in accordance with s. 119.15 and shall stand repealed on October
 222 2, 2017, unless reviewed and saved from repeal through
 223 reenactment by the Legislature.

224 m. The home addresses, telephone numbers, dates of birth,
 225 and photographs of current or former personnel of the Department
 226 of Health whose duties include, or result in, the determination
 227 or adjudication of eligibility for social security disability
 228 benefits, the investigation or prosecution of complaints filed
 229 against health care practitioners, or the inspection of health
 230 care practitioners or health care facilities licensed by the
 231 Department of Health; the names, home addresses, telephone
 232 numbers, dates of birth, and places of employment of the spouses

40-01176A-17

20171108__

233 and children of such personnel; and the names and locations of
 234 schools and day care facilities attended by the children of such
 235 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 236 the State Constitution if the personnel have made reasonable
 237 efforts to protect such information from being accessible
 238 through other means available to the public. This sub-
 239 subparagraph is subject to the Open Government Sunset Review Act
 240 in accordance with s. 119.15 and shall stand repealed on October
 241 2, 2019, unless reviewed and saved from repeal through
 242 reenactment by the Legislature.

243 n. The home addresses, telephone numbers, dates of birth,
 244 and photographs of current or former impaired practitioner
 245 consultants who are retained by an agency or current or former
 246 employees of an impaired practitioner consultant whose duties
 247 result in a determination of a person's skill and safety to
 248 practice a licensed profession; the names, home addresses,
 249 telephone numbers, dates of birth, and places of employment of
 250 the spouses and children of such consultants or their employees;
 251 and the names and locations of schools and day care facilities
 252 attended by the children of such consultants or employees are
 253 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 254 Constitution if a consultant or employee has made reasonable
 255 efforts to protect such information from being accessible
 256 through other means available to the public. This sub-
 257 subparagraph is subject to the Open Government Sunset Review Act
 258 in accordance with s. 119.15 and shall stand repealed on October
 259 2, 2020, unless reviewed and saved from repeal through
 260 reenactment by the Legislature.

261 o. The home addresses, telephone numbers, dates of birth,

40-01176A-17

20171108__

262 and photographs of current or former emergency medical
 263 technicians or paramedics certified under chapter 401; the
 264 names, home addresses, telephone numbers, dates of birth, and
 265 places of employment of the spouses and children of such
 266 emergency medical technicians or paramedics; and the names and
 267 locations of schools and day care facilities attended by the
 268 children of such emergency medical technicians or paramedics are
 269 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 270 Constitution if the emergency medical technicians or paramedics
 271 have made reasonable efforts to protect such information from
 272 being accessible through other means available to the public.
 273 This sub-subparagraph is subject to the Open Government Sunset
 274 Review Act in accordance with s. 119.15 and shall stand repealed
 275 on October 2, 2021, unless reviewed and saved from repeal
 276 through reenactment by the Legislature.

277 p. The home addresses, telephone numbers, dates of birth,
 278 and photographs of current or former personnel employed in an
 279 agency's office of inspector general or internal audit
 280 department whose duties include auditing or investigating waste,
 281 fraud, abuse, theft, exploitation, or other activities that
 282 could lead to criminal prosecution or administrative discipline;
 283 the names, home addresses, telephone numbers, dates of birth,
 284 and places of employment of spouses and children of such
 285 personnel; and the names and locations of schools and day care
 286 facilities attended by the children of such personnel are exempt
 287 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution
 288 if the personnel have made reasonable efforts to protect such
 289 information from being accessible through other means available
 290 to the public. This sub-subparagraph is subject to the Open

40-01176A-17

20171108__

291 Government Sunset Review Act in accordance with s. 119.15 and
 292 shall stand repealed on October 2, 2021, unless reviewed and
 293 saved from repeal through reenactment by the Legislature.

294 3. An agency that is the custodian of the information
 295 specified in subparagraph 2. and that is not the employer of the
 296 officer, employee, justice, judge, or other person specified in
 297 subparagraph 2. shall maintain the exempt status of that
 298 information only if the officer, employee, justice, judge, other
 299 person, or employing agency of the designated employee submits a
 300 written request for maintenance of the exemption to the
 301 custodial agency.

302 4. The exemptions in this paragraph apply to information
 303 held by an agency before, on, or after the effective date of the
 304 exemption.

305 5. Except as otherwise expressly provided in this
 306 paragraph, this paragraph is subject to the Open Government
 307 Sunset Review Act in accordance with s. 119.15, and shall stand
 308 repealed on October 2, 2017, unless reviewed and saved from
 309 repeal through reenactment by the Legislature.

310 Section 2. The Legislature finds that it is a public
 311 necessity to expand the exemption from public records
 312 requirements which applies to the home addresses, telephone
 313 numbers, dates of birth, and photographs of firefighters
 314 certified under s. 633.408; the home addresses, telephone
 315 numbers, photographs, dates of birth, and places of employment
 316 of the spouses and children of such firefighters; and the names
 317 and locations of schools and day care facilities attended by the
 318 children of such firefighters to include former firefighters and
 319 their spouses and children. The personal identifying and

Page 11 of 12

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

40-01176A-17

20171108__

320 location information of other former first responders, such as
 321 former law enforcement officers, and their family members is
 322 currently exempt from public records requirements. Firefighters
 323 often respond to serious emergency situations, ranging from
 324 domestic violence to homicide, and the release of personal
 325 identifying and location information may place former
 326 firefighters and their family members in danger of serious
 327 physical or emotional harm by hostile individuals. The
 328 Legislature further finds that the harm that may result from the
 329 release of such identifying and location information outweighs
 330 any public benefit that may be derived from the disclosure of
 331 such information.

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

Page 12 of 12

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



The Florida Senate

Committee Agenda Request


To: Senator Dennis Baxley, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: March 21, 2017

I respectfully request that **Senate Bill #1108** relating to Public Records/Firefighters and their Spouses and Children, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.



Senator Frank Artiles
Florida Senate, District 40

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/27
Meeting Date

1108
Bill Number (if applicable)

Topic Public Records - Firefighters

Amendment Barcode (if applicable)

Name Rocco Salvatori

Job Title Firefighter

Address 343 W Madison St
Street

Phone 850-224-7333

Tallahassee FL 32301
City State Zip

Email rocco.fish@verizon.net

Speaking: For Against Information

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

Representing Florida Professional Firefighters

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: SB 1470

INTRODUCER: Senator Simmons

SUBJECT: Agency Inspectors General

DATE: March 24, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Ferrin	GO	Favorable
2.			CA	
3.			RC	

I. Summary:

SB 1470 prohibits an agency from offering a bonus on work performance in an inspector general contract or agreement.

The bill also prohibits the Florida Housing Finance Corporation from offering a bonus on work performance in an inspector general contract or agreement.

The bill takes effect upon becoming a law.

II. Present Situation:

Chief Inspector General

Section 14.32, F.S., creates the Office of Chief Inspector General in the Executive Office of the Governor. The Chief Inspector General is responsible for promoting accountability, integrity, and efficiency in the agencies under the jurisdiction of the Governor.¹ The Chief Inspector General is appointed by, and serves at the pleasure of, the Governor and serves as the inspector general for the Executive Office of the Governor.² Some of the duties of the Chief Inspector General include:

- Initiating investigations, recommending policies, and carrying out other activities designed to deter, detect, and prevent, fraud, waste, mismanagement, and misconduct in government;
- Investigating and examining records of any agency under the direct supervision of the Governor, and coordinate complaint-handling activities with the agencies;
- Coordinating the activities of the Whistle-blower's Act³ and maintaining the whistle-blower's hotline;

¹ Section 14.32(1), F.S.

² *Id.*

³ The Whistle-blower's Act can be found in ss. 112.3187-112.31895, F.S.

- Acting as liaison and monitoring the activities of the inspectors general in the agencies under the Governor's jurisdiction; and
- Conducting special investigations and management reviews at the request of the Governor.⁴

The Chief Inspector General also has various duties relating to public-private partnerships, including advising on internal control and performance measures, conducting audits, investigating complaints of fraud, and monitoring contract compliance.⁵

Agency Inspectors General

Duties

Section 20.055, F.S., requires each state agency⁶ of state government to have an Office of Inspector General (OIG). The OIG is created to provide a focal point of accountability efforts within the agency.⁷ Each agency inspector general is responsible for the following:⁸

- Advising in the development of performance measures, standards, and procedures for the evaluation of state agency programs;
- Assessing the reliability and validity of information provided by the agency on performance measures and standards;
- Reviewing the actions taken by the agency to improve agency performance, and making recommendations, if necessary;
- Supervising and coordinating audits, investigations, and management reviews relating to the programs and operations of the agency;
- Conducting, supervising, or coordinating other activities carried out or financed by the agency for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;
- Informing and recommending corrective action to the agency head or, for state agencies under the jurisdiction of the Governor, the Chief Inspector General about fraud, abuses, deficiencies relating to programs and operations administered or financed by the state agency, and reporting on progress made in implementing corrective action;
- Ensuring effective coordination and cooperation between the Auditor General, federal auditors, and other governmental bodies to avoid duplication;
- Reviewing rules relating to the programs and operations of the agency and making recommendations concerning their impact;
- Ensuring that an appropriate balance is maintained between audit, investigative, and other accountability activities; and
- Complying with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.

⁴ Section 14.32(2), F.S.

⁵ Section 14.32(3), F.S.

⁶ Section 20.055(1)(d), F.S., defines the term "state agency" as "each department created pursuant to this chapter and the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation of the Financial Services Commission, the Office of Financial Regulation of the Financial Services Commission, the Public Service Commission, the Board of Governors of the State University System, the Florida Housing Finance Corporation, the Agency for State Technology, the Office of Early Learning, and the state courts system."

⁷ Section 20.055(2), F.S.

⁸ *Id.*

In carrying out the investigative duties and responsibilities, the inspector general initiates, conducts, supervises, and coordinates investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government.⁹

Each inspector general must submit an annual report on its activities to the agency head,¹⁰ and provide any written complaints about the operations of the inspector general.¹¹ Audit plans and reports are submitted to the Auditor General.¹²

Appointment

Section 20.055(3)(a), F.S., governs appointment of inspector generals. For state agencies under the jurisdiction of the Governor and Cabinet, the inspector general is appointed by the agency head. For agencies under the jurisdiction of the Governor, the inspector general is appointed by the Chief Inspector General. The agency head or Chief Inspector General is required to notify the Governor in writing of their intent to hire the inspector general at least 7 days prior to an offer of employment. Inspectors general are appointed without regard to political affiliation.¹³

Removal

Section 20.055(3)(c), F.S., governs removal of inspector generals. For agencies under the jurisdiction of the Governor and Cabinet, inspectors general may be removed by the agency head. For agencies under the jurisdiction of the Governor, the inspector general may only be removed from office by the Chief Inspector General for cause, including concerns regarding performance, malfeasance, misfeasance, misconduct, or failure to carry out his or her duties. At least 21 days before removal, the Chief Inspector General must notify the Governor in writing of his or her intention to remove an inspector general. For state agencies under the jurisdiction of the Governor and Cabinet, the agency head shall notify the Governor and Cabinet in writing of his or her intention to remove the inspector general at least 21 days before the removal. If the inspector general disagrees with the removal, the inspector general may present objections in writing to the Governor within the 21-day period.

Internal Audits

Each inspector general must review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency.¹⁴ The inspector general must conduct financial, compliance, electronic data processing, and performance audits of the agency and prepare audit reports of his or her findings.¹⁵ If the inspector general does not possess the specified qualifications, the director of auditing must perform the auditing functions.¹⁶

⁹ Section 20.055(7), F.S.

¹⁰ Section 20.055(8), F.S.

¹¹ Section 20.055(9), F.S. For agencies under the jurisdiction of the Governor, the inspector general must provide the complaint to the Chief Inspector General.

¹² Section 20.055(6)(f)-(i), F.S.

¹³ Section 20.055(3)(a), 1., F.S.

¹⁴ Section 20.055(6), F.S.

¹⁵ *Id.*

¹⁶ *Id.*

Florida Housing Finance Corporation

The Florida Housing Finance Corporation (FHFC), a public corporation administratively housed within the Department of Economic Opportunity,¹⁷ is the state's affordable housing finance agency. As such, the FHFC is responsible for increasing the amount of affordable housing available to individuals and families by stimulating investment of private capital and encouraging public and private sector housing partnerships. To accomplish this, the FHFC uses federal and state resources to finance the development of safe, affordable homes and rental housing and to assist first-time homebuyers.¹⁸

The FHFC is authorized to employ an inspector general, who is appointed by the corporation's executive director, with the advice and consent of the corporation's nine-member board of directors.¹⁹ The inspector general is charged with performing the same duties outlined above for inspectors general of other state agencies.²⁰

Bonus Payments

Section 110.1245(2), F.S., requires state agencies to pay employees bonuses from funds authorized by the Legislature in an appropriation specifically for bonuses. Each agency is required to develop a plan²¹ for awarding lump-sum bonuses, which must be submitted no later than September 15 of each year and approved by the Office of Policy and Budget in the Executive Office of the Governor. To be eligible for a bonus, employees must meet specified eligibility criteria.²² No more than 35 percent of an agency's total authorized positions can receive a bonus.²³

Section 215.425(3), F.S., provides that any policy, ordinance, rule, or resolution designed to implement a bonus scheme must:

- Base the award of a bonus on work performance;
- Describe the performance standards and evaluation process by which a bonus will be awarded;
- Notify all employees of the policy, ordinance, rule, or resolution before the beginning of the evaluation period on which a bonus will be based; and
- Consider all employees for the bonus.

III. Effect of Proposed Changes:

Section 1 amends s. 20.055, F.S., to prohibit a state agency, effective July 1, 2017, that enters into an employment agreement, or renewal or renegotiation of an existing contract or employment agreement, with an inspector general or deputy inspector general from offering a

¹⁷ Section 420.504(1), F.S.

¹⁸ See ss. 420.502 and 420.507, F.S.

¹⁹ Section 420.506(2), F.S.

²⁰ *Id.*

²¹ Section 110.1245(2), F.S.

²² Section 110.245(2)(b), F.S.

²³ Section 110.1245(2)(f), F.S.

bonus on work performance in the contract or agreement. The awarding of such a bonus is also prohibited.

Section 2 amends s. 420.506, F.S., to prohibit the FHFC, effective July 1, 2017, from entering into an employment agreement, or renewal or renegotiation of an existing contract or employment agreement, with an inspector general or deputy inspector general that offers a bonus on work performance in the contract or agreement. The awarding of such a bonus is also prohibited.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties or municipalities to spend funds, reduce the counties' or municipalities' ability to raise revenue or reduce the percentage of state tax shared with counties or municipalities.

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:

The bill may have a positive effect on agency expenditures because agencies will no longer be permitted to provide bonuses to inspectors general or deputy inspector generals. If the inspector general or deputy inspector general of an agency or the FHFC was a hired employee and not under a contract or an employment agreement, the provisions of SB 1470 prohibiting bonuses might not be applicable to such employees.²⁴ In addition, if an agency offered employees of an agency bonus payments, the prohibition of inspector

²⁴ Florida Housing Finance Corporation, *2017 Legislative Bill Analysis HB 207* (March 2, 2017)(Copy on file with the Senate Governmental Oversight and Accountability Committee).

generals and deputy inspector generals from being eligible to receive and from receiving such payments would appear to violate ss. 110.1245(2) and 215.425(3), F.S.²⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the sections 20.055 and 420.506 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.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²⁵ Florida Agency for Health Care Administration, *2017 Legislative Bill Analysis HB 207* (January 18, 2017)(Copy on file with the Senate Governmental Oversight and Accountability Committee).

By Senator Simmons

9-01378-17

20171470__

A bill to be entitled

An act relating to agency inspectors general; amending s. 20.055, F.S.; prohibiting an agency from offering a bonus on work performance in an inspector general contract or agreement; amending s. 420.506, F.S.; prohibiting the Florida Housing Finance Corporation from offering a bonus on work performance in an inspector general contract or agreement; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) of section 20.055, Florida Statutes, is amended to read:

20.055 Agency inspectors general.—

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

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

Page 1 of 3

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

9-01378-17

20171470__

general. Effective July 1, 2017, an agency that enters into an employment agreement, or renewal or renegotiation of an existing contract or employment agreement, with an inspector general or deputy inspector may not offer a bonus on work performance in the contract or agreement, and the awarding of such bonuses is prohibited. In the event of a vacancy in the position of inspector general, the agency head or, for agencies under the jurisdiction of the Governor, the Chief Inspector General, may appoint other office of inspector general management personnel as interim inspector general until such time as a successor inspector general is appointed.

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

Section 2. Subsection (2) of section 420.506, Florida Statutes, is amended to read:

420.506 Executive director; agents and employees; inspector general.—

(2) (a) The appointment and removal of an inspector general shall be by the executive director, with the advice and consent of the corporation's board of directors. The corporation's inspector general shall perform for the corporation the functions set forth in s. 20.055. The inspector general shall administratively report to the executive director. The inspector general shall meet the minimum qualifications as set forth in s. 20.055(4). The corporation may establish additional qualifications deemed necessary by the board of directors to meet the unique needs of the corporation. The inspector general

Page 2 of 3

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

9-01378-17

20171470__

59 shall be responsible for coordinating the responsibilities set
60 forth in s. 420.0006.

61 (b) Effective July 1, 2017, if the corporation enters into
62 an employment agreement, or renewal or renegotiation of an
63 existing contract or employment agreement, with an inspector
64 general or deputy inspector, the corporation may not offer a
65 bonus on work performance in the contract or agreement, and the
66 awarding of such bonuses is prohibited.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/27/17

Meeting Date

SB 1470

Bill Number (if applicable)

Topic Governmental oversight & Accountability

Amendment Barcode (if applicable)

Name Jacqui Peters

Job Title Legislative Director

Address 227 N. Bronough St, Suite 5000

Phone 850 488 4197

Street

Tallahassee

FL

32301

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Florida Housing Finance Corporation

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

Committee Agenda Request

To: Senator Dennis Baxley, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: March 14, 2017

I respectfully request that **Senate Bill 1470**, relating to Agency Inspectors General, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "David Simmons".

Senator David Simmons
Florida Senate, District 9

CourtSmart Tag Report

Room: SB 401

Case:

Type:

Caption: Senate Committee on Governmental Oversight and Accountability

Judge:

Started: 3/27/2017 4:00:49 PM

Ends: 3/27/2017 5:05:34 PM

Length: 01:04:46

4:00:49 PM Meeting called to order- Roll Call
4:00:59 PM Quorum
4:01:47 PM Tab 6 CS/SB 738 -Public Records/International Financial Institutions
4:02:07 PM Strike all amendment barcode 244480
4:02:46 PM Bill as amended
4:03:46 PM Senator Mayfield
4:03:51 PM Senator Rader
4:04:34 PM Roll Call
4:05:27 PM CS/SB 738 Favorable as a committee substitute
4:06:03 PM Tab 2 CS/SB 450 -Public Records
4:06:08 PM Senator Brandes recognized
4:06:38 PM Amendment barcode 116034
4:07:09 PM Substitute amendment barcode 480408
4:08:01 PM Substitute amendment adopted
4:08:05 PM Bill as amended
4:08:08 PM Roll Call
4:08:53 PM CS/SB 450 Favorable as a committee substitute
4:09:07 PM Tab 9 SB 1470 -Agency Inspectors General
4:09:26 PM Senator Simmons
4:09:28 PM Senator Rader
4:10:40 PM Roll Call
4:11:40 PM SB 1470 Favorable
4:11:50 PM Tab 1 SB 168 -Career Development for Officers and Firefighters
4:12:07 PM Senator Latvala recognized
4:12:36 PM Strike all amendment barcode 733988
4:13:44 PM Bill as amended
4:14:04 PM Roll Call
4:14:31 PM SB 168 favorable as a committee substitute
4:14:44 PM Tab 4 CS/SB 596 -Utilities
4:16:01 PM Strike all amendment barcode 561176
4:17:01 PM Senator Stewart
4:17:49 PM Amendment to the Amendment barcode 634024
4:18:55 PM Senator Rader
4:20:47 PM Amendment adopted
4:20:54 PM Amendment to the Amendment barcode 755080
4:20:56 PM Amendment barcode 755080 unfavorable
4:22:55 PM Amendment Adopted 561176
4:23:43 PM Bill as amended
4:25:06 PM Douglas Metzger, City of Orlando recognized
4:29:03 PM Eric Poole, Florida Association of Counties recognized
4:34:40 PM Meghan Sirjane-Samples, Florida League of Cities recognized
4:38:16 PM Senator Stewart
4:39:23 PM Senator Rader
4:41:43 PM Senator Baxley
4:41:55 PM Roll Call
4:42:55 PM CS/SB 596 Favorable as a committee substitute
4:43:16 PM Tab 3 CS/CS/SB 550 -Public Records/Murder Witness
4:43:47 PM Senator Bracy
4:44:37 PM Arlene Byrd, Parents of Murdered Kids
4:46:52 PM Myrna Williams recognized
4:48:38 PM Wanda Jones, Witness Protection Bill
4:50:22 PM Tangela Sears, Parents of Murdered Kids

4:55:13 PM Senator Rouson
4:56:00 PM Senator Bracy closing remarks
4:57:00 PM Roll Call
4:57:29 PM CS/CS/SB 550 favorable as a committee substitute
4:57:47 PM Tab 5 CS/SB 674 -Public Records/Nonviable Birth Records
4:57:53 PM Senator Bean recognized
4:58:56 PM Amendment barcode 630118
4:59:24 PM Bill as amended
4:59:50 PM Roll Call
4:59:53 PM CS/SB 674 favorable as a committee substitute
5:00:21 PM Tab 7 SB 1024 -Public Records/Homeless Management Information System
5:01:20 PM Roll call
5:01:43 PM SB 1024 Favorable
5:01:53 PM Tab 8 SB 1108 -Public Records/Firefighters and their Spouses and Children
5:02:22 PM Strike all amendment barcode 312804
5:03:17 PM Bill as amended
5:03:26 PM Senator Artiles closing remarks
5:04:19 PM Roll Call
5:04:22 PM SB 1108 Favorable as a Committee Substitute
5:04:40 PM Senator Rouson
5:05:04 PM Meeting Adjourned