

Tab 1	SB 248 by Broxson (CO-INTRODUCERS) Passidomo ; (Identical to H 00243) Public Records/Office of Financial Regulation					
Tab 2	CS/SB 600 by AG, Grimsley (CO-INTRODUCERS) Montford, Passidomo ; (Similar to CS/H 00333) Rural Economic Development Initiative					
Tab 3	CS/SB 686 by CJ, Baxley ; (Similar to CS/H 00701) Public Records/Internet Identifiers					
Tab 4	CS/SB 840 by HP, Clemens ; (Similar to CS/CS/H 00557) Controlled Substance Prescribing					
199576	A	S	RCS	GO, Clemens	Delete L.20 - 120:	04/17 07:57 PM
198366	AA	S	RCS	GO, Clemens	Delete L.10 - 12:	04/17 07:57 PM
Tab 5	SB 856 by Broxson ; (Identical to H 00373) Education					
700896	A	S	FAV	GO, Broxson	Delete L.19:	04/17 07:55 PM
Tab 6	CS/SB 1008 by BI, Perry (CO-INTRODUCERS) Bradley ; (Similar to CS/CS/H 01107) Public Records/Injured or Deceased Employee/Department of Financial Services					
Tab 7	CS/SB 1014 by BI, Brandes ; (Similar to CS/H 01009) Public Records/Investigation and Tracking of Insurance Fraud/Department of Financial Services					
Tab 8	CS/SB 1072 by EE, Hutson ; (Similar to CS/H 00709) Public Records/Interstate Agreement/Department of State					
682324	D	S	RCS	GO, Hutson	Delete everything after	04/17 07:55 PM
Tab 9	CS/SB 1084 by BI, Stargel (CO-INTRODUCERS) Artiles ; (Similar to CS/H 00465) Firefighters					
Tab 10	CS/SB 1224 by MS, Passidomo (CO-INTRODUCERS) Hutson ; (Similar to CS/H 01079) Public Records and Public Meetings/Campus Emergency Response for Public Postsecondary Institutions					
Tab 11	SB 1408 by Broxson ; (Similar to CS/CS/H 00981) Public Records/Confidentiality/Department of Elderly Affairs					
Tab 12	SB 1478 by Baxley ; (Compare to CS/H 01283) Inspectors General and Auditors					
112248	D	S	RCS	GO, Baxley	Delete everything after	04/17 07:55 PM
Tab 13	SB 1480 by Baxley ; (Compare to CS/H 01283) Public Records/Active Audit or Investigation/Agency Inspector General					
652786	D	S	RCS	GO, Baxley	Delete everything after	04/17 07:55 PM
Tab 14	SB 1844 by Bradley ; (Compare to H 07095) Public Records/Compassionate Use Registry					
457760	A	S	RCS	GO, Bradley	Delete L.27 - 31:	04/17 07:55 PM
Tab 15	SB 7028 by JU ; (Similar to H 07087) OGSR/Injunction for Protection Against Domestic Violence, Repeat Violence, Sexual Violence, and Dating Violence					

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

MEETING DATE: Monday, April 17, 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 248 Broxson (Identical H 243)	Public Records/Office of Financial Regulation ; Providing an exemption from public records requirements for the personal identifying and location information of certain nonsworn investigative personnel of the Office of Financial Regulation and the names and personal identifying and location information of the spouses and children of such personnel; providing for future review and repeal of the exemption; providing a statement of public necessity, etc. BI 04/03/2017 Favorable GO 04/17/2017 Favorable RC	Favorable Yeas 6 Nays 0
2	CS/SB 600 Agriculture / Grimsley (Similar CS/H 333, Compare CS/CS/H 7005)	Rural Economic Development Initiative; Revising legislative intent relating to the Rural Economic Development Initiative; revising the duties, responsibilities, and membership of the Rural Economic Development Initiative; deleting a provision listing the economic development incentives for which the Governor may waive criteria requirements or similar provisions, etc. CM 03/13/2017 Favorable AG 04/03/2017 Fav/CS GO 04/17/2017 Favorable RC	Favorable Yeas 6 Nays 0
3	CS/SB 686 Criminal Justice / Baxley (Similar CS/H 701, Compare CS/H 699, Linked CS/S 684)	Public Records/Internet Identifiers; Requiring that electronic mail addresses and Internet identifiers of sexual predators or sexual offenders reported pursuant to specified laws be exempt from public records requirements; providing for future review and repeal of the exemption; providing a statement of public necessity, etc. CJ 04/03/2017 Fav/CS GO 04/17/2017 Favorable AP	Favorable Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDAGovernmental Oversight and Accountability
Monday, April 17, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 840 Health Policy / Clemens (Similar CS/CS/H 557)	Controlled Substance Prescribing; Limiting the quantity of opioids that may be prescribed for acute pain in certain circumstances; revising requirements for reporting the dispensing of controlled substances; authorizing certain employees of the United States Department of Veterans Affairs access to certain information in the prescription drug monitoring program's database, etc. HP 04/03/2017 Fav/CS GO 04/17/2017 Fav/CS RI RC	Fav/CS Yeas 6 Nays 0
5	SB 856 Broxson (Identical H 373)	Education; Prohibiting a district school board from awarding an annual contract for instructional personnel under certain circumstances; prohibiting a district school board from altering or limiting its authority to award or not award an annual contract, etc. ED 04/03/2017 Favorable GO 04/17/2017 Amendment Adopted - Temporarily Postponed RC	Amendment Adopted - Temporarily Postponed
6	CS/SB 1008 Banking and Insurance / Perry (Similar CS/CS/H 1107)	Public Records/Injured or Deceased Employee/Department of Financial Services; Providing an exemption from public records requirements for the personal identifying information of an injured or deceased employee which is contained in reports, notices, records, or supporting documentation held by the Department of Financial Services; providing a criminal penalty for willful and knowing disclosure of such information; providing for future review and repeal of the exemption; providing a statement of public necessity, etc. BI 04/03/2017 Fav/CS GO 04/17/2017 Favorable RC	Favorable Yeas 6 Nays 0
7	CS/SB 1014 Banking and Insurance / Brandes (Similar CS/H 1009, Compare CS/H 1007, Linked CS/S 1012)	Public Records/Investigation and Tracking of Insurance Fraud/Department of Financial Services; Providing an exemption from public records requirements for reports, documents, or other information relating to the investigation and tracking of insurance fraud submitted by insurers to the Department of Financial Services; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. BI 04/03/2017 Fav/CS GO 04/17/2017 Favorable AP	Favorable Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDAGovernmental Oversight and Accountability
Monday, April 17, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	CS/SB 1072 Ethics and Elections / Hutson (Similar CS/H 709, Compare CS/H 707, Linked CS/S 1070)	Public Records/Interstate Agreement/Department of State ; Creating a public records exemption for certain information received by the Department of State through an interstate agreement from another state which is confidential or exempt pursuant to the laws of that state; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. EE 04/04/2017 Fav/CS GO 04/17/2017 Fav/CS RC	Fav/CS Yeas 5 Nays 0
9	CS/SB 1084 Banking and Insurance / Stargel (Similar CS/H 465)	Firefighters; Providing for the designation as a Lifetime Firefighter; providing responsibilities of the Division of State Fire Marshal within the Department of Financial Services; authorizing the division to investigate reports, complaints, or felony convictions concerning Lifetime Firefighters, etc. BI 04/03/2017 Fav/CS GO 04/17/2017 Favorable RC	Favorable Yeas 6 Nays 0
10	CS/SB 1224 Military and Veterans Affairs, Space, and Domestic Security / Passidomo (Similar CS/H 1079)	Public Records and Public Meetings/Campus Emergency Response for Public Postsecondary Institutions; Providing an exemption from public records requirements for a public postsecondary educational institution's campus emergency response plan when held by specified custodial agencies; providing an exemption from public meetings requirements for any portion of a public meeting at which certain components of a campus emergency response plan are discussed; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. MS 03/22/2017 Fav/CS ED 04/03/2017 Favorable GO 04/17/2017 Favorable	Favorable Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDAGovernmental Oversight and Accountability
Monday, April 17, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	SB 1408 Broxson (Similar CS/CS/H 981)	Public Records/Confidentiality/Department of Elderly Affairs; Creating an exemption from public records requirements for certain personal identifying information, personal health and financial records, and photographs and video recordings held by the Department of Elderly Affairs in connection with a complaint filed or an investigation conducted pursuant to part II of ch. 744, F.S.; specifying that information retains its confidential and exempt status for the duration of an investigation; providing for future legislative review and repeal; providing a statement of public necessity, etc. CF 03/27/2017 Favorable GO 04/17/2017 Favorable RC	Favorable Yeas 6 Nays 0
12	SB 1478 Baxley (Compare CS/H 1283, CS/H 1285, Linked S 1480)	Inspectors General and Auditors; Removing a provision that requires the Chief Inspector General to serve at the pleasure of the Governor; authorizing the termination of the Chief Inspector General's appointment by a majority vote of both houses of the Legislature; requiring the State Board of Administration to appoint an inspector general, etc. GO 04/17/2017 Fav/CS JU RC	Fav/CS Yeas 5 Nays 0
13	SB 1480 Baxley (Compare CS/H 1283, CS/H 1285, Linked S 1478)	Public Records/Active Audit or Investigation/Agency Inspector General; Providing an exemption from public records requirements for audit workpapers, records, reports, or other documentation obtained or created during or in relation to an active audit or investigation by an agency inspector general until completion of such audit or investigation or issuance of a final report; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. GO 04/17/2017 Fav/CS JU RC	Fav/CS Yeas 5 Nays 0
14	SB 1844 Bradley (Compare H 7095, S 1388, S 1666, S 1758, Linked CS/S 406)	Public Records/Compassionate Use Registry; Providing an exemption from public records requirements for a qualifying patient's or caregiver's personal identifying information, all information contained on their compassionate use registry identification cards, and all information pertaining to a physician certification for marijuana; extending the date of future review and repeal of the exemption; providing a statement of public necessity, etc. GO 04/17/2017 Fav/CS AP	Fav/CS Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability
 Monday, April 17, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
15	SB 7028 Judiciary (Similar H 7087)	OGSR/Injunction for Protection Against Domestic Violence, Repeat Violence, Sexual Violence, and Dating Violence; Extending the repeal dates for exemptions from public records requirements for personal identifying and location information of a petitioner who requests notification of service of an injunction for protection against domestic violence, repeat violence, sexual violence, and dating violence and other court actions related to the injunction held by clerks of the court and law enforcement agencies, etc. GO 04/17/2017 Favorable RC	Favorable Yeas 6 Nays 0

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointment to the office indicated.			
Investment Advisory Council			
16	Collins, Peter H. (Tampa)	12/31/2021	Recommend Confirm Yeas 5 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	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: SB 248

INTRODUCER: Senators Broxson and Passidomo

SUBJECT: Public Records/Office of Financial Regulation

DATE: April 14, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2.	<u>Kim</u>	<u>Ferrin</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 248 exempts from public inspection and disclosure certain personal identifying information of nonsworn investigative employees of the Office of Financial Regulation (Office). The exemption applies to all current or former employees as well as their spouses and children. The exemption also covers an employee's spouse's place of employment and his or her child's school or daycare facility.

The bill states it is a public necessity to protect such information because the employees' investigative duties can result in arrests and prosecutions for crimes up to and including first degree felony violations and can also result in the loss of commerce and property, the assessment of monetary fines, or the suspension or loss of professional licenses. The Office has documented several instances where their nonsworn investigators have been intimidated and threatened, including the brandishing of firearms.

The provisions of the bill are subject to the Open Government Sunset Review Act and will be repealed on October 2, 2022, unless reenacted by the Legislature. The bill goes into effect upon becoming law.

The bill requires a two-thirds vote of each chamber in order to pass because it creates a public records exemption.

The bill is effective upon becoming 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

Office of Financial Regulation

The Office provides regulatory oversight for Florida's financial services providers. The nonsworn investigators for the Office work under the Bureau of Financial Investigations (bureau). The bureau has 39 employees, 35 of which would be covered by this exemption.²⁴ The bureau's nonsworn investigators are housed in satellite offices throughout the state (Tallahassee, Tampa, Orlando, West Palm Beach, and Miami). Although the investigators are nonsworn, they work on criminal and civil cases independently and collaboratively with law enforcement and prosecutorial agencies. The nonsworn investigators also provide investigative assistance to those agencies, including testimony at trial.²⁵

III. Effect of Proposed Changes:

SB 248 amends s. 119.071, F.S., to exempt from public inspection and disclosure laws the home address, telephone numbers, dates of birth, and photographs of any current or former nonsworn investigative employee of the Office.

The bill also exempts from public inspection and disclosure the employee's spouse's and children's home address, telephone numbers, dates of birth, and photographs. A spouse's place of employment as well as the school or daycare of an employee's children are also exempt.

The bill states that it is a public necessity to protect such information because these employees and their families may be subject to revenge perpetrated by people who have been investigated. The bill states such investigations can result in arrests and prosecutions for crimes up to and including first degree felony violations and can also result in the loss of commerce and property, the assessment of monetary fines, or the suspension or loss of professional licenses. The Office has documented several instances where their nonsworn investigative personal and their families have been intimidated or threatened as a result of their work.²⁶

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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 Office of Financial Regulation, Senate Bill 248 Bill Analysis (Jan. 9, 2017) (On file with the Senate Committee on Banking and Insurance).

²⁵ *Id.*

²⁶ *Id.*

- A person associated with an investigation appeared at an investigator's former residence, where his young children still resided. The visit put the investigator and his family at great unease.
- An investigator's name appeared on a credible hit list found by U.S. Marshals during the search of a suspect's home. Other evidence, including photos of the investigator's residence and children were also found during the search.
- Two investigators conducting surveillance of a suspected illegal banking operation were seen by suspects and were chased by vehicle through the streets of Miami and Liberty City. The suspects were observed brandishing firearms before the investigators were able to escape.
- While investigators were reviewing records obtained via subpoena, notes were found by the investigators indicating that the suspects hired private investigators to collect personal background information on the investigators working the case.
- The suspect of an investment fraud case learned of the time and location of a deposition taken by an investigator. The suspect arrived at the location and waited outside for the deposition to conclude. As the investigator emerged from the deposition room, the suspect approached and verbally confronted the investigator loudly and in a threatening way. As a result, the investigator took personal time from his job to work with his local property appraiser's office to conceal his personal information from any public search of his records.
- An investigator received verbal threats from a suspect while conducting an advance fee investigation. In one instance, the suspect told her that "if he went down, she would go down, too." In a subsequent instance, the suspect threatened that if he went to prison, "she would not be around any longer." The investigator felt endangered to the point that she reported the matter to law enforcement and purchased a firearm for her personal protection.²⁷

The Office believes these documented instances of nonsworn investigative personal and their families being intimidated or threatened for completing their work warrants their identification and location information being exempt from public inspection and copying.

The provisions of the bill are subject to the OGSR and will be automatically repealed on October 2, 2022, unless reenacted by the Legislature.

The bill goes in to effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly-created or

²⁷ *Id.*

expanded public records or public meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly-created or expanded public records or public meetings exemption. The public necessity statement in this bill appears to support the breadth of this 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 119.071 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.

By Senator Broxson

1-00219-17

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1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; providing an exemption from public
 4 records requirements for the personal identifying and
 5 location information of certain nonsworn investigative
 6 personnel of the Office of Financial Regulation and
 7 the names and personal identifying and location
 8 information of the spouses and children of such
 9 personnel; providing for future review and repeal of
 10 the exemption; providing a statement of public
 11 necessity; providing an effective date.

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

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
 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

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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
 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

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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.

65 (V) The home addresses, telephone numbers, dates of birth,
66 and photographs of current or former nonsworn investigative
67 personnel of the Office of Financial Regulation's Bureau of
68 Financial Investigations whose duties include the investigation
69 of fraud, theft, other related criminal activities, or state
70 regulatory requirement violations; the names, home addresses,
71 telephone numbers, dates of birth, and places of employment of
72 the spouses and children of such personnel; and the names and
73 locations of schools and day care facilities attended by the
74 children of such personnel are exempt from s. 119.07(1) and s.
75 24(a), Art. I of the State Constitution. This sub-sub-
76 paragraph is subject to the Open Government Sunset Review Act
77 in accordance with s. 119.15 and shall stand repealed on October
78 2, 2022, unless reviewed and saved from repeal through
79 reenactment by the Legislature.

80 b. The home addresses, telephone numbers, dates of birth,
81 and photographs of firefighters certified in compliance with s.
82 633.408; the home addresses, telephone numbers, photographs,
83 dates of birth, and places of employment of the spouses and
84 children of such firefighters; and the names and locations of
85 schools and day care facilities attended by the children of such
86 firefighters are exempt from s. 119.07(1).

87 c. The home addresses, dates of birth, and telephone
88 numbers of current or former justices of the Supreme Court,
89 district court of appeal judges, circuit court judges, and
90 county court judges; the home addresses, telephone numbers,

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91 dates of birth, and places of employment of the spouses and
92 children of current or former justices and judges; and the names
93 and locations of schools and day care facilities attended by the
94 children of current or former justices and judges are exempt
95 from s. 119.07(1).

96 d.(I) The home addresses, telephone numbers, social
97 security numbers, dates of birth, and photographs of current or
98 former state attorneys, assistant state attorneys, statewide
99 prosecutors, or assistant statewide prosecutors; the home
100 addresses, telephone numbers, social security numbers,
101 photographs, dates of birth, and places of employment of the
102 spouses and children of current or former state attorneys,
103 assistant state attorneys, statewide prosecutors, or assistant
104 statewide prosecutors; and the names and locations of schools
105 and day care facilities attended by the children of current or
106 former state attorneys, assistant state attorneys, statewide
107 prosecutors, or assistant statewide prosecutors are exempt from
108 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

109 (II) The names of the spouses and children of current or
110 former state attorneys, assistant state attorneys, statewide
111 prosecutors, or assistant statewide prosecutors are exempt from
112 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

117 e. The home addresses, dates of birth, and telephone
118 numbers of general magistrates, special magistrates, judges of
119 compensation claims, administrative law judges of the Division

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120 of Administrative Hearings, and child support enforcement
 121 hearing officers; the home addresses, telephone numbers, dates
 122 of birth, and places of employment of the spouses and children
 123 of general magistrates, special magistrates, judges of
 124 compensation claims, administrative law judges of the Division
 125 of Administrative Hearings, and child support enforcement
 126 hearing officers; and the names and locations of schools and day
 127 care facilities attended by the children of general magistrates,
 128 special magistrates, judges of compensation claims,
 129 administrative law judges of the Division of Administrative
 130 Hearings, and child support enforcement hearing officers are
 131 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 132 Constitution if the general magistrate, special magistrate,
 133 judge of compensation claims, administrative law judge of the
 134 Division of Administrative Hearings, or child support hearing
 135 officer provides a written statement that the general
 136 magistrate, special magistrate, judge of compensation claims,
 137 administrative law judge of the Division of Administrative
 138 Hearings, or child support hearing officer has made reasonable
 139 efforts to protect such information from being accessible
 140 through other means available to the public.

141 f. The home addresses, telephone numbers, dates of birth,
 142 and photographs of current or former human resource, labor
 143 relations, or employee relations directors, assistant directors,
 144 managers, or assistant managers of any local government agency
 145 or water management district whose duties include hiring and
 146 firing employees, labor contract negotiation, administration, or
 147 other personnel-related duties; the names, home addresses,
 148 telephone numbers, dates of birth, and places of employment of

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149 the spouses and children of such personnel; and the names and
 150 locations of schools and day care facilities attended by the
 151 children of such personnel are exempt from s. 119.07(1) and s.
 152 24(a), Art. I of the State Constitution.

153 g. The home addresses, telephone numbers, dates of birth,
 154 and photographs of current or former code enforcement officers;
 155 the names, home addresses, telephone numbers, dates of birth,
 156 and places of employment of the spouses and children of such
 157 personnel; and the names and locations of schools and day care
 158 facilities attended by the children of such personnel are exempt
 159 from s. 119.07(1) and s. 24(a), Art. I of the State
 160 Constitution.

161 h. The home addresses, telephone numbers, places of
 162 employment, dates of birth, and photographs of current or former
 163 guardians ad litem, as defined in s. 39.820; the names, home
 164 addresses, telephone numbers, dates of birth, and places of
 165 employment of the spouses and children of such persons; and the
 166 names and locations of schools and day care facilities attended
 167 by the children of such persons are exempt from s. 119.07(1) and
 168 s. 24(a), Art. I of the State Constitution, if the guardian ad
 169 litem provides a written statement that the guardian ad litem
 170 has made reasonable efforts to protect such information from
 171 being accessible through other means available to the public.

172 i. The home addresses, telephone numbers, dates of birth,
 173 and photographs of current or former juvenile probation
 174 officers, juvenile probation supervisors, detention
 175 superintendents, assistant detention superintendents, juvenile
 176 justice detention officers I and II, juvenile justice detention
 177 officer supervisors, juvenile justice residential officers,

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178 juvenile justice residential officer supervisors I and II,
 179 juvenile justice counselors, juvenile justice counselor
 180 supervisors, human services counselor administrators, senior
 181 human services counselor administrators, rehabilitation
 182 therapists, and social services counselors of the Department of
 183 Juvenile Justice; the names, home addresses, telephone numbers,
 184 dates of birth, and places of employment of spouses and children
 185 of such personnel; and the names and locations of schools and
 186 day care facilities attended by the children of such personnel
 187 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 188 Constitution.

189 j. (I) The home addresses, telephone numbers, dates of
 190 birth, and photographs of current or former public defenders,
 191 assistant public defenders, criminal conflict and civil regional
 192 counsel, and assistant criminal conflict and civil regional
 193 counsel; the home addresses, telephone numbers, dates of birth,
 194 and places of employment of the spouses and children of such
 195 defenders or counsel; and the names and locations of schools and
 196 day care facilities attended by the children of such defenders
 197 or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 198 the State Constitution.

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

206 k. The home addresses, telephone numbers, and photographs

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207 of current or former investigators or inspectors of the
 208 Department of Business and Professional Regulation; the names,
 209 home addresses, telephone numbers, and places of employment of
 210 the spouses and children of such current or former investigators
 211 and inspectors; and the names and locations of schools and day
 212 care facilities attended by the children of such current or
 213 former investigators and inspectors are exempt from s. 119.07(1)
 214 and s. 24(a), Art. I of the State Constitution if the
 215 investigator or inspector has made reasonable efforts to protect
 216 such information from being accessible through other means
 217 available to the public. This sub-subparagraph is subject to the
 218 Open Government Sunset Review Act in accordance with s. 119.15
 219 and shall stand repealed on October 2, 2017, unless reviewed and
 220 saved from repeal through reenactment by the Legislature.

221 1. The home addresses and telephone numbers of county tax
 222 collectors; the names, home addresses, telephone numbers, and
 223 places of employment of the spouses and children of such tax
 224 collectors; and the names and locations of schools and day care
 225 facilities attended by the children of such tax collectors are
 226 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 227 Constitution if the county tax collector has made reasonable
 228 efforts to protect such information from being accessible
 229 through other means available to the public. This sub-
 230 subparagraph is subject to the Open Government Sunset Review Act
 231 in accordance with s. 119.15 and shall stand repealed on October
 232 2, 2017, unless reviewed and saved from repeal through
 233 reenactment by the Legislature.

234 m. The home addresses, telephone numbers, dates of birth,
 235 and photographs of current or former personnel of the Department

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236 of Health whose duties include, or result in, the determination
 237 or adjudication of eligibility for social security disability
 238 benefits, the investigation or prosecution of complaints filed
 239 against health care practitioners, or the inspection of health
 240 care practitioners or health care facilities licensed by the
 241 Department of Health; the names, home addresses, telephone
 242 numbers, dates of birth, and places of employment of the spouses
 243 and children of such personnel; and the names and locations of
 244 schools and day care facilities attended by the children of such
 245 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 246 the State Constitution if the personnel have made reasonable
 247 efforts to protect such information from being accessible
 248 through other means available to the public. This sub-
 249 subparagraph is subject to the Open Government Sunset Review Act
 250 in accordance with s. 119.15 and shall stand repealed on October
 251 2, 2019, unless reviewed and saved from repeal through
 252 reenactment by the Legislature.

253 n. The home addresses, telephone numbers, dates of birth,
 254 and photographs of current or former impaired practitioner
 255 consultants who are retained by an agency or current or former
 256 employees of an impaired practitioner consultant whose duties
 257 result in a determination of a person's skill and safety to
 258 practice a licensed profession; the names, home addresses,
 259 telephone numbers, dates of birth, and places of employment of
 260 the spouses and children of such consultants or their employees;
 261 and the names and locations of schools and day care facilities
 262 attended by the children of such consultants or employees are
 263 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 264 Constitution if a consultant or employee has made reasonable

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265 efforts to protect such information from being accessible
 266 through other means available to the public. This sub-
 267 subparagraph is subject to the Open Government Sunset Review Act
 268 in accordance with s. 119.15 and shall stand repealed on October
 269 2, 2020, unless reviewed and saved from repeal through
 270 reenactment by the Legislature.

271 o. The home addresses, telephone numbers, dates of birth,
 272 and photographs of current or former emergency medical
 273 technicians or paramedics certified under chapter 401; the
 274 names, home addresses, telephone numbers, dates of birth, and
 275 places of employment of the spouses and children of such
 276 emergency medical technicians or paramedics; and the names and
 277 locations of schools and day care facilities attended by the
 278 children of such emergency medical technicians or paramedics are
 279 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 280 Constitution if the emergency medical technicians or paramedics
 281 have made reasonable efforts to protect such information from
 282 being accessible through other means available to the public.
 283 This sub-subparagraph is subject to the Open Government Sunset
 284 Review Act in accordance with s. 119.15 and shall stand repealed
 285 on October 2, 2021, unless reviewed and saved from repeal
 286 through reenactment by the Legislature.

287 p. The home addresses, telephone numbers, dates of birth,
 288 and photographs of current or former personnel employed in an
 289 agency's office of inspector general or internal audit
 290 department whose duties include auditing or investigating waste,
 291 fraud, abuse, theft, exploitation, or other activities that
 292 could lead to criminal prosecution or administrative discipline;
 293 the names, home addresses, telephone numbers, dates of birth,

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294 and places of employment of spouses and children of such
 295 personnel; and the names and locations of schools and day care
 296 facilities attended by the children of such personnel are exempt
 297 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution
 298 if the personnel have made reasonable efforts to protect such
 299 information from being accessible through other means available
 300 to the public. This sub-subparagraph is subject to the Open
 301 Government Sunset Review Act in accordance with s. 119.15 and
 302 shall stand repealed on October 2, 2021, unless reviewed and
 303 saved from repeal through reenactment by the Legislature.

304 3. An agency that is the custodian of the information
 305 specified in subparagraph 2. and that is not the employer of the
 306 officer, employee, justice, judge, or other person specified in
 307 subparagraph 2. shall maintain the exempt status of that
 308 information only if the officer, employee, justice, judge, other
 309 person, or employing agency of the designated employee submits a
 310 written request for maintenance of the exemption to the
 311 custodial agency.

312 4. The exemptions in this paragraph apply to information
 313 held by an agency before, on, or after the effective date of the
 314 exemption.

315 5. Except as otherwise expressly provided in this
 316 paragraph, this paragraph is subject to the Open Government
 317 Sunset Review Act in accordance with s. 119.15, and shall stand
 318 repealed on October 2, 2017, unless reviewed and saved from
 319 repeal through reenactment by the Legislature.

320 Section 2. The Legislature finds that it is a public
 321 necessity to exempt from public records requirements the home
 322 addresses, telephone numbers, dates of birth, and photographs of

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323 current or former nonsworn investigative personnel of the Office
 324 of Financial Regulation's Bureau of Financial Investigations
 325 whose duties include the investigation of fraud, theft, other
 326 related criminal activities, or state regulatory requirement
 327 violations; the names, home addresses, telephone numbers, dates
 328 of birth, and places of employment of the spouses and children
 329 of such personnel; and the names and locations of schools and
 330 day care facilities attended by the children of such personnel.
 331 The efforts of such personnel can lead to arrests and
 332 prosecutions for crimes up to and including first degree felony
 333 violations and can also result in the loss of commerce and
 334 property, the assessment of monetary fines, or the suspension or
 335 loss of professional licenses. The office has documented
 336 multiple compelling instances of such personnel being threatened
 337 and fearing repercussions as a result of carrying out their
 338 duties. These threats have included weapons being brandished,
 339 verbal threats made to harm them or their family members,
 340 harassment, and intimidation. The Legislature finds that the
 341 release of such personal identifying and location information
 342 might place these nonsworn investigative personnel of the office
 343 and their family members in danger of physical and emotional
 344 harm from disgruntled individuals who have contentious reactions
 345 to actions taken by such personnel, or whose business or
 346 professional practices have come under the scrutiny of such
 347 personnel. The Legislature further finds that the harm that may
 348 result from the release of such personal identifying and
 349 location information outweighs any public benefit that may be
 350 derived from the disclosure of the information.

351 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)

4/17/17
Meeting Date

248
Bill Number (if applicable)

Topic Waive in Support of SB 248

Amendment Barcode (if applicable)

Name Jamie Mongiovi (MON-JOE-VEE) pron.

Job Title Florida Office of Financial Regulation

Address 101 E Gainer St.
Street

Phone 850-559-7003

Tallahassee FL 32399
City State Zip

Email _____

Speaking: For Against Information

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

Representing Florida 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
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 600

INTRODUCER: Agriculture Committee and Senator Grimsley and others

SUBJECT: Rural Economic Development Initiative

DATE: April 14, 2017 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Askey</u>	<u>McKay</u>	<u>CM</u>	Favorable
2.	<u>Becker</u>	<u>Becker</u>	<u>AG</u>	Fav/CS
3.	<u>Ferrin</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/SB 600 makes several changes to the Rural Economic Development Initiative (REDI), most notably to the agency and organization members who collaborate with the REDI. The bill changes the membership to include:

- The executive director of the Department of Economic Opportunity or their designee, to serve as chair;
- The Secretary of Transportation or their designee;
- The Secretary of Environmental Protection or their designee;
- The Commissioner of Agriculture or their designee;
- The State Surgeon General or their designee;
- The Commissioner of Education or their designee;
- The President of Enterprise Florida, Inc., or their designee;
- The chair of the board of CareerSource Florida, Inc., or their designee;
- Five members from the private sector, three who are appointed by the executive director of the Department of Economic Opportunity, and one each appointed by the President of the Senate and the Speaker of the House of Representatives.

The bill requires that the report required of the REDI be submitted to the Department of Economic Opportunity, the President of the Senate, and the Speaker of the House of

Representatives by September 1st of each year and expands the information to be included in the report.

The bill makes conforming changes to address cross-references in numerous sections of the Florida Statutes.

The bill is effective upon becoming law.

II. Present Situation:

Rural Economic Development Initiative

The Rural Economic Development Initiative (REDI) was established in 1997¹ by the Legislature to encourage and facilitate the location and expansion of major economic development projects of significant scale in rural communities.² The REDI is responsible for coordinating and focusing the efforts and resources of state and regional agencies on the problems that affect the fiscal, economic, and community viability of Florida's economically distressed rural communities.³ The REDI works with local governments, community-based organizations, and private organizations that have an interest in the growth and development of these communities to find ways to balance environmental and growth management issues with local needs and economic development.⁴ Other responsibilities include the review and evaluation of the impact of statutes and rules on rural communities, and the facilitation of better access to state resources by promoting direct access and referrals to both state and regional agencies and statewide organizations.⁵

The REDI is administered by the Department of Economic Opportunity (DEO), but is a collaborative effort facilitated by a group of agencies and organizations. Numerous state agencies and organizations are required to participate in the REDI by designating a deputy secretary or higher-level staff person to serve as a REDI representative. The agencies and organizations that are statutorily required to designate a representative are:⁶

- The Department of Transportation;
- The Department of Environmental Protection;
- The Department of Agriculture and Consumer Services;
- The Department of State;
- The Department of Health;
- The Department of Children and Families;
- The Department of Corrections;
- The Department of Education;
- The Department of Juvenile Justice;
- The Fish and Wildlife Conservation Commission;
- Each water management district;

¹ Ch. 97-278

² Section 288.0656, F.S.

³ Section 288.0656(3), F.S.

⁴ *Id.*

⁵ Sections 288.0656(4) and (5), F.S.

⁶ Section 288.0656(6)(a), F.S.

- Enterprise Florida, Inc. (EFI);
- VISIT Florida;
- The Florida Regional Planning Council Association;
- The Agency for Health Care Administration; and
- The Institute for Food and Agricultural Sciences.

Agency and organization representatives are required to have comprehensive knowledge of their agency's regulatory and service functions, and the state's economic goals, policies, and programs.⁷ The representatives are required to work with the REDI in the reviewing, evaluating, and proposing impact mitigation of any statute or rule that may have an adverse effect on rural communities.⁸ Additionally, representatives are to inform their agencies and organizations about the REDI and provide assistance to the REDI throughout the agency or organization.⁹

The law governing the REDI program defines a rural area of opportunity (RAO) as a rural community,¹⁰ or a region comprised of rural communities, designated by the Governor, that have been adversely affected by an extraordinary economic event, a natural disaster, or severe or chronic distress.¹¹ An area may also be classified as a RAO if it presents a unique economic development opportunity of regional impact.¹² A designation of RAO must be agreed upon by the DEO and the local governments included in the RAO.¹³

Based on recommendations of REDI, up to three rural areas of opportunity can be designated by the Governor through executive order.¹⁴ This designation establishes these areas as priority assignments for REDI as well as allows the Governor, acting through REDI, to waive criteria, requirements, or similar provisions of any economic development initiative.¹⁵

Currently, there are three designated RAO areas:

- Northwest Rural Area of Opportunity: Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington counties, and the City of Freeport in Walton County. The name of this area's economic development organization is Opportunity Florida.¹⁶

⁷ Section 288.0656(6)(b), F.S.

⁸ Section 288.0656(6)(c), F.S.

⁹ Section 288.0656(6)(d), F.S.

¹⁰ Section 288.0656(2)(e), F.S., defines a "Rural community" as a county with a population of 75,000 or fewer; a county with a population of 125,000 or fewer, which is contiguous to a county with a population of 75,000 or fewer; a municipality within such a county; or an unincorporated federal enterprise community or an incorporated rural city with a population of 25,000 or fewer and an employment base focused on traditional agricultural or resource-based industries, located in a county not defined as rural, which has at least three or more of the economic distress factors identified in s. 288.0656(2)(c), F.S., and verified by DEO. For purposes of this paragraph, population is determined in accordance with the most recent official estimate pursuant to the state population census statute located in s. 186.901, F.S. The U.S. Census Bureau defines "rural" as all population, housing, and territory not included within an urban area, and identifies two types of urban areas, Urbanized Areas (UAs) of 50,000 or more people; and Urban Clusters (UCs) of at least 2,500 and less than 50,000 people.

¹¹ Section 288.0656(2)(d), F.S.

¹² *Id.*

¹³ Section 288.0656(7)(b), F.S. a designation of RAO is contingent upon the execution of a memorandum of agreement among the Department of Economic Opportunity, the governing body of the county, and the governing bodies of any municipalities included within a RAO.

¹⁴ Section 288.0656(7)(a), F.S.

¹⁵ *Id.*

¹⁶ For additional information on Opportunity Florida, see: <http://www.opportunityflorida.com/> (last viewed April 10, 2017).

- South Central Rural Area of Opportunity: DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee counties, and the cities of Pahokee, Belle Glade, and South Bay (Palm Beach County), and Immokalee (Collier County). The name of this area's economic development organization is Florida's Heartland Regional Economic Development Initiative, Inc.¹⁷
- North Central Rural Area of Opportunity: Baker, Bradford, Citrus, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union counties. The name of this area's economic development organization is the North Florida Economic Development Partnership.¹⁸

Each rural area of opportunity, by a REDI recommendation and identification by Enterprise Florida Inc., may designate catalyst projects, which must be confirmed by the Department of Economic Opportunity.¹⁹ All agencies and departments of the state are required to use all available tools and resources available to promote the creation and development of each catalyst project and the development of catalyst sites.²⁰ For purposes of the REDI program, a catalyst project is a business relocating or expanding in an RAO and serves as an economic generator of regional significance, and a catalyst site is one or more parcels of land in an RAO that is prioritized for economic development.²¹

REDI is required to submit a report to DEO on all REDI activities for the previous fiscal year as a supplement to DEO's annual report required under s. 20.60, F.S.²² This supplementary report must include:

- A status report on all projects currently being coordinated through REDI;
- The number of preferential awards and allowances made pursuant to the REDI program;
- The dollar amount of such awards, and the names of the recipients;
- A description of all waivers of program requirements granted;
- Information as to the economic impact of the projects coordinated by REDI; and
- Recommendations based on the review and evaluation of statutes and rules having an adverse impact on rural communities and proposals to mitigate such adverse impacts.

III. Effect of Proposed Changes:

This bill makes several changes to the REDI, most notably to the agency and organization members who collaborate with the REDI. The bill changes the membership to include:

- The executive director of the DEO or their designee, to serve as chair;
- The Secretary of Transportation or their designee;
- The Secretary of Environmental Protection or their designee;
- The Commissioner of Agriculture or their designee;
- The State Surgeon General or their designee;
- The Commissioner of Education or their designee;

¹⁷ For additional information on Florida's Heartland Regional Economic Development Initiative, Inc., see: <http://flaheartland.com/> (last viewed April 10, 2017).

¹⁸ For additional information on the North Florida Economic Development Partnership, see: <http://nflp.org/?/Home> (last viewed April 10, 2017).

¹⁹ Section 288.0656(7)(c), F.S.

²⁰ *Id.*

²¹ Section 288.0656(2), F.S.

²² Section 288.0656(8), F.S.

- The President of EFI or their designee;
- The chair of the board of CareerSource Florida, Inc., or their designee;
- The chair of the board of each regional economic development organization for each of the rural areas of opportunity or their designee; and
- Five members from the private sector, three who are appointed by the executive director of the DEO, and one each appointed by the President of the Senate and the Speaker of the House of Representatives.

In making their appointments, the executive director, the President, and the Speaker are to ensure that the diversity of the state's business community and the state's ethnic, racial, and gender diversity are reflected. Appointments are for 2-year terms, beginning on July 1 and expiring on June 30, with initial appointments beginning in July 2017. The bill provides direction for appointee vacancies and removal. The bill removes the requirement related to REDI members needing comprehensive knowledge of their agency or organization and the state's economic policies and goals.

The bill authorizes the chair of the REDI to create ad hoc committees to address issues or projects. The chair is authorized to request the head of any state agency or organization to serve on the ad hoc committees, but is directed to consider requesting:

- The executive director of FWC or their designee;
- The Secretary of State or their designee;
- The Secretary of Children and Families or their designee;
- The Secretary of Corrections or their designee;
- The Secretary of Juvenile Justice or their designee;
- The Secretary of Health Care Administration or their designee; and
- A board member of the Florida Regional Councils Association or their designee.

Additional changes to the program include:

- Clarifying the legislative intent of the REDI to include encouraging job creation, improving community infrastructure including roads, utilities, water, sewer, and communications, the development and expansion of a skilled workforce, and improved access to healthcare;
- Expanding the definition of "rural area of opportunity" to include a rural community that faces competitive disadvantages including low labor force participation, low education levels, high unemployment, a district grade of "D" or "F" pursuant to s. 1008.34,²³ high infant mortality rates, and high rates of diabetes and obesity;
- Clarifying that the REDI is to focus its efforts on the challenges of the state's rural areas of opportunity and economically distressed rural communities, and that REDI is to work with private organizations that have an interest in the renewed prosperity and competitiveness of these communities;
- Clarifying that when undertaking outreach and capacity-building efforts, REDI's purpose should be to improve rural communities' ability to compete in a global economy;
- Removing the limitation on the Governor's designation of only three rural areas of opportunity;

²³ This section refers to the school grading system, school report cards, and district grades.

- Requiring that the report required of the REDI be submitted to the DEO, the President of the Senate, and the Speaker of the House of Representatives by September 1st of each year; and
- Expanding the information to be included in the report to include evaluation of organizational progress towards goals, REDI accomplishments, and issues affecting the performance of REDI programs and activities.

The bill makes conforming changes to address cross-references in sections 163.3177, 163.3187, 257.193, 288.019, 288.06561, 290.0055, 290.06561, 337.403, 339.2818, 339.2819, 339.63, 479.16, 627.6699, F.S.

The bill is effective upon becoming 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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 288.0656, 163.3177, 163.3187, 257.193, 288.019, 288.06561, 290.0055, 290.06561, 337.403, 339.2818, 339.2819, 339.63, 479.16, and 627.6699.

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 Agriculture on April 3, 2017:

The committee substitute removes the requirement that an analysis shall be done by OPPAGA. It clarifies that communications methods that improve community infrastructure could include more than broadband. It removes the requirement that catalyst projects must be identified by EFI.

- B. **Amendments:**

None.

By the Committee on Agriculture; and Senators Grimsley,
Montford, and Passidomo

575-03317-17

2017600c1

1 A bill to be entitled
2 An act relating to the Rural Economic Development
3 Initiative; amending s. 288.0656, F.S.; revising
4 legislative intent relating to the Rural Economic
5 Development Initiative; redefining the term "rural
6 area of opportunity"; revising the duties,
7 responsibilities, and membership of the Rural Economic
8 Development Initiative; deleting a provision limiting
9 the number of rural areas of opportunity that may be
10 designated; deleting a provision listing the economic
11 development incentives for which the Governor may
12 waive criteria requirements or similar provisions;
13 deleting a requirement that certain catalyst projects
14 be identified as catalyst projects by Enterprise
15 Florida, Inc.; revising reporting requirements;
16 amending ss. 163.3177, 163.3187, 257.193, 288.019,
17 288.06561, 290.0055, 290.06561, 337.403, 339.2818,
18 339.2819, 339.63, 479.16, and 627.6699, F.S.;

19 conforming cross-references; providing an effective
20 date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Section 288.0656, Florida Statutes, is amended
25 to read:

26 288.0656 Rural Economic Development Initiative.—

27 (1) ~~(a)~~ Recognizing that rural communities and regions
28 continue to face extraordinary challenges in their efforts to
29 significantly improve their quality of life and economies,

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30 specifically in terms of personal income, education,
31 infrastructure, access to healthcare, and job creation, average
32 ~~wages, and strong tax bases,~~ it is the intent of the Legislature
33 to encourage and facilitate:

34 (a) Job creation through the location and expansion of
35 ~~major~~ economic development projects ~~of significant scale in such~~
36 ~~rural communities.~~

37 (b) Improved community infrastructure, including, but not
38 limited to, roads, utilities, water and sewer, and
39 communications.

40 (c) The development and expansion of a skilled workforce.

41 (d) Improved access to healthcare.

42 ~~(2) (b)~~ The Rural Economic Development Initiative, known as
43 "REDI," is created within the Department of Economic
44 Opportunity, and the participation of state and regional
45 agencies in this initiative is authorized.

46 ~~(3) (2)~~ As used in this section, the term:

47 (a) "Catalyst project" means a business locating or
48 expanding in a rural area of opportunity to serve as an economic
49 generator of regional significance for the growth of a regional
50 target industry cluster. The project must provide capital
51 investment on a scale significant enough to affect the entire
52 region and result in the development of high-wage and high-skill
53 jobs.

54 (b) "Catalyst site" means a parcel or parcels of land
55 within a rural area of opportunity that has been prioritized as
56 a geographic site for economic development through partnerships
57 with state, regional, and local organizations. The site must be
58 reviewed by REDI and approved by the department for the purposes

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59 of locating a catalyst project.

60 (c) "Economic distress" means conditions affecting the
61 fiscal and economic viability of a rural community, including
62 such factors as low per capita income, low per capita taxable
63 values, high unemployment, high underemployment, low weekly
64 earned wages compared to the state average, low housing values
65 compared to the state average, high percentages of the
66 population receiving public assistance, high poverty levels
67 compared to the state average, and a lack of year-round stable
68 employment opportunities.

69 (d) "Rural area of opportunity" means a rural community, or
70 a region composed of rural communities, designated by the
71 Governor, which has been adversely affected by ~~an extraordinary~~
72 ~~economic event~~, severe or chronic economic distress, and faces
73 competitive disadvantages such as low labor force participation,
74 low educational attainment levels, high unemployment, "D" or "F"
75 district grades pursuant to s. 1008.34, high infant mortality
76 rates, and high diabetes and obesity rates, and which ~~or a~~
77 ~~natural disaster or that~~ presents a unique economic development
78 opportunity of regional impact.

79 (e) "Rural community" means:

- 80 1. A county with a population of 75,000 or fewer.
81 2. A county with a population of 125,000 or fewer which is
82 contiguous to a county with a population of 75,000 or fewer.
83 3. A municipality within a county described in subparagraph
84 1. or subparagraph 2.
85 4. An unincorporated federal enterprise community or an
86 incorporated rural city with a population of 25,000 or fewer and
87 an employment base focused on traditional agricultural or

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88 resource-based industries, located in a county not defined as
89 rural, which has at least three or more of the economic distress
90 factors identified in paragraph (c) and verified by the
91 department.

92
93 For purposes of this paragraph, population shall be determined
94 in accordance with the most recent official estimate pursuant to
95 s. 186.901.

96 ~~(4)(3)~~ REDI ~~is shall be~~ responsible for coordinating and
97 focusing the efforts and resources of state and regional
98 agencies on the challenges of the state's rural areas of
99 opportunity and economically distressed rural communities. REDI
100 shall work problems which affect the fiscal, economic, and
101 community viability of Florida's economically distressed rural
102 communities, ~~working~~ with local governments, community-based
103 organizations, and private organizations that have an interest
104 in the renewed prosperity and competitiveness of growth and
105 ~~development of~~ these communities ~~to find ways to balance~~
106 ~~environmental and growth management issues with local needs~~.

107 ~~(5)(4)~~ REDI shall review and evaluate the impact of
108 statutes and rules on rural communities and shall work to
109 minimize any adverse impact and undertake outreach and capacity-
110 building efforts to improve rural communities' ability to
111 compete in a global economy.

112 ~~(6)(5)~~ REDI shall facilitate better access to state
113 resources by promoting direct access and referrals to
114 appropriate state and regional agencies and statewide
115 organizations. ~~REDI may undertake outreach, capacity building,~~
116 ~~and other advocacy efforts to improve conditions in rural~~

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117 ~~communities. These activities may include sponsorship of~~
 118 ~~conferences and achievement awards.~~

119 (7) (a) REDI shall consist of the following members:

- 120 1. The executive director of the Department of Economic
 121 Opportunity or his or her designee, who shall serve as the
 122 chair.
- 123 2. The Secretary of Transportation or his or her designee.
- 124 3. The Secretary of Environmental Protection or his or her
 125 designee.
- 126 4. The Commissioner of Agriculture or his or her designee.
- 127 5. The State Surgeon General or his or her designee.
- 128 6. The Commissioner of Education or his or her designee.
- 129 7. The President of Enterprise Florida, Inc., or his or her
 130 designee.
- 131 8. The chair of the board of directors of CareerSource
 132 Florida, Inc., or his or her designee.
- 133 9. The chair of the board of the regional economic
 134 development organization for each of the rural areas of
 135 opportunity or his or her designee.
- 136 10. Five members from the private sector, three of whom
 137 shall be appointed by the executive director of the Department
 138 of Economic Opportunity, one of whom shall be appointed by the
 139 President of the Senate, and one of whom shall be appointed by
 140 the Speaker of the House of Representatives.
- 141 (b) In making their appointments, the executive director,
 142 the President of the Senate, and the Speaker of the House of
 143 Representatives shall ensure that the appointments reflect the
 144 diversity of Florida's business community and are representative
 145 of the economic development goals in subsection (1).

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146 (c) The executive director, the President of the Senate,
 147 and the Speaker of the House of Representatives shall consider
 148 appointees who reflect the state's racial, ethnic, and gender
 149 diversity, and who are from rural communities.

150 (d) Each appointed member shall be appointed to a 2-year
 151 term.

152 (e) Initial appointments shall be made by July 1, 2017.
 153 Member terms shall expire on June 30.

154 (f) A vacancy shall be filled for the remainder of an
 155 unexpired term and filled in the same manner as the original
 156 appointment.

157 (g) An appointed member may be removed by the appointing
 158 officer for cause. Absence of a member from three consecutive
 159 meetings results in automatic removal.

160 (h) The chair may request the head of any state agency or
 161 organization to serve on an ad hoc committee as needed to
 162 address issues or projects relating to rural areas of
 163 opportunity and economically distressed rural communities. The
 164 chair shall consider requesting the following individuals to
 165 serve on an ad hoc committee:

- 166 1. The executive director of the Fish and Wildlife
 167 Conservation Commission or his or her designee.
- 168 2. The Secretary of State or his or her designee.
- 169 3. The Secretary of Children and Families or his or her
 170 designee.
- 171 4. The Secretary of Corrections or his or her designee.
- 172 5. The Secretary of Juvenile Justice or his or her
 173 designee.
- 174 6. The Secretary of Health Care Administration or his or

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175 her designee.

176 7. A board member of the Florida Regional Councils
 177 Association or his or her designee.

178 ~~(6) (a) By August 1 of each year, the head of each of the~~
 179 ~~following agencies and organizations shall designate a deputy~~
 180 ~~secretary or higher-level staff person from within the agency or~~
 181 ~~organization to serve as the REDI representative for the agency~~
 182 ~~or organization.~~

- 183 ~~1. The Department of Transportation.~~
- 184 ~~2. The Department of Environmental Protection.~~
- 185 ~~3. The Department of Agriculture and Consumer Services.~~
- 186 ~~4. The Department of State.~~
- 187 ~~5. The Department of Health.~~
- 188 ~~6. The Department of Children and Families.~~
- 189 ~~7. The Department of Corrections.~~
- 190 ~~8. The Department of Education.~~
- 191 ~~9. The Department of Juvenile Justice.~~
- 192 ~~10. The Fish and Wildlife Conservation Commission.~~
- 193 ~~11. Each water management district.~~
- 194 ~~12. Enterprise Florida, Inc.~~
- 195 ~~13. CareerSource Florida, Inc.~~
- 196 ~~14. VISIT Florida.~~
- 197 ~~15. The Florida Regional Planning Council Association.~~
- 198 ~~16. The Agency for Health Care Administration.~~
- 199 ~~17. The Institute of Food and Agricultural Sciences (IFAS).~~

200 ~~An alternate for each designee shall also be chosen, and the~~
 201 ~~names of the designees and alternates shall be sent to the~~
 202 ~~executive director of the department.~~
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204 (i) (b) Each REDI member from a state agency or organization
 205 ~~representative must have comprehensive knowledge of his or her~~
 206 ~~agency's functions, both regulatory and service in nature, and~~
 207 ~~of the state's economic goals, policies, and programs. This~~
 208 ~~person~~ shall be the primary point of contact for his or her
 209 agency with REDI on issues and projects relating to rural areas
 210 of opportunity and economically distressed rural communities and
 211 with regard to expediting project review, shall ensure a prompt
 212 effective response to problems arising with regard to rural
 213 issues, and shall work closely with the other REDI members
 214 representatives in the identification of opportunities for
 215 preferential awards of program funds and allowances and waiver
 216 of program requirements when necessary to encourage and
 217 facilitate long-term private capital investment and job
 218 creation. The member shall also ensure that each district office
 219 or facility of his or her agency or organization is informed
 220 about REDI and shall provide assistance throughout the agency in
 221 the implementation of REDI activities.

222 ~~(c) The REDI representatives shall work with REDI in the~~
 223 ~~review and evaluation of statutes and rules for adverse impact~~
 224 ~~on rural communities and the development of alternative~~
 225 ~~proposals to mitigate that impact.~~

226 ~~(d) Each REDI representative shall be responsible for~~
 227 ~~ensuring that each district office or facility of his or her~~
 228 ~~agency is informed about the Rural Economic Development~~
 229 ~~Initiative and for providing assistance throughout the agency in~~
 230 ~~the implementation of REDI activities.~~

231 (8) (7) (a) REDI may recommend to the Governor up to three
 232 rural areas of opportunity. The Governor may by executive order

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233 designate ~~up to three~~ rural areas of opportunity which will
 234 establish these areas as priority assignments for REDI, ~~as well~~
 235 ~~as to allow~~ The Governor may, acting through REDI, ~~to~~ waive
 236 criteria, requirements, or similar provisions of any economic
 237 development incentive. ~~Such incentives shall include, but are~~
 238 ~~not limited to, the Qualified Target Industry Tax Refund Program~~
 239 ~~under s. 288.106, the Quick Response Training Program under s.~~
 240 ~~288.047, the Quick Response Training Program for participants in~~
 241 ~~the welfare transition program under s. 288.047(8),~~
 242 ~~transportation projects under s. 339.2821, the brownfield~~
 243 ~~redevelopment bonus refund under s. 288.107, and the rural job~~
 244 ~~tax credit program under ss. 212.098 and 220.1895.~~

245 (b) Designation as a rural area of opportunity under this
 246 subsection shall be contingent upon the execution of a
 247 memorandum of agreement among the department; the governing body
 248 of the county; and the governing bodies of any municipalities to
 249 be included within a rural area of opportunity. Such agreement
 250 shall specify the terms and conditions of the designation,
 251 including, but not limited to, the duties and responsibilities
 252 of the county and any participating municipalities to take
 253 actions designed to facilitate the retention and expansion of
 254 existing businesses in the area, as well as the recruitment of
 255 new businesses to the area.

256 (c) Each rural area of opportunity may designate catalyst
 257 projects, provided that each catalyst project is specifically
 258 recommended by REDI, ~~identified as a catalyst project by~~
 259 ~~Enterprise Florida, Inc.~~, and confirmed as a catalyst project by
 260 the department. All state agencies and departments shall use all
 261 available tools and resources to the extent permissible by law

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262 to promote the creation and development of each catalyst project
 263 and the development of catalyst sites.

264 ~~(9)(8)~~ Before September 1 of each year, REDI shall submit a
 265 ~~report~~ to the department, the Governor, the President of the
 266 Senate, and the Speaker of the House of Representatives a
 267 complete and detailed report, including, but not limited to on
 268 all REDI activities for the previous fiscal year as a supplement
 269 to the department's annual report required under s. 20.60. This
 270 supplementary report must include:

271 (a) A description of the operations of ~~status report on~~ all
 272 projects currently being coordinated through REDI, the number of
 273 preferential awards and allowances made pursuant to this
 274 section, the dollar amount of such awards, ~~and~~ the names of the
 275 recipients, and an evaluation of progress toward achieving
 276 organizational goals and specific performance outcomes, as
 277 established by the department.

278 (b) A description of the accomplishments of REDI and
 279 identification of major trends, initiatives, or developments
 280 affecting the performance of a program or activity coordinated
 281 through REDI.

282 (c) A description of all waivers of program requirements
 283 granted.

284 ~~(d)(e)~~ Information as to the economic impact of the
 285 projects coordinated by REDI.

286 ~~(e)(d)~~ Recommendations based on the review and evaluation
 287 of statutes and rules having an adverse impact on rural
 288 communities and proposals to mitigate such adverse impacts.

289 Section 2. Paragraph (e) of subsection (7) of section
 290 163.3177, Florida Statutes, is amended to read:

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291 163.3177 Required and optional elements of comprehensive
292 plan; studies and surveys.—

293 (7)

294 (e) This subsection does not confer the status of rural
295 area of opportunity, or any of the rights or benefits derived
296 from such status, on any land area not otherwise designated as
297 such pursuant to s. 288.0656(8) ~~s. 288.0656(7)~~.

298 Section 3. Subsection (3) of section 163.3187, Florida
299 Statutes, is amended to read:

300 163.3187 Process for adoption of small-scale comprehensive
301 plan amendment.—

302 (3) If the small scale development amendment involves a
303 site within a rural area of opportunity as defined under s.
304 288.0656(3) (d) ~~s. 288.0656(2) (d)~~ for the duration of such
305 designation, the 10-acre limit listed in subsection (1) shall be
306 increased by 100 percent to 20 acres. The local government
307 approving the small scale plan amendment shall certify to the
308 state land planning agency that the plan amendment furthers the
309 economic objectives set forth in the executive order issued
310 under s. 288.0656(8) ~~s. 288.0656(7)~~, and the property subject to
311 the plan amendment shall undergo public review to ensure that
312 all concurrency requirements and federal, state, and local
313 environmental permit requirements are met.

314 Section 4. Subsection (2) of section 257.193, Florida
315 Statutes, is amended to read:

316 257.193 Community Libraries in Caring Program.—

317 (2) The purpose of the Community Libraries in Caring
318 Program is to assist libraries in rural communities, as defined
319 in s. 288.0656(3) ~~s. 288.0656(2)~~ and subject to the provisions

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320 of s. 288.06561, to strengthen their collections and services,
321 improve literacy in their communities, and improve the economic
322 viability of their communities.

323 Section 5. Section 288.019, Florida Statutes, is amended to
324 read:

325 288.019 Rural considerations in grant review and evaluation
326 processes.—Notwithstanding any other law, and to the fullest
327 extent possible, the member agencies and organizations of the
328 Rural Economic Development Initiative (REDI) as defined in s.
329 288.0656(7) (a) ~~s. 288.0656(6) (a)~~ shall review all grant and loan
330 application evaluation criteria to ensure the fullest access for
331 rural counties as defined in s. 288.0656(3) ~~s. 288.0656(2)~~ to
332 resources available throughout the state.

333 (1) Each REDI agency and organization shall review all
334 evaluation and scoring procedures and develop modifications to
335 those procedures which minimize the impact of a project within a
336 rural area.

337 (2) Evaluation criteria and scoring procedures must provide
338 for an appropriate ranking based on the proportionate impact
339 that projects have on a rural area when compared with similar
340 project impacts on an urban area.

341 (3) Evaluation criteria and scoring procedures must
342 recognize the disparity of available fiscal resources for an
343 equal level of financial support from an urban county and a
344 rural county.

345 (a) The evaluation criteria should weight contribution in
346 proportion to the amount of funding available at the local
347 level.

348 (b) In-kind match should be allowed and applied as

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349 financial match when a county is experiencing financial distress
 350 through elevated unemployment at a rate in excess of the state's
 351 average by 5 percentage points or because of the loss of its ad
 352 valorem base.

353 (4) For existing programs, the modified evaluation criteria
 354 and scoring procedure must be delivered to the department for
 355 distribution to the REDI agencies and organizations. The REDI
 356 agencies and organizations shall review and make comments.
 357 Future rules, programs, evaluation criteria, and scoring
 358 processes must be brought before a REDI meeting for review,
 359 discussion, and recommendation to allow rural counties fuller
 360 access to the state's resources.

361 Section 6. Section 288.06561, Florida Statutes, is amended
 362 to read:

363 288.06561 Reduction or waiver of financial match
 364 requirements.—Notwithstanding any other law, the member agencies
 365 and organizations of the Rural Economic Development Initiative
 366 (REDI), as defined in s. 288.0656(7) (a) ~~s. 288.0656(6) (a)~~, shall
 367 review the financial match requirements for projects in rural
 368 areas as defined in s. 288.0656(3) ~~s. 288.0656(2)~~.

369 (1) Each agency and organization shall develop a proposal
 370 to waive or reduce the match requirement for rural areas.

371 (2) Agencies and organizations shall ensure that all
 372 proposals are submitted to the department for review by the REDI
 373 agencies.

374 (3) These proposals shall be delivered to the department
 375 for distribution to the REDI agencies and organizations. A
 376 meeting of REDI agencies and organizations must be called within
 377 30 days after receipt of such proposals for REDI comment and

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378 recommendations on each proposal.

379 (4) Waivers and reductions must be requested by the county
 380 or community, and such county or community must have three or
 381 more of the factors identified in s. 288.0656(3) (c) ~~s.~~
 382 ~~288.0656(2) (c)~~.

383 (5) Any other funds available to the project may be used
 384 for financial match of federal programs when there is fiscal
 385 hardship, and the match requirements may not be waived or
 386 reduced.

387 (6) When match requirements are not reduced or eliminated,
 388 donations of land, though usually not recognized as an in-kind
 389 match, may be permitted.

390 (7) To the fullest extent possible, agencies and
 391 organizations shall expedite the rule adoption and amendment
 392 process if necessary to incorporate the reduction in match by
 393 rural areas in fiscal distress.

394 (8) REDI shall include in its annual report an evaluation
 395 on the status of changes to rules, number of awards made with
 396 waivers, and recommendations for future changes.

397 Section 7. Paragraph (d) of subsection (6) of section
 398 290.0055, Florida Statutes, is amended to read:

399 290.0055 Local nominating procedure.—

400 (6)

401 (d)1. The governing body of a jurisdiction which has
 402 nominated an application for an enterprise zone that is at least
 403 15 square miles and less than 20 square miles and includes a
 404 portion of the state designated as a rural area of opportunity
 405 under s. 288.0656(8) ~~s. 288.0656(7)~~ may apply to the department
 406 to expand the boundary of the existing enterprise zone by not

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407 more than 3 square miles.

408 2. The governing body of a jurisdiction which has nominated
409 an application for an enterprise zone that is at least 20 square
410 miles and includes a portion of the state designated as a rural
411 area of opportunity under s. 288.0656(8) ~~s. 288.0656(7)~~ may
412 apply to the department to expand the boundary of the existing
413 enterprise zone by not more than 5 square miles.

414 3. An application to expand the boundary of an enterprise
415 zone under this paragraph must be submitted by December 31,
416 2013.

417 4. Notwithstanding the area limitations specified in
418 subsection (4), the department may approve the request for a
419 boundary amendment if the area continues to satisfy the
420 remaining requirements of this section.

421 5. The department shall establish the initial effective
422 date of an enterprise zone designated under this paragraph.

423 Section 8. Section 290.06561, Florida Statutes, is amended
424 to read:

425 290.06561 Designation of rural enterprise zone as catalyst
426 site.—Notwithstanding s. 290.0065(1), the Department of Economic
427 Opportunity, upon request of the host county, shall designate as
428 a rural enterprise zone any catalyst site as defined in s.
429 288.0656(3)(b) ~~s. 288.0656(2)(b)~~ that was approved before
430 January 1, 2010, and that is not located in an existing rural
431 enterprise zone. The request from the host county must include
432 the legal description of the catalyst site and the name and
433 contact information for the county development authority
434 responsible for managing the catalyst site. The designation
435 shall provide businesses locating within the catalyst site the

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436 same eligibility for economic incentives and other benefits of a
437 rural enterprise zone designated under s. 290.0065. The
438 reporting criteria for a catalyst site designated as a rural
439 enterprise zone under this section are the same as for other
440 rural enterprise zones. Host county development authorities may
441 enter into memoranda of agreement, as necessary, to coordinate
442 their efforts to implement this section.

443 Section 9. Paragraph (h) of subsection (1) of section
444 337.403, Florida Statutes, is amended to read:

445 337.403 Interference caused by utility; expenses.—

446 (1) If a utility that is placed upon, under, over, or
447 within the right-of-way limits of any public road or publicly
448 owned rail corridor is found by the authority to be unreasonably
449 interfering in any way with the convenient, safe, or continuous
450 use, or the maintenance, improvement, extension, or expansion,
451 of such public road or publicly owned rail corridor, the utility
452 owner shall, upon 30 days' written notice to the utility or its
453 agent by the authority, initiate the work necessary to alleviate
454 the interference at its own expense except as provided in
455 paragraphs (a)-(j). The work must be completed within such
456 reasonable time as stated in the notice or such time as agreed
457 to by the authority and the utility owner.

458 (h) If a municipally owned utility or county-owned utility
459 is located in a rural area of opportunity, as defined in s.
460 288.0656(3) ~~s. 288.0656(2)~~, and the department determines that
461 the utility is unable, and will not be able within the next 10
462 years, to pay for the cost of utility work necessitated by a
463 department project on the State Highway System, the department
464 may pay, in whole or in part, the cost of such utility work

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465 performed by the department or its contractor.
 466 Section 10. Subsection (7) of section 339.2818, Florida
 467 Statutes, is amended to read:
 468 339.2818 Small County Outreach Program.—
 469 (7) Subject to a specific appropriation in addition to
 470 funds annually appropriated for projects under this section, a
 471 municipality within a rural area of opportunity or a rural area
 472 of opportunity community designated under s. 288.0656(8) (a) ~~or~~
 473 ~~288.0656(7) (a)~~ may compete for the additional project funding
 474 using the criteria listed in subsection (4) at up to 100 percent
 475 of project costs, excluding capacity improvement projects.
 476 Section 11. Paragraph (c) of subsection (4) of section
 477 339.2819, Florida Statutes, is amended to read:
 478 339.2819 Transportation Regional Incentive Program.—
 479 (4)
 480 (c) The department shall give priority to projects that:
 481 1. Provide connectivity to the Strategic Intermodal System
 482 developed under s. 339.64.
 483 2. Support economic development and the movement of goods
 484 in rural areas of opportunity designated under s. 288.0656(8) ~~or~~
 485 ~~288.0656(7)~~.
 486 3. Are subject to a local ordinance that establishes
 487 corridor management techniques, including access management
 488 strategies, right-of-way acquisition and protection measures,
 489 appropriate land use strategies, zoning, and setback
 490 requirements for adjacent land uses.
 491 4. Improve connectivity between military installations and
 492 the Strategic Highway Network or the Strategic Rail Corridor
 493 Network.

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494
 495 The department shall also consider the extent to which local
 496 matching funds are available to be committed to the project.
 497 Section 12. Paragraph (b) of subsection (5) of section
 498 339.63, Florida Statutes, is amended to read:
 499 339.63 System facilities designated; additions and
 500 deletions.—
 501 (5)
 502 (b) A facility designated part of the Strategic Intermodal
 503 System pursuant to paragraph (a) that is within the jurisdiction
 504 of a local government that maintains a transportation
 505 concurrency system shall receive a waiver of transportation
 506 concurrency requirements applicable to Strategic Intermodal
 507 System facilities in order to accommodate any development at the
 508 facility which occurs pursuant to a building permit issued on or
 509 before December 31, 2017, but only if such facility is located:
 510 1. Within an area designated pursuant to s. 288.0656(8) ~~or~~
 511 ~~288.0656(7)~~ as a rural area of opportunity;
 512 2. Within a rural enterprise zone as defined in s.
 513 290.004(5); or
 514 3. Within 15 miles of the boundary of a rural area of
 515 opportunity or a rural enterprise zone.
 516 Section 13. Subsection (16) of section 479.16, Florida
 517 Statutes, is amended to read:
 518 479.16 Signs for which permits are not required.—The
 519 following signs are exempt from the requirement that a permit
 520 for a sign be obtained under this chapter but are required to
 521 comply with s. 479.11(4)-(8), and subsections (15)-(20) may not
 522 be implemented or continued if the Federal Government notifies

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523 the department that implementation or continuation will
524 adversely affect the allocation of federal funds to the
525 department:

526 (16) Signs placed by a local tourist-oriented business
527 located within a rural area of opportunity as defined in s.
528 288.0656(3) ~~s. 288.0656(2)~~ which are:

529 (a) Not more than 8 square feet in size or more than 4 feet
530 in height;

531 (b) Located only in rural areas on a facility that does not
532 meet the definition of a limited access facility, as defined in
533 s. 334.03;

534 (c) Located within 2 miles of the business location and at
535 least 500 feet apart;

536 (d) Located only in two directions leading to the business;
537 and

538 (e) Not located within the road right-of-way.

539 A business placing such signs must be at least 4 miles from any
540 other business using this exemption and may not participate in
541 any other directional signage program by the department.
542

543 If the exemptions in subsections (15)-(20) are not implemented
544 or continued due to notification from the Federal Government
545 that the allocation of federal funds to the department will be
546 adversely impacted, the department shall provide notice to the
547 sign owner that the sign must be removed within 30 days after
548 receipt of the notice. If the sign is not removed within 30 days
549 after receipt of the notice by the sign owner, the department
550 may remove the sign, and the costs incurred in connection with
551

575-03317-17 2017600c1

552 the sign removal shall be assessed against and collected from
553 the sign owner.

554 Section 14. Paragraph (d) of subsection (14) of section
555 627.6699, Florida Statutes, is amended to read:

556 627.6699 Employee Health Care Access Act.—

557 (14) SMALL EMPLOYERS ACCESS PROGRAM.—

558 (d) *Eligibility*.—

559 1. Any small employer that is actively engaged in business,
560 has its principal place of business in this state, employs up to
561 25 eligible employees on business days during the preceding
562 calendar year, employs at least 2 employees on the first day of
563 the plan year, and has had no prior coverage for the last 6
564 months may participate.

565 2. Any municipality, county, school district, or hospital
566 employer located in a rural community as defined in s.
567 288.0656(3) ~~s. 288.0656(2)~~ may participate.

568 3. Nursing home employers may participate.

569 4. Each dependent of a person eligible for coverage is also
570 eligible to participate.

571 Any employer participating in the program must do so until the
572 end of the term for which the carrier providing the coverage is
573 obligated to provide such coverage to the program. Coverage for
574 a small employer group that ceases to meet the eligibility
575 requirements of this section may be terminated at the end of the
576 policy period for which the necessary premiums have been paid.

577 Section 15. This act shall take effect upon becoming a law.
578



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: April 5, 2017

I respectfully request that **CS/Senate Bill #600**, relating to Rural Economic Development Initiative, be placed on the:

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

A handwritten signature in black ink that reads "Denise Grimsley".

Senator Denise Grimsley
Florida Senate, District 26

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-18-17

Meeting Date

SB 600

Bill Number (if applicable)

Topic SB 600

Amendment Barcode (if applicable)

Name Chris Doolin

Job Title Consultant to Small County Coalition

Address 1118-B Thomasville Rd.

Phone 850-508-5492

Street

Tallahassee Fla 32303

City

State

Zip

Email cdoolin@nettally.com

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

4/17/17

Meeting Date

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

600

Bill Number (if applicable)

Topic Rural Economic Development

Amendment Barcode (if applicable)

Name Adam Basford

Job Title Director, Legislative Affairs

Address 310 S ~~Catford~~ W. College Ave

Phone 227 2557

Street

Tallahassee

City

FL

State

32301

Zip

Email

Speaking: For Against Information

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

Representing Florida Farm Bureau

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

9/17/17
Meeting Date

SB 600
Bill Number (if applicable)

Topic REDI BILL

Amendment Barcode (if applicable)

Name ROY BAKER

Job Title BUS. DEV. COORDINATOR FL

Address 4636 HWY 90, SUITE K
Street

Phone 850.633.4119

MARIANNA FL 32446
City State Zip

Email ROYB@OPPORTUNITY
FLORIDA.COM

Speaking: For Against Information

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

Representing OPPORTUNITY FLORIDA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/17/17

Meeting Date

SB 600

Bill Number (if applicable)

Topic Rural Economic Development

Amendment Barcode (if applicable)

Name Ellen Anderson

Job Title Director, Government Relations

Address 106 E. College Ave, Suite 650

Phone 228-7959

Street

Tallahassee FL 32301

City

State

Zip

Email Ellen.Anderson@cvs.net

Speaking: For Against Information

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

Representing Community Health Systems

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)

4/17/17

Meeting Date

6000

Bill Number (if applicable)

Topic Rural Economic Dev Initiative

Amendment Barcode (if applicable)

Name Cavolyn Johnson

Job Title Policy Director

Address 136 S Bronaugh St
Street

Phone 850-521-1200

Tallahassee FL 32301
City State Zip

Email cjohnson@flchamber.com

Speaking: For Against Information

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

Representing FL 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)

4/17/17
Meeting/Date

600
Bill Number (if applicable)

Topic Rural Economic Development

Amendment Barcode (if applicable)

Name Jim Spratt

Job Title _____

Address PO Box 10011
Street

Phone 850-220-1296

TLH FL 32302
City State Zip

Email Jim.e.magnoli@stetson.edu

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

Apr. 17, 2017
Meeting Date

600
Bill Number (if applicable)

Topic REDI

Amendment Barcode (if applicable)

Name Grace Lovett

Job Title Dir. legislative affairs

Address PL 10 The Capitol
Street
Tallahassee FL 32399
City State Zip

Phone 850 617 7700

Email grace.lovett@freshfromflorida.com

Speaking: For Against Information

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

Representing FL Dept. of Agriculture & Consumer Services

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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 686

INTRODUCER: Criminal Justice Committee and Senator Baxley

SUBJECT: Public Records/Internet Identifiers

DATE: April 14, 2017

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 686 provides that electronic mail addresses and Internet identifiers registered by sexual predators or sexual offenders and held by agencies pursuant to specified statutory authority are exempt from public disclosure. This exemption applies to records held before, on, or after the effective date of the bill. However, a law enforcement agency is not prohibited from confirming to a member of the public that an electronic mail address or Internet identifier is registered in the Florida Department of Law Enforcement sexual offender and sexual predator registry.

The bill provides that 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 includes a public necessity statement as required by the Florida Constitution.

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

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.

This bill becomes effective at the same time that SB 684 or similar legislation takes effect.

II. Present Situation:

Florida law requires registration of any person who has been convicted or adjudicated delinquent of a specified sex offense or offenses and who meets other statutory criteria that qualify the person for designation as a sexual predator or classification as a sexual offender. The registration laws also require reregistration and provide for public and community notification of certain information about sexual predators and sexual offenders. The laws span several different chapters and numerous statutes,¹ and are implemented through the combined efforts of the Florida Department of Law Enforcement (FDLE), all Florida sheriffs, the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), the Department of Highway Safety and Motor Vehicles (DHSMV), and the Department of Children and Families (DCF).

A person is designated as a sexual predator by a court if the person:

- Has been convicted of a current qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;²
- Has been convicted of a current qualifying sex offense committed on or after October 1, 1993, and has a prior conviction for a qualifying sex offense; or
- Was found to be a sexually violent predator in a civil commitment proceeding.³

A person is classified as a sexual offender if the person:

- Has been convicted of a qualifying sex offense and has been released on or after October 1, 1997, (the date the modern registry became effective), from the sanction imposed for that offense;
- Establishes or maintains a Florida residence and is subject to registration or community or public notification in another state or jurisdiction or is in the custody or control of, or under the supervision of, another state or jurisdiction as a result of a conviction for a qualifying sex offense; or
- On or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the person was 14 years of age or older.⁴

Sexual predators and sexual offenders are required to report certain information, including electronic mail addresses⁵ and Internet identifiers.⁶ The FDLE may provide information relating to electronic mail addresses and Internet identifiers maintained as part of the sexual offender

¹ Sections 775.21-775.25, 943.043-943.0437, 944.606-944.607, and 985.481-985.4815, F.S.

² Examples of qualifying sex offenses are sexual battery by an adult on a child under 12 years of age (s. 794.011(2)(a), F.S.) and lewd battery by an adult on a child 12 years of age or older but under 16 years of age (s. 800.04(4)(a), F.S.).

³ Section s. 775.21(4) and (5), F.S. The Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act, part V, ch. 394, F.S., provides for the civil confinement of a group of sexual offenders who, due to their criminal history and the presence of mental abnormality, are found likely to engage in future acts of sexual violence if they are not confined in a secure facility for long-term control, care, and treatment.

⁴ Sections 943.0435(1)(h) and 985.4815(1)(h), F.S. Sections 944.606(1)(f) and 944.607(1)(f), F.S., which address sexual offenders in the custody of or under the supervision of the Department of Corrections, also define the term "sexual offender."

⁵ An "electronic mail address" is defined in s. 775.21(2)(g), F.S., as having the same meaning as provided in s. 668.602, F.S. Section 668.602(6), F.S., defines an "electronic mail address" as a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.

⁶ Requirements to report electronic mail addresses and Internet identifiers and changes in this information are in: s. 775.21(6)(a), (e), and (g) and (8), F.S.; s. 943.0435(2)(a), (4)(e), and (14)(c), F.S.; s. 944.607(4)(a) and (13)(c), F.S.; and s. 985.4815(4)(a) and (13)(b), F.S.

registry to commercial social networking websites⁷ or third parties designated by commercial social networking websites.⁸ The commercial social networking website may use this information for the purpose of comparing registered users and screening potential users of the commercial social networking website against the list of electronic mail addresses and Internet identifiers provided by the FDLE.⁹

Requirements for in-person registration and reregistration are similar for sexual predators and sexual offenders,¹⁰ but the frequency of reregistration may differ.¹¹ Registration requirements may also differ based on a special status, e.g., the sexual predator or sexual offender is in the DOC's control or custody, under DOC or DJJ supervision, or in residential commitment under the DJJ.¹²

The FDLE, through its agency website, provides a searchable database that contains information about sexual predators and sexual offenders.¹³ Further, local law enforcement agencies provide access to this information, typically through a link to the state public registry webpage.

Florida's registry laws meet minimum requirements of the federal Sex Offender Registration and Notification Act (SORNA), which is Title I of the Adam Walsh Protection and Safety Act of 2006 (AWA).¹⁴ The SORNA attempts to make all states' laws uniform with respect to requirements (or minimum standards) that Congress judged to be necessary to be included in states' registry laws. The U.S. Department of Justice (DOJ) maintains the Dru Sjodin National

⁷ For the purpose of s. 943.0437, F.S., the term "commercial social networking website" means a commercially operated Internet website that allows users to create web pages or profiles that provide information about themselves and are available publicly or to other users and that offers a mechanism for communication with other users, such as a forum, chat room, electronic mail, or instant messenger. Section 943.0437(1), F.S.

⁸ Section 943.0437(2), F.S.

⁹ *Id.*

¹⁰ Sexual predator reporting requirements are in s. 775.21(6) and (8), F.S. Sexual offender reporting requirements are in ss. 943.0435(2-4), (7-8), and (14), 944.607(4), (9), and (13), and 985.4815(4), (9), and (13), F.S.

¹¹ A sexual predator is required to reregister each year during the month of the predator's birthday and during every third month thereafter. Section 775.21(8), F.S. A sexual offender convicted of any listed offense in s. 943.0435(14)(b), F.S., must reregister in the same manner as a sexual predator. Any other sex offender must reregister each year during the month of the offender's birthday and during the sixth month following the offender's birth month. Section 943.0435(14)(a), F.S.

¹² See footnote 10.

¹³ The FDLE is the central repository for registration information. The department also maintains the state public registry and ensures Florida's compliance with federal laws. The Florida sheriffs handle in-person registration and reregistration. "About Us" (updated October 1, 2016), Florida Department of Law Enforcement, *available at* <http://offender.fdle.state.fl.us/offender/About.jsp> (last visited on March 13, 2017). The FDLE maintains a database that allows members of the public to search for sexual offenders and sexual predators through a variety of search options, including name, neighborhood, and enrollment, employment, or volunteer status at a institute of higher education. Members of the public may also check whether an electronic mail address or Internet identifier belongs to a registered sexual offender or sexual predator. Offender searches and other information may be accessed from "Florida Sexual Offenders and Predators," Florida Department of Law Enforcement, *available at* <http://offender.fdle.state.fl.us/offender/Search.jsp> (last visited on March 13, 2017).

¹⁴ 42 U.S.C. Sections 16911 *et seq.* The Department of Justice issued guidelines for the implementation of the SORNA. The final guidelines (July 2008) and supplemental guidelines (January 11, 2011) may be accessed at "Guidelines," Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), Office of Justice Programs, U.S. Department of Justice, *available at* <https://ojp.gov/smart/guidelines.htm> (last visited on March 13, 2017).

Sex Offender Public Website (NSOPW).¹⁵ States may choose not to substantially implement the SORNA, but the AWA penalizes noncompliance by partially reducing Byrne Justice Assistance Grant funding.¹⁶ The DOJ has determined that Florida has substantially implemented the SORNA.¹⁷

Preliminary Injunction Precluding Enforcement of the Current Definition of Internet Identifier

As previously noted, sexual predators and sexual offenders are required to report certain information, including Internet identifiers. The requirement to report Internet identifiers was created by the Legislature in 2014.¹⁸ In 2016, the Legislature modified the original definition of “Internet identifier.”¹⁹ This modified definition, which was to take effect on October 1, 2016,²⁰ expanded the original definition to include Internet identifiers associated with a website, URL²¹ or software applications.

Section 775.21(2)(j), F.S., provides that an “Internet identifier” includes, but is not limited to, all websites, URLs and application software mobile or nonmobile, used for Internet communication, including anonymous communication, through electronic mail, chat, instant messages, social networking, social gaming, or other similar programs and all corresponding usernames, logins, screen names, and screen identifiers associated with each URL or application software. Internet identifier does not include a date of birth, Social Security number, personal identification number (PIN), URL, or application software used for utility, banking, retail, or medical purposes. Voluntary disclosure by a sexual predator or sexual offender of his or her date of birth, Social Security number, or PIN as an Internet identifier waives the disclosure exemption in this paragraph for such personal information.²²

Shortly before the amended definition of “Internet identifier” was slated to take effect, a group of plaintiffs in Florida who had been convicted as sexual offenders filed a lawsuit against the

¹⁵ Offender searches and other information may be accessed from “NSPOW,” Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), Office of Justice Programs, U.S. Department of Justice, available at <http://www.nsopw.gov/Core/Portal.aspx> (last visited on March 13, 2017).

¹⁶ *Edward Byrne Justice Assistance Grant (JAG) Program Fact Sheet*, Bureau of Justice Assistance, U.S. Department of Justice (updated January 1, 2016) available at <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=266685> (last visited on March 13, 2017).

¹⁷ “Jurisdictions that have substantially implemented SORNA,” Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), Office of Justice Programs, U.S. Department of Justice, available at http://www.ojp.usdoj.gov/smart/newsroom_jurisdictions_sorna.htm (last visited on March 13, 2017).

¹⁸ Chapter 2014-5, Laws of Fla.

¹⁹ Chapter 2016-104, Laws of Fla. (amending s. 775.21(2)(i), F.S., and renumbering it as s. 775.21(2)(j), F.S.). The original definition of “Internet identifier” was all electronic mail, chat, instant messenger, social networking, application software, or similar names used for Internet communication, but did not include a date of birth, social security number, or PIN. Voluntary disclosure by a sexual predator of his or her date of birth, social security number, or PIN as an Internet identifier waived the disclosure exemption in this paragraph for such personal information. Section 775.21(2)(i), F.S. (2014).

²⁰ *Id.*

²¹ “URL stands for Uniform Resource Locator, and is used to specify addresses on the World Wide Web. A URL is the fundamental network identification for any resource connected to the web (e.g., hypertext pages, images, and sound files).” “ARCHIVED: What is a URL?,” Indiana University Information Technology Knowledge Base Repository, available at <https://kb.iu.edu/d/adnz> (last visited on March 14, 2017).

²² Sections 943.0435(1)(e), 944.607, and 985.4815, F.S., provide that “Internet identifier” has the same meaning as provided in s. 775.21, F.S.

Commissioner of the FDLE in the United States District Court for the Northern District of Florida, Tallahassee Division.²³ The plaintiffs argued that the prior and amended definition of “Internet identifier” violated the First Amendment and raised a vagueness challenge. The plaintiffs also moved for a preliminary injunction, which the court treated as a challenge only to the amended definition.

The court found the current definition is “hopelessly vague, chills speech protected by the First Amendment, and is far broader than necessary to serve the state’s legitimate interest in deterring or solving online sex crimes.”²⁴ The court granted the preliminary injunction.

The court stated the definition “sets no outer limit, because the term is expressly ‘not limited to’ what the definition says. Having jettisoned the ordinary understanding and replaced it with an expressly unlimited description, the definition leaves a sex offender guessing at what must be disclosed.”²⁵ The court also stated that the definition, “at least on many plausible readings, is hopelessly and unnecessarily broad in scope.” One of the examples the court cited in its finding was that of a registered sex offender, John Doe’s, subscription to a digital newspaper. In the court’s illustration, Mr. Doe, receives an e-mail every morning with the day’s headlines and e-mails every day with additional articles or breaking news. The court continued:

He plainly must register at least the URL for the newspaper, if not the URL for every article the newspaper sends. But the State has absolutely no legitimate interest in requiring a sex offender to register the URL of the newspaper or articles the offender reads. And if Mr. Doe chooses one day to make a comment on an article, he must now figure out whether the same URL is in use, and he must make his identity available to the public. Unlike every other subscriber or member of the public, Mr. Doe cannot comment anonymously. *See White v. Baker*, 696 F. Supp. 2d 1289, 1313 (N.D. Ga. 2010) (holding that enforcement of a registration requirement would irreparably harm a registered sex offender “by chilling his First Amendment right to engage in anonymous free speech”).²⁶

The order states that the preliminary injunction remains in effect until entry of a final judgment in the case or until otherwise ordered. The injunction prohibits the FDLE Commissioner²⁷ from taking any action based on the current definition of “Internet identifier.” However, the injunction does not preclude enforcement of the prior definition.

²³ The plaintiffs filed this action against current FDLE Commissioner Richard “Rick” L. Swearingen in his official capacity. Preliminary Injunction, *Doe I et al. v. Swearingen, etc.*, Case No. 4:16-00cv501-RH-CAS (N.D. Fla. Sept. 27, 2016) (on file with the Senate Committee on Criminal Justice). All information regarding this case is from this source.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* The injunction also binds the Commissioner’s “officers, agents, servants, employees, and attorneys - and others in active concert or participation with any of them - who receive actual notice of this injunction by personal service or otherwise.” *Id.*

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.²⁸ 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.²⁹

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³⁰ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.³¹ 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.³²

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.³³ 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.”³⁴ A violation of the Public Records Act may result in civil or criminal liability.³⁵

The Legislature may create an exemption to public records requirements.³⁶ An exemption must pass by a two-thirds vote of the House and the Senate.³⁷ 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.³⁸ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.³⁹

²⁸ FLA. CONST., art. I, s. 24(a).

²⁹ *Id.*

³⁰ 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.

³¹ Public records laws are found throughout the Florida Statutes.

³² Section 119.01(1), F.S.

³³ 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.”

³⁴ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

³⁵ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

³⁶ FLA. CONST., art. I, s. 24(c).

³⁷ *Id.*

³⁸ *Id.*

³⁹ *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).

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”⁴⁰ 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.⁴¹

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.⁴² 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.⁴³

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.⁴⁴ 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;⁴⁵
- 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;⁴⁶ or
- It protects trade or business secrets.⁴⁷

The OGSR also requires specified questions to be considered during the review process.⁴⁸ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

⁴⁰ 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).

⁴¹ *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

⁴² 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.

⁴³ Section 119.15(3), F.S.

⁴⁴ Section 119.15(6)(b), F.S.

⁴⁵ Section 119.15(6)(b)1., F.S.

⁴⁶ Section 119.15(6)(b)2., F.S.

⁴⁷ Section 119.15(6)(b)3., F.S.

⁴⁸ 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?

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.⁴⁹ 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.⁵⁰

III. Effect of Proposed Changes:

The bill amends s. 119.071(5), F.S., to create a new paragraph (l), which provides that electronic mail addresses and Internet identifiers registered by sexual predators or sexual offenders and held by agencies pursuant to ss. 775.21, 943.0435, 944.606, 944.607, 985.481, or 985.4815, F.S., are exempt from public disclosure.

The bill references definitions for “electronic mail address” and “Internet identifier.” “Electronic mail address” has the same meaning as provided in s. 668.602, F.S. Section 668.602(6), F.S., provides that “electronic mail address” means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered. “Internet identifier” has the same meaning as provided in s. 775.21, F.S. The substantive linked bill, CS/SB 684, provides that “Internet identifier” means:

any designation, moniker, screen name, username, or other name used for self-identification to send or receive social Internet communication. Internet identifier does not include a date of birth, social security number, personal identification number (PIN), or password. A sexual offender’s or sexual predator’s use of an Internet identifier that discloses his or her date of birth, social security number, personal identification number (PIN), password, or other information that would reveal the identity of the sexual offender or sexual predator waives the disclosure exemption in this paragraph and in s. 119.071(5)(l) for such personal information.⁵¹

This exemption applies to records held before, on, or after the effective date of the bill.

The bill expressly states that a law enforcement agency is not prohibited from confirming to a member of the public that an electronic mail address or Internet identifier reported pursuant to ss. 775.21, 943.0435, 944.606, 944.607, 985.481, or 985.4815, F.S., is registered in the FDLE sexual offender and sexual predator registry.

The bill provides that the exemption is subject to the OGSR Act in accordance with s. 119.15, F.S., and stands repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

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

⁴⁹ FLA. CONST. art. I, s. 24(c).

⁵⁰ Section 119.15(7), F.S.

⁵¹ This is the definition as amended by the CS/SB 684. Coding has been removed.

The bill includes a public necessity statement as required by the Florida Constitution.⁵² The statement includes the following legislative findings that it is a public necessity to create the exemption:

- The exemption strikes an important balance between the government’s legitimate interest in public safety and protecting individuals’ rights afforded under the Florida Constitution and First Amendment rights protected by the United States Constitution.
- The exemption maintains the ability of members of the public to confirm whether an electronic mail address or Internet identifier is associated with or is contained in the sexual offender and sexual predator registry without obtaining the personal identifying information of the registrant associated with this information.
- The exemption allows members of the public access to safety information which assists them in making informed decisions regarding communicating or otherwise interacting with registered sexual predators and sexual offenders.
- The exemption preserves the ability of criminal justice agencies to access valuable investigative information.
- Criminal justice agencies are tasked with the prevention of crimes to protect residents, particularly children, from sexual exploitation through investigating and bringing offenders to justice.
- As daily life necessitates increasing dependence upon access to the Internet, sexual exploitation through the use of the Internet grows as well.
- There is a nexus between commercial social networking sites and Internet sex crimes. Commercial social networking sites are widely used among youth and adults for introduction, communication, and publication of personal details that may be exploited.
- Locating missing children, sexual predators, and sexual offenders who have evaded registration is greatly aided through the use of registered electronic mail addresses and Internet identifiers.
- Without the exemption, criminal justice agencies may lose access to information which has become a valuable investigative tool since the inception of this registration requirement.
- Absent a registration requirement for electronic mail addresses and Internet identifiers, investigative agencies will be severely hampered in the growing call to protect Florida residents from sexual exploitation online.
- Electronic mail addresses and Internet identifiers have an exceptional distinction from other registration requirements in that they are used as unique personal identifiers for speech and communication, and because of this distinction, a public records exemption is required to avoid any appearance of infringement on registrants’ constitutional rights.
- If the ability to collect this information were prevented, it would greatly disrupt the ability of criminal justice agencies to use this essential information in combatting the prevalent problem of online sexual exploitation of children.

The bill also directs the Division of Law Revision and Information to replace the phrase “the effective date of this act” whenever it occurs in this act with the date the act becomes a law.

The bill takes effect on the same date that SB 684 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof, and becomes law.

⁵² Article I, s. 24(c), FLA. CONST.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

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

Public Necessity Statement

Article I, s. 24(c) of the Florida 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 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 public records exemption is 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 does not appear to have a fiscal impact on state or local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:**Connected Bill**

A connected bill, CS/SB 684 (2017), revises provisions requiring registered sexual predators and sexual offenders to report Internet identifiers. These revisions include modifying the definition of the term “Internet identifier” and defining a connected term “social Internet communication.” The bill also requires a sexual predator and sexual offender to report each Internet identifier’s corresponding website homepage or application software name.

Access to Sex Offender Registry Information

The bill does not affect the public’s access to information currently available on the sex offender registry. The online registry does not include sex offenders’ electronic mail addresses or Internet identifiers.

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 Criminal Justice on April 3, 2017:

The committee substitute:

- Specifies that the public records exemption applies to electronic mail addresses and Internet identifiers registered by sexual predators or sexual offenders and held by agencies pursuant to specified statutory authority.
- Removes language stating that the electronic mail addresses and Internet identifiers can be used “only by criminal justice agencies for criminal justice purposes.”
- Removes language precluding disclosure of personal identification information linked to exempt electronic mail addresses and Internet identifiers.
- Removes language authorizing the FDLE to provide exempt information pursuant to s. 943.0437, F.S. (commercial social networking sites).
- Revises the public necessity statement.
- Revises the effective date by providing a contingent effective date (effective on the same date that SB 684 or similar legislation takes effect in the same session).

- B. **Amendments:**

None.

By the Committee on Criminal Justice; and Senator Baxley

591-03323A-17

2017686c1

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; defining terms; requiring that
 4 electronic mail addresses and Internet identifiers of
 5 sexual predators or sexual offenders reported pursuant
 6 to specified laws be exempt from public records
 7 requirements; providing retroactive applicability;
 8 providing construction; providing for future review
 9 and repeal of the exemption; providing a statement of
 10 public necessity; providing a directive to the
 11 Division of Law Revision and Information; providing a
 12 contingent effective date.
 13
 14 Be It Enacted by the Legislature of the State of Florida:
 15
 16 Section 1. Paragraph (1) is added to subsection (5) of
 17 section 119.071, Florida Statutes, to read:
 18 119.071 General exemptions from inspection or copying of
 19 public records.—
 20 (5) OTHER PERSONAL INFORMATION.—
 21 (1)1. As used in this paragraph, the term:
 22 a. "Electronic mail address" has the same meaning as in s.
 23 668.602.
 24 b. "Internet identifier" has the same meaning as in s.
 25 775.21.
 26 2. Electronic mail addresses and Internet identifiers
 27 registered by sexual predators or sexual offenders and held by
 28 agencies pursuant to s. 775.21, s. 943.0435, s. 944.606, s.
 29 944.607, s. 985.481, or s. 985.4815 are exempt from s. 119.07(1)

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30 and s. 24(a), Art. I of the State Constitution. This exemption
 31 applies to records held before, on, or after the effective date
 32 of this act.
 33 3. This paragraph does not prohibit a law enforcement
 34 agency from confirming to a member of the public that an
 35 electronic mail address or Internet identifier reported pursuant
 36 to s. 775.21, s. 943.0435, s. 944.606, s. 944.607, s. 985.481,
 37 or s. 985.4815 is registered in the Department of Law
 38 Enforcement sexual offender and sexual predator registry.
 39 4. This paragraph is subject to the Open Government Sunset
 40 Review Act in accordance with s. 119.15 and shall stand repealed
 41 on October 2, 2022, unless reviewed and saved from repeal
 42 through reenactment by the Legislature.
 43 Section 2. (1) The Legislature finds that it is a public
 44 necessity that electronic mail addresses and Internet
 45 identifiers registered by sexual predators and sexual offenders
 46 and held by agencies pursuant to s. 775.21, s. 943.0435, s.
 47 944.606, s. 944.607, s. 985.481, or s. 985.4815, Florida
 48 Statutes, be made exempt from s. 119.071(1), Florida Statutes,
 49 and s. 24(a), Article I of the State Constitution. The
 50 Legislature finds that the exemption strikes an important
 51 balance between the government's legitimate interest in public
 52 safety and protecting individuals' rights afforded under the
 53 Constitution of the State of Florida and the First Amendment
 54 rights protected by the United States Constitution. The
 55 exemption maintains the ability of members of the public to
 56 confirm whether an electronic mail address or Internet
 57 identifier is associated with or is contained in the sexual
 58 offender and sexual predator registry without obtaining the

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59 personal identifying information of the registrant associated
 60 with the electronic mail address or Internet identifier. This
 61 exemption allows members of the public access to safety
 62 information which assists them in making informed decisions
 63 regarding communicating or otherwise interacting with registered
 64 sexual predators and sexual offenders. Additionally, this
 65 exemption preserves the ability of criminal justice agencies to
 66 access valuable investigative information. Criminal justice
 67 agencies are tasked with the prevention of crimes to protect
 68 residents, particularly children, from sexual exploitation
 69 through investigating and bringing offenders to justice. As
 70 daily life necessitates increasing dependence upon access to the
 71 Internet, sexual exploitation through the use of the Internet
 72 grows as well. There is a nexus between commercial social
 73 networking sites and Internet sex crimes. Commercial social
 74 networking sites are widely used among youth and adults for
 75 introduction, communication, and publication of personal details
 76 that may be exploited. Additionally, locating missing children
 77 and sexual predators and sexual offenders who have evaded
 78 registration is greatly aided through the use of registered
 79 electronic mail addresses and Internet identifiers. Without this
 80 exemption, criminal justice agencies may lose access to
 81 information which has become a valuable investigative tool since
 82 the inception of this registration requirement. Absent a
 83 registration requirement for electronic mail addresses and
 84 Internet identifiers, investigative agencies will be severely
 85 hampered in the growing call to protect our residents from
 86 sexual exploitation online.

87 (2) The Legislature recognizes the importance of protecting

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88 rights provided in the First Amendment to the United States
 89 Constitution for all citizens. Equally, the Legislature
 90 recognizes the importance of preserving the civil regulatory
 91 processes of sexual offender and sexual predator registration
 92 and ensuring criminal justice agencies have the critical
 93 resource of sexual offender and sexual predator electronic mail
 94 address and Internet identifier registration information
 95 necessary to protect our residents. Electronic mail addresses
 96 and Internet identifiers have an exceptional distinction from
 97 other registration requirements in that they are used as unique
 98 personal identifiers for speech and communication. Because of
 99 this distinction, a public records exemption is required to
 100 avoid any appearance of infringement on registrants'
 101 constitutional rights. If the ability to collect this
 102 information were prevented, it would greatly disrupt the ability
 103 of criminal justice agencies to use this essential information
 104 in combatting the prevalent problem of online sexual
 105 exploitation of children. For these reasons and for the
 106 preservation of and continued collection of this information,
 107 the Legislature finds that it is a public necessity that the
 108 electronic mail addresses and Internet identifiers continue to
 109 be registered by sexual predators and sexual offenders and held
 110 by agencies pursuant to ss. 775.21, 943.0435, 944.606, 944.607,
 111 985.481, and 985.4815, Florida Statutes, be exempt from public
 112 record requirements.

113 Section 3. The Division of Law Revision and Information is
 114 directed to replace the phrase "the effective date of this act"
 115 whenever it occurs in this act with the date the act becomes a
 116 law.

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117 Section 4. This act shall take effect on the same date that
118 SB 684 or similar legislation takes effect, if such legislation
119 is adopted in the same legislative session or an extension
120 thereof and becomes a law.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4.17.17

Meeting Date

CS/SB 686

Bill Number (if applicable)

Topic SB 686 - INTERNET IDENTIFIER (PR)

Amendment Barcode (if applicable)

Name RON DRAA

Job Title DIRECTOR OF EXTERNAL AFFAIRS

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Speaking: For Against Information

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

Representing FDLE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 840

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

SUBJECT: Controlled Substance Prescribing

DATE: April 19, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HP	Fav/CS
2.	Peacock	Ferrin	GO	Fav/CS
3.			RI	
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 840 directs the applicable boards within the Department of Health (DOH or Department) with jurisdiction over practitioners, as defined in s. 893.02, F.S., who are authorized to prescribe controlled substances to include as part of the practitioner's continuing medical education requirements information on the risks of opioid addiction following even brief periods of treatment in the management of acute pain.

The bill requires dispensers to report the dispensing of a controlled substance to the Prescription Drug Monitoring Program database (PDMP) by the close of the next business day, rather than 7 days, after the controlled substance is dispensed. This expedited timeframe for reporting is effective January 1, 2018. Reporting must be through the electronic system approved by the DOH.

The bill clarifies an exemption from reporting for rehabilitative hospitals, assisted living facilities, or nursing homes dispensing a certain dosage of a controlled substance, as needed, to a patient as ordered by the patient's treating physician by requiring the dispensing to occur while the patient is present and receiving care.

An employee of the U.S. Department of Veterans Affairs, who is authorized to prescribe controlled substances, may access the PDMP for the purpose of reviewing his or her patient's controlled substance prescription history.

The effective date of the bill is July 1, 2017.

II. Present Situation:

The Prescription Drug Monitoring Program

Starting in the early 2000s, Florida began experiencing a marked increase in deaths resulting from prescription drug abuse. In 2010, the former Florida Office of Drug Control (FODC) identified prescription drug abuse as “the most threatening substance abuse issue in Florida.”¹ According to the FODC, between 2003 and 2009, the number of deaths caused by at least one prescription drug increased by 102 percent (from 1,234 to 2,488).² The FODC remarked that these numbers translated into seven Floridians dying from prescription drug overdoses per day.³

Between 2009 and 2011, the Legislature enacted a series of reforms to combat prescription drug abuse. These reforms included strict regulation of pain management clinics; creating the PDMP; and stricter regulation on selling, distributing, and dispensing controlled substances.⁴

Chapter 2009-197, L.O.F., established the PDMP in s. 893.055, F.S. The PDMP uses a comprehensive electronic system/database to monitor the prescribing and dispensing of certain controlled substances.⁵ The PDMP became operational on September 1, 2011, when it began receiving prescription data from pharmacies and dispensing practitioners.⁶ Dispensers have reported over 198 million controlled substance prescriptions to the PDMP since its inception.⁷ Health care practitioners began accessing the PDMP on October 17, 2011.⁸ Law enforcement agencies began requesting data from the PDMP in support of active criminal investigations on November 14, 2011.⁹

Dispensers of controlled substances listed in Schedule II, Schedule III, or Schedule IV of s. 893.03, F.S., must report specified information to the PDMP database within seven days after dispensing, each time the controlled substance is dispensed. The information required to be reported includes:¹⁰

¹ Executive Office of the Governor, *Florida Office of Drug Control 2010 Annual Report*, p. 8 (on file with the Senate Committee on Health Policy).

² *Id.*

³ *Id.*

⁴ See chs. 2009-197, 2010-211, and 2011-141, Laws of Fla.

⁵ Section 893.055(2)(a), F.S.

⁶ Florida Dep't of Health, *2012-2013 Prescription Drug Monitoring Program Annual Report* (December 1, 2013), p. 2, available at <http://www.floridahealth.gov/reports-and-data/e-forcse/news-reports/documents/2012-2013pdmp-annual-report.pdf> (last visited on Mar. 29, 2017).

⁷ Florida Dep't of Health, *2015-2016 Prescription Drug Monitoring Program Annual Report* (December 1, 2016), p. 4, available at <http://www.floridahealth.gov/statistics-and-data/e-forcse/documents/2016PDMPAnnualReport.pdf> (last visited on Mar. 29, 2017).

⁸ *Supra* note 6.

⁹ *Supra* note 6.

¹⁰ The specific information reported depends upon the whether the reporter is a pharmacy or practitioner.

- Name of the dispenser [pharmacy], Drug Enforcement Administration registration number, and address of the pharmacy;
- Name of the prescribing practitioner and his or her Drug Enforcement Administration registration number, National Provider Identification, or other applicable identifier, and the date of the prescription;
- Date the prescription is dispensed;
- Name, address, and date of birth of the person to whom the controlled substance is dispensed; and
- Name, national drug code, quantity, and strength of the controlled substance dispensed.¹¹

Personal identifying information in the PDMP is confidential and exempt from the public records laws and State Constitution.¹² Specified persons or entities are authorized either direct or indirect¹³ access to certain protected information in the PDMP.¹⁴

Current law exempts certain acts of dispensing or administering from PDMP reporting:

- A health care practitioner when administering a controlled substance directly to a patient if the amount of the controlled substance is adequate to treat the patient during that particular treatment session.
- A pharmacist or health care practitioner when administering a controlled substance to a patient or resident receiving care as a patient at a hospital, nursing home, ambulatory surgical center, hospice, or intermediate care facility for the developmentally disabled which is licensed in this state.
- A practitioner when administering or dispensing a controlled substance in the health care system of the Department of Corrections.
- A practitioner when administering a controlled substance in the emergency room of a licensed hospital.
- A health care practitioner when administering or dispensing a controlled substance to a person under the age of 16.
- A pharmacist or a dispensing practitioner when dispensing a one-time, 72-hour emergency resupply of a controlled substance to a patient.
- A rehabilitative hospital, assisted living facility, or nursing home dispensing a certain dosage of a controlled substance, as needed, to a patient as ordered by the patient's treating physician.¹⁵

A dispenser must submit the required dispensing information in a Department-approved, secure methodology and format. Such approved formats may include, but are not limited to, submission via the Internet, on a disc, or by use of regular mail.¹⁶ Rule 64K-1.004, F.A.C., requires all

¹¹ See s. 893.055(3), F.S.

¹² Section 893.0551, F.S.

¹³ Indirect access requires submitting a request to the PDMP program manager for specific information each time information is needed which may be released once the requester and request is verified as authentic and authorized. See ss. 893.055(7)(c) and 893.0551(3), F.S.

¹⁴ See s. 893.0551, F.S.

¹⁵ See s. 893.055(5), F.S.

¹⁶ See s. 893.055(4), F.S.

dispensers to electronically report the dispensing information.¹⁷ The DOH allows five electronic data delivery methods.¹⁸

On average, each month 6,546 dispensers report controlled substance dispensing information to the PDMP, and 96 percent of dispensers complied with the mandated 7-day timeframe for reporting. Of those dispensers, 66 percent reported the information within 24 hours.¹⁹

PDMP Reporting in Other States

Data reporting frequency varies from state to state. Oklahoma is the only state that requires its dispensers to report controlled substance dispensing data at the point of sale, real time. Thirty-five states require data to be uploaded within 1 day, three states require data to be uploaded within 3 days, 11 states require data to be uploaded within 7 days, and one state requires data to be uploaded within 14 days.²⁰

Guidelines for Prescribing Opioids

Drug overdose deaths and opioid-involved deaths continue to increase in the United States. The majority of drug overdose deaths (more than six out of ten) involve an opioid. Since 1999, the number of overdose deaths involving opioids (including prescription opioids and heroin) quadrupled. From 2000 to 2015 more than half a million people died from drug overdoses. Ninety-one Americans die every day from an opioid overdose.²¹

In March 2016, the Centers for Disease Control and Prevention (CDC) issued Guidelines for Prescribing Opioids for Chronic Pain.²² The guidelines is a series of recommendations that focus on the use of opioids in treating chronic pain (pain lasting longer than 3 months or past the time of normal tissue healing) outside of active cancer treatment, palliative care, and end-of-life care.²³ However, among the 12 recommendations is one relating to prescribing short durations for acute pain. This recommendation is summarized as follows:

¹⁷ The DOH may grant a dispenser a waiver of the electronic submission requirement for good cause. “Good cause” includes financial hardship and lack of an automated recordkeeping system. The dispenser must notify the DOH in writing by completing an electronic reporting waiver form provided by the DOH. The DOH will work with the dispenser to determine the format, method, and frequency of the alternative non-electronic submissions. See E-FORCSE Dispenser’s Implementation Guide ASAP 4.2 (July 2015) DH8013-PDMP, p. 7, available at <https://www.flrules.org/gateway/reference.asp?No=Ref-06459> and click on the DH8013-PDMP (01.15) 64K-1.004 (v2).pdf link, (last visited on Mar. 29, 2017).

¹⁸ *Id.*, p. 21.

¹⁹ *Supra* note 7, p.5.

²⁰ Department of Health, *Senate Bill 840 Analysis* (February 13, 2017) (on file with the Senate Committee on Health Policy).

²¹ Centers for Disease Control and Prevention, *Opioid Overdose, Understanding the Epidemic* (updated December 16, 2016) available at <https://www.cdc.gov/drugoverdose/epidemic/index.html> (last visited April 4, 2017).

²² Dowell D. Haegerich TM, Chou R. CDC Guideline for Prescribing Opioids for Chronic Pain – United States, 2016. *MMWR Recomm Rep* 2016;65(No. RR-1): 1-49. DOI: <http://dx.doi.org/10.15585/mmwr.rr6501e1> available at <https://www.cdc.gov/mmwr/volumes/65/rr/rr6501e1.htm> (last visited April 4, 2017).

²³ Centers for Disease Control and Prevention, *Opioid Overdose, CDC Guidelines for Prescribing Opioids for Chronic Pain* (updated March 15, 2017) available at <https://www.cdc.gov/drugoverdose/prescribing/guideline.html> (last visited April 4, 2017).

Long-term opioid use often begins with treatment of acute pain. When opioids are used for acute pain, clinicians should prescribe the lowest effective dose of immediate-release opioids and should prescribe no greater quantity than needed for the expected duration of pain severe enough to require opioids. Three days or less will often be sufficient; more than 7 days will rarely be needed.²⁴

A number of states have enacted legislation or otherwise limited the initial duration of prescriptions for opioids for acute pain. On February 15, 2017, Governor Chris Christie of New Jersey signed legislation, reported as the strictest in the nation, limiting initial opioid prescriptions to a 5-day supply.²⁵ Over the past year, Connecticut, Delaware, Maine, Massachusetts, New York, Pennsylvania, Rhode Island, and Vermont, have enacted laws or adopted rules for imposing 7-day limits for initial opioid prescriptions, mostly for acute pain.²⁶ Bills to restrict opioid prescriptions are pending in Georgia, Hawaii, Indiana, Kentucky, Montana, Oregon, and Washington.²⁷

Florida Practitioners Authorized to Prescribe Controlled Substances

Certain licensed health care providers and veterinarians are authorized to prescribe controlled substances. Section 893.02(23), F.S., defines “practitioner” as a physician licensed under chapter 458, a dentist licensed under chapter 466, a veterinarian licensed under chapter 474, an osteopathic physician licensed under chapter 459, an advanced registered nurse practitioner certified under chapter 464, a naturopath licensed under chapter 462, a certified optometrist licensed under chapter 463, a psychiatric nurse as defined in s. 394.455, a podiatric physician licensed under chapter 461, or a physician assistant licensed under chapter 458 or chapter 459, provided such practitioner holds a valid federal controlled substance registry number.

III. Effect of Proposed Changes:

The bill directs the applicable boards within the DOH with jurisdiction over practitioners, as defined in s. 893.02, F.S., who are authorized to prescribe controlled substances to include as part of the practitioner’s continuing medical education requirements information on the risks of opioid addiction following even brief periods of treatment in the management of acute pain.

Effective January 1, 2018, dispensers of controlled substances that are required to report the dispensing of a controlled substance to the PDMP must report no later than the close of the next business day after the controlled substance is dispensed. The DOH may grant an extension to this timeframe for cause as determined by rule. The bill requires the submission via the Department-

²⁴ Centers for Disease Control and Prevention, Opioid Overdose, Guidelines at a Glance, (updated February 9, 2017), available at <https://www.cdc.gov/drugoverdose/> (last visited April 4, 2017).

²⁵ Christine Vestal, *New Jersey Enacts Nation’s Strictest Opioid Prescribing Limit* (February 16, 2017), available at <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/02/16/new-jersey-enacts-nations-strictest-opioid-prescribing-limit> (last visited April 4, 2017).

²⁶ Association of State and Territorial Health Officials, *A Look at State Legislation Limiting Opioid Prescriptions* (February 23, 2017), available at <http://astho.org/StaatePublicHealth/A-Look-at-State-Legislation-Limiting-Opioid-Prescriptions/2-23-17/?terms=acute+pain> (last visited April 4, 2017).

²⁷ *Id.*

approved electronic system and eliminates other approved formats that may include being on a disc or submitting by regular mail.

The bill clarifies an exemption from reporting to the PDMP that was enacted during the 2016 Regular Session²⁸ for rehabilitative hospitals, assisted living facilities, or nursing homes dispensing a certain dosage of a controlled substance, as needed, to a patient as ordered by the patient's treating physician. The bill limits application of the exemption such that the controlled substance must be dispensed to a patient while the patient is present and receiving care in the facility. This ensures that the controlled substance is dispensed and administered²⁹ at the facility to conform with the other exemptions.

The bill also authorizes an employee of the U.S. Department of Veterans Affairs, who provides health care services pursuant to that employment and is authorized to prescribe controlled substances, to access the PDMP only for the purpose of reviewing his or her patient's controlled substance prescription history.

The effective date of the bill is July 1, 2017, except as otherwise expressly provided.

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:

Some dispensers may incur additional costs, such as software updates, to develop electronic reporting capabilities and being able to submit within the next business day reporting timeframe. The effective date of January 1, 2018, for meeting the submission timeframe may ease the transition.

²⁸ Chapter 2016-177, Laws of Fla.

²⁹ Dispense means to transfer possession and administer means to inject, inhale, or ingest. *See* s. 893.02, F.S.

C. **Government Sector Impact:**

The DOH indicates it will incur non-recurring costs for rulemaking, which can be absorbed within existing resources.³⁰

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends section 893.055 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 April 17, 2017:

The committee substitute:

- Removes section pertaining to definition of “acute pain” and limitation for initial prescription of opioids for acute pain not to exceed 5 days;
- Removes section pertaining to a conforming cross reference within ch. 463, F.S., relating to optometrists; and
- Directs the DOH to include as part of a practitioner’s continuing medical education requirements information on the risks of opioid addiction following even brief periods of treatment in the management of acute pain.

CS by Health Policy on April 3, 2017:

The committee substitute:

- Limits an initial prescription for controlled substances for “acute pain” (associated with surgery, trauma, or acute illness) to a 5-day supply.
- Revises reporting to the PDMP to: the close of the next business day and via the department-approved electronic system. The bill as filed provided for reporting within 24 hours and via the Internet.
- Authorizes a prescriber of controlled substances with the U.S. Department of Veterans Affairs access to the PDMP.
- Includes a conforming cross-reference within ch. 463, F.S., relating to optometrists.
- Changes the title of the bill from the Prescription Drug Monitoring Program.

³⁰ *Supra* note 19.

B. Amendments:

None.

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



199576

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 20 - 120
and insert:

Section 1. The Legislature finds that the road to drug addiction may begin as early as 3 days after the initiation of opioid treatment for acute pain. Because of the potentially devastating effects of such addiction, the Legislature also finds that awareness of this potentially life-threatening problem must be raised among Florida's physicians. The



199576

11 Department of Health is directed to include as part of a
12 physician's continuing medical education requirements
13 information on the risks of opioid addiction following even
14 brief periods of treatment in the management of acute pain.

15 Section 2. Subsection (4), paragraph (g) of subsection (5),
16 and paragraphs (a) and (b) of subsection (7) of section 893.055,
17 Florida Statutes, are amended to read:

18 893.055 Prescription drug monitoring program.—

19 (4) Each time a controlled substance is dispensed to an
20 individual, the controlled substance shall be reported to the
21 department through the system as soon thereafter as possible,
22 but no later than the close of the next business day ~~not more~~
23 ~~than 7 days~~ after the day ~~date~~ the controlled substance is
24 dispensed unless an extension is approved by the department for
25 cause as determined by rule. A dispenser must meet the reporting
26 requirements of this section by submitting via the department-
27 approved electronic system ~~providing~~ the required information
28 concerning each controlled substance that it dispensed ~~in a~~
29 ~~department-approved, secure methodology and format. Such~~
30 ~~approved formats may include, but are not limited to, submission~~
31 ~~via the Internet, on a disc, or by use of regular mail.~~

32 (5) When the following acts of dispensing or administering
33 occur, the following are exempt from reporting under this
34 section for that specific act of dispensing or administration:

35 (g) A rehabilitative hospital, assisted living facility, or
36 nursing home dispensing a certain dosage of a controlled
37 substance, as needed, to a patient while the patient is present
38 and receiving care as ordered by the patient's treating
39 physician.



199576

40 (7) (a) A practitioner or pharmacist who dispenses a
41 controlled substance must submit the information required by
42 this section in an electronic ~~or other~~ method in an ASAP format
43 approved by rule of the department unless otherwise provided in
44 this section. The cost to the dispenser in submitting the
45 information required by this section may not be material or
46 extraordinary. Costs not considered to be material or
47 extraordinary include, but are not limited to, regular postage,
48 electronic media, regular electronic mail, and facsimile
49 charges.

50 (b) A pharmacy, prescriber, or dispenser, or the designee
51 of a pharmacy, prescriber, or dispenser, shall have access to
52 information in the prescription drug monitoring program's
53 database which relates to a patient of that pharmacy,
54 prescriber, or dispenser in a manner established by the
55 department as needed for the purpose of reviewing the patient's
56 controlled substance prescription history. An employee of the
57 United States Department of Veterans Affairs who provides health
58 care services pursuant to such employment and has the authority
59 to prescribe controlled substances shall have access to the
60 information in the program's database in a manner established by
61 the department. Such access is limited to the information that
62 relates to a patient of such employee and may be accessed only
63 for the purpose of reviewing the patient's controlled substance
64 prescription history. Other access to the program's database
65 shall be limited to the program's manager and to the designated
66 program and support staff, who may act only at the direction of
67 the program manager or, in the absence of the program manager,
68 as authorized. Access by the program manager or such designated



199576

69 staff is for prescription drug program management only or for
70 management of the program's database and its system in support
71 of the requirements of this section and in furtherance of the
72 prescription drug monitoring program. Confidential and exempt
73 information in the database shall be released only as provided
74 in paragraph (c) and s. 893.0551. The program manager,
75 designated program and support staff who act at the direction of
76 or in the absence of the program manager, and any individual who
77 has similar access regarding the management of the database from
78 the prescription drug monitoring program shall submit
79 fingerprints to the department for background screening. The
80 department shall follow the procedure established by the
81 Department of Law Enforcement to request a statewide criminal
82 history record check and to request that the Department of Law
83 Enforcement forward the fingerprints to the Federal Bureau of
84 Investigation for a national criminal history record check.

85 Section 3. The requirement in s. 893.055(4), Florida
86 Statutes, as amended by this act, that the dispensing of a
87 controlled substance be reported to the Department of Health no
88 later than the next business day shall take effect January 1,
89 2018.

90
91 ===== T I T L E A M E N D M E N T =====

92 And the title is amended as follows:

93 Delete lines 3 - 15

94 and insert:

95 providing legislative findings; directing the
96 Department of Health to include information on the
97 risks of opioid addiction as part of a physician's



199576

98 continuing medical education requirements; amending s.
99 893.055, F.S.; revising requirements for reporting the
100 dispensing of controlled substances; limiting an
101 exception to reporting requirements for certain
102 facilities that dispense controlled substances;
103 authorizing certain employees of the United States
104 Department of Veterans Affairs access to certain
105 information in the prescription drug monitoring
106 program's database; specifying when a revised
107 reporting requirement takes effect;



198366

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2017	.	
	.	
	.	
	.	

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

1 **Senate Amendment to Amendment (199576) (with title**
2 **amendment)**

3
4 Delete lines 10 - 12
5 and insert:

6 problem must be raised among Florida's practitioners. The
7 applicable boards within the Department of Health with
8 jurisdiction over practitioners, as defined in s. 893.02,
9 Florida Statutes, who are authorized to prescribe controlled
10 substances are directed to include as part of the practitioner's



198366

11 continuing medical education requirements

12

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

14 And the title is amended as follows:

15 Delete line 97

16 and insert:

17 risks of opioid addiction as part of a practitioner's

By the Committee on Health Policy; and Senator Clemens

588-03385-17

2017840c1

A bill to be entitled

An act relating to controlled substance prescribing; amending s. 456.44, F.S.; defining the term "acute pain"; limiting the quantity of opioids that may be prescribed for acute pain in certain circumstances; amending s. 893.055, F.S.; revising requirements for reporting the dispensing of controlled substances; limiting an exception to reporting requirements for certain facilities that dispense controlled substances; authorizing certain employees of the United States Department of Veterans Affairs access to certain information in the prescription drug monitoring program's database; specifying when a revised reporting requirement takes effect; amending s. 463.0055, F.S.; conforming a cross-reference; providing effective dates.

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

Section 1. Paragraphs (a) through (g) of subsection (1) of section 456.44, Florida Statutes, are redesignated as paragraphs (b) through (h), respectively, a new paragraph (a) is added to that subsection, and subsection (4) is added to that section, to read:

456.44 Controlled substance prescribing.—

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

(a) "Acute pain" means the normal, predicted, physiological, and time-limited response to an adverse chemical, thermal, or mechanical stimulus associated with surgery, trauma,

Page 1 of 5

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

588-03385-17

2017840c1

or acute illness.

(4) INITIAL PRESCRIPTION QUANTITY.—For the initial prescription of opioids for the treatment or alleviation of acute pain, the prescription must be limited to a quantity not to exceed 5 days.

Section 2. Subsection (4), paragraph (g) of subsection (5), and paragraphs (a) and (b) of subsection (7) of section 893.055, Florida Statutes, are amended to read:

893.055 Prescription drug monitoring program.—

(4) Each time a controlled substance is dispensed to an individual, the controlled substance shall be reported to the department through the system as soon thereafter as possible, but no later than the close of the next business day not more than 7 days after the day date the controlled substance is dispensed unless an extension is approved by the department for cause as determined by rule. A dispenser must meet the reporting requirements of this section by submitting via the department-approved electronic system ~~providing~~ the required information concerning each controlled substance that it dispensed ~~in a department-approved, secure methodology and format. Such approved formats may include, but are not limited to, submission via the Internet, on a disc, or by use of regular mail.~~

(5) When the following acts of dispensing or administering occur, the following are exempt from reporting under this section for that specific act of dispensing or administration:

(g) A rehabilitative hospital, assisted living facility, or nursing home dispensing a certain dosage of a controlled substance, as needed, to a patient while the patient is present and receiving care as ordered by the patient's treating

Page 2 of 5

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

588-03385-17

2017840c1

59 physician.

60 (7) (a) A practitioner or pharmacist who dispenses a
61 controlled substance must submit the information required by
62 this section in an electronic ~~or other~~ method in an ASAP format
63 approved by rule of the department unless otherwise provided in
64 this section. The cost to the dispenser in submitting the
65 information required by this section may not be material or
66 extraordinary. Costs not considered to be material or
67 extraordinary include, but are not limited to, regular postage,
68 electronic media, regular electronic mail, and facsimile
69 charges.

70 (b) A pharmacy, prescriber, or dispenser, or the designee
71 of a pharmacy, prescriber, or dispenser, shall have access to
72 information in the prescription drug monitoring program's
73 database which relates to a patient of that pharmacy,
74 prescriber, or dispenser in a manner established by the
75 department as needed for the purpose of reviewing the patient's
76 controlled substance prescription history. An employee of the
77 United States Department of Veterans Affairs who provides health
78 care services pursuant to such employment and has the authority
79 to prescribe controlled substances shall have access to the
80 information in the program's database in a manner established by
81 the department. Such access is limited to the information that
82 relates to a patient of such employee and may only be accessed
83 for the purpose of reviewing the patient's controlled substance
84 prescription history. Other access to the program's database
85 shall be limited to the program's manager and to the designated
86 program and support staff, who may act only at the direction of
87 the program manager or, in the absence of the program manager,

Page 3 of 5

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

588-03385-17

2017840c1

88 as authorized. Access by the program manager or such designated
89 staff is for prescription drug program management only or for
90 management of the program's database and its system in support
91 of the requirements of this section and in furtherance of the
92 prescription drug monitoring program. Confidential and exempt
93 information in the database shall be released only as provided
94 in paragraph (c) and s. 893.0551. The program manager,
95 designated program and support staff who act at the direction of
96 or in the absence of the program manager, and any individual who
97 has similar access regarding the management of the database from
98 the prescription drug monitoring program shall submit
99 fingerprints to the department for background screening. The
100 department shall follow the procedure established by the
101 Department of Law Enforcement to request a statewide criminal
102 history record check and to request that the Department of Law
103 Enforcement forward the fingerprints to the Federal Bureau of
104 Investigation for a national criminal history record check.

105 Section 3. The requirement in s. 893.055(4), Florida
106 Statutes, as amended by this act, that the dispensing of a
107 controlled substance be reported to the Department of Health no
108 later than the next business day shall take effect January 1,
109 2018.

110 Section 4. Paragraph (b) of subsection (4) of section
111 463.0055, Florida Statutes, is amended to read:

112 463.0055 Administration and prescription of ocular
113 pharmaceutical agents.-

114 (4) A certified optometrist shall be issued a prescriber
115 number by the board. Any prescription written by a certified
116 optometrist for an ocular pharmaceutical agent pursuant to this

Page 4 of 5

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

588-03385-17

2017840c1

117 section shall have the prescriber number printed thereon. A
118 certified optometrist may not administer or prescribe:
119 (b) A controlled substance for the treatment of chronic
120 nonmalignant pain as defined in s. 456.44 ~~456.44(1)(e)~~.
121 Section 5. Except as otherwise expressly provided in this
122 act, this act shall take effect July 1, 2017.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Community Affairs, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Higher Education
Communications, Energy, and Public Utilities
Criminal Justice

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR JEFF CLEMENS

Democratic Whip
31st District

April 6, 2017

Senator Dennis Baxley, Chair
Senate Committee on Governmental Oversight and Accountability
525 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Baxley:

I respectfully request that SB 840—Prescription Drug Monitoring Program be added to the agenda for the next Senate Committee on Governmental Oversight and Accountability meeting.

SB 840 will help combat Florida's ongoing opioid epidemic by modernizing the prescription drug monitoring program and shortening reporting time to better identify drug abuse. The bill would shorten the reporting time to the close of the next business day and require reporting to be handled exclusively via the electronic system.

Please feel free to contact me with any questions. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Clemens".

Senator Jeff Clemens
Florida Senate District 31

REPLY TO:

- 508 Lake Avenue, Unit C, Lake Worth, Florida 33460 (561) 540-1140 FAX: (561) 540-1143
- 210 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5031

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)

4/17/17

Meeting Date

840

Bill Number (if applicable)

199576

Amendment Barcode (if applicable)

Topic _____

Name Chris Nland

Job Title _____

Address 1000 Riverside Ave #240

Phone 904-233-3051

Street

Jacksonville, FL 32204

Email nlandlaw@aol.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Chapter, American College of Surgeons / FL. Society of Thoracic & Cardiovascular Surgeons

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)

4/17/2017

Meeting Date

SB 840

Bill Number (if applicable)

Topic Controlled Substance Prescribing

Amendment Barcode (if applicable)

Name Jill Gran

Job Title Policy Director

Address 2868 Mahan Drive

Phone 850-878-2196

Street

Tallahassee

FL

32308

Email jill@myfbha.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Behavioral Health 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
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 856

INTRODUCER: Senator Broxson

SUBJECT: Education

DATE: April 14, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Benvenisty</u>	<u>Graf</u>	<u>ED</u>	Favorable
2.	<u>Ferrin</u>	<u>Ferrin</u>	<u>GO</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 856 clarifies that a district school board must issue contracts on an annual basis to instructional personnel hired on or after July 1, 2011, by specifying that the district school board may not:

- Award an annual contract based on a contingency or condition that is not expressed in s. 1012.335, F.S.; or
- Alter or limit its authority to award or not award an annual contract as provided in s. 1012.335, F.S.

The bill takes effect upon becoming law.

II. Present Situation:

Instructional personnel provide direct instructional services or direct instructional support to K-12 students.¹ Instructional personnel include:²

- Classroom teachers;³
- Staff who provide student personal services (e.g., guidance counselors, social workers, career specialists, and school psychologists);
- Librarians and media specialists;
- Other instructional staff (e.g., learning resource specialists);⁴ and
- Education paraprofessionals.⁵

¹ Section 1012.01(2), F.S.

² *Id.* at (2)(a)-(e).

³ Classroom teachers include substitute teachers. Section 1012.01(2)(a), F.S.

⁴ *Id.* at (2)(d).

⁵ Educational paraprofessionals are individuals who are under the direct supervision of an instructional staff member, aiding in the instructional process. *Id.* at (2)(e). The term includes classroom paraprofessionals in regular instruction, exceptional

Three types of contracts are used to employ instructional personnel in Florida: continuing contracts,⁶ professional service contracts⁷, and annual contracts.⁸

An annual contract is an employment contract for a period of no longer than one school year that a district school board may choose to award or not award without cause.⁹ As of July 1, 2011, instructional personnel under an annual contract and personnel hired thereafter may only be employed on an annual contract basis.¹⁰ The first annual contract for newly hired instructional personnel is a one-year probationary contract, which may be terminated without cause or from which the employee may resign without breach of contract.¹¹ “Newly hired instructional personnel” include employees new to the profession or employees with experience who are new to the school district.¹²

Upon successful completion of the one-year probationary contract, district school boards may award subsequent annual contracts if the employee:¹³

- Holds an active professional certificate or temporary certificate issued pursuant to Florida law and rules of the State Board of Education.
- Has been recommended by the superintendent based upon his or her performance evaluation, and approved by the district school board.
- Has not received two consecutive annual performance evaluation ratings of unsatisfactory, two annual performance evaluation ratings of unsatisfactory within a 3-year period, or three consecutive annual performance evaluation ratings of needs improvement or a combination of needs improvement and unsatisfactory pursuant to Florida law.

III. Effect of Proposed Changes:

The bill clarifies that a district school board must issue contracts on an annual basis to instructional personnel hired on or after July 1, 2011, by specifying that the district school board may not:

- Award an annual contract based on a contingency or condition that is not expressed in s. 1012.335, F.S.; or
- Alter or limit its authority to award or not award an annual contract as provided in s. 1012.335, F.S.

Additionally, the bill specifies that the provisions enumerated above only apply to collective bargaining agreements entered into or renewed by a district school board on or after this legislation is enacted. Accordingly, instructional personnel hired after the effective date of this

education paraprofessionals, career education paraprofessionals, adult education paraprofessionals, library paraprofessionals, physical education and playground paraprofessionals, and other school-level paraprofessionals. *Id.*

⁶ Section 1012.33(3)(a)1.-3., F.S. (2010).

⁷ Section 231.36(1) and (3)(a)1.-4., F.S. (1981).

⁸ Section 1012.335(1)(a), F.S.

⁹ *Id.*

¹⁰ *Id.* at (2)(a)-(b), F.S.

¹¹ *Id.* at (1)(c).

¹² Section 1012.335(1)-(2), F.S. For the purpose of awarding annual contracts, the term “instructional personnel” does not include substitute teachers. Section 1012.335(1)(b), F.S.

¹³ *Id.* at (2)(c).

bill may not be awarded an annual contract based on a contingency or condition that is not currently authorized in law.

The bill takes effect upon becoming 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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1012.335 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.



700896

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/17/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete line 19

and insert:

(d) Except in a county as defined in s. 125.011(1), a
district school board may not:

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

And the title is amended as follows:

Delete line 7



700896

11 and insert:
12 authority to award or not award an annual contract
13 under certain circumstances;

By Senator Broxson

1-01397-17

2017856__

1 A bill to be entitled
2 An act relating to education; amending s. 1012.335,
3 F.S.; prohibiting a district school board from
4 awarding an annual contract for instructional
5 personnel under certain circumstances; prohibiting a
6 district school board from altering or limiting its
7 authority to award or not award an annual contract;
8 providing applicability; providing a directive to the
9 Division of Law Revision and Information; providing an
10 effective date.

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

13
14 Section 1. Paragraph (d) is added to subsection (2) of
15 section 1012.335, Florida Statutes, to read:
16 1012.335 Contracts with instructional personnel hired on or
17 after July 1, 2011.—

18 (2) EMPLOYMENT.—

19 (d) A district school board may not:

20 1. Award an annual contract on the basis of any contingency
21 or condition not expressly authorized in this section; or

22 2. Alter or limit its authority to award or not award an
23 annual contract as provided in this section.

24
25 This paragraph applies only to a collective bargaining agreement
26 entered into or renewed by a district school board on or after
27 the effective date of this act.

28 Section 2. The Division of Law Revision and Information is
29 directed to replace the phrase "the effective date of this act"
30 as it occurs in section 1 of this act with the date this act
31 takes effect.

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

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 1008

INTRODUCER: Banking and Insurance Committee and Senators Perry and Bradley

SUBJECT: Public Records/Injured or Deceased Employee/Department of Financial Services

DATE: April 14, 2017

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1008 creates a public records exemption for personal identifying information of an injured or deceased worker contained in reports, notices, records, or supporting documentation held by the Department of Financial Services (DFS) pursuant to s. 440.1851, F.S. "Personal identifying information," means the injured or deceased employee's name, date of birth, home, mailing, or e-mail address, or telephone number. The bill authorizes the DFS to disclose personal identifying information made confidential and exempt only:

- To the injured employee, to the spouse or a dependent of the deceased employee, to the spouse or a dependent of the injured employee if authorized by the injured employee, or to the legal representative of the deceased employee's estate;
- To a party litigant, or his or her authorized representative, in matters pending before the Office of the Judges of Compensation Claims;
- To a carrier or an employer for the purpose of investigating the compensability of a claim or for the purpose of administering its anti-fraud investigative unit established pursuant to s. 626.9891, F.S.;
- In an aggregate reporting format that does not reveal the personal identifying information of any employee;
- Pursuant to a court order or subpoena;
- To an agency for administering its anti-fraud investigative function or in furtherance of the agency's official duties and responsibilities; or
- To a federal governmental entity in the furtherance of the entity's official duties and responsibilities.

The bill provides that a person who willfully and knowingly discloses personal identifying information made confidential and exempt by this bill commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S.

The public records exemption created by this bill is subject to the Open Government Sunset Review and will stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

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

The bill takes effect 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

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

Department of Financial Services

The Chief Financial Officer is the head of the DFS.²⁴ The DFS is responsible for various administrative and law enforcement functions. The scope of the DFS's jurisdiction includes many divisions, such as the Division of Investigative and Forensic Services, the Division of Risk Management, and the Division of Workers' Compensation.

The Bureau of Insurance Fraud of the Division of Investigative and Forensic Services investigates alleged acts of insurance fraud not categorized under workers' compensation fraud, including; licensee, healthcare, application, vehicle, homeowners, commercial, disability, arson, and life insurance fraud. Within these categories are: organized schemes to defraud the public and insurers, insolvency of insurance companies due to internal fraud, criminal activity.²⁵

The Bureau of State Employee Workers' Compensation Claims within the Division of Risk Management is responsible for the administration of all workers' compensations claims filed by state employees and volunteers who are injured on the job. The bureau is primarily responsible for ensuring that covered individuals receive timely benefits, while safeguarding the State from instances of fraud, waste, and abuse.²⁶

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 Section 20.121(1), F.S.

²⁵ Section 626.989, F.S.

²⁶ See Bureau of State Employee Workers' Compensation Claims within the Division of Risk Management, available at <http://www.fldfs.com/Division/Risk/WorkersCompensation/Default.htm> (last viewed Apr. 5, 2017).

The Division of Workers' Compensation is responsible for administering many of the provisions of ch. 440, F.S.²⁷ In addition, the Agency for Health Care Administration and the Office of Judges of Compensation Claims within the Division of Administrative Hearings are also responsible for administering provisions of ch. 440, F.S., the Workers' Compensation Law.²⁸

Section 440.185, F.S., establishes reporting requirements for employers and carriers relating to injured employees. In addition to the First Report of Injury (DWC-1), employers and carriers are required to file subsequent reports with the DFS relating to an injured worker that also contain information that would identify an injured worker. These reports or forms include, but are not limited to the: Wage Statement, Request for Wage Loss/Temporary Partial Benefits, Notice of Action/Change, Notice of Denial, and Claim Cost Report. Generally, these reports or forms²⁹ require the submission of the following information to the DFS:

- The name and address of the employer;
- The name, social security number, mailing address, telephone number, and occupation of the injured worker;
- The cause and nature of the injury or death;
- The year, month, day, and hour when, and the particular locality where the injury or death occurred; and
- Such other information the DFS may require.³⁰

Carriers and employers are required to report to the DFS every injury that results in payment of lost wages. Further, additional reports about the condition of the employee, including copies of medical reports,³¹ funeral expenses, and wage statements, must be filed with the DFS.³²

Public Records Exemptions Relating to Florida's Workers' Compensation Law

Currently, ch. 440, F.S., provides two public records exemptions directly related to injured or deceased injured workers. The first exemption, s. 440.102(8), F.S., protects all information, interviews, reports, statements, memoranda, and drug test results, written or otherwise, received or produced because of a drug-testing program. The second exemption, s. 440.125, F.S., provides that medical records and medical reports identifying an injured worker, which are filed with the DFS pursuant to s. 440.13, F.S., are confidential and exempt.

In addition, s. 624.23, F.S., of the Florida Insurance Code provides a public record exemption for personal information submitted by a consumer seeking assistance from the DFS. The term, "consumer," is defined to include an employee seeking assistance from the Employee Assistance

²⁷ Effective July 1, 2002, the Department of Labor and Employment Security was abolished and the majority of the functions and programs that were within the Division of Workers' Compensation of this department were transferred to the Department of Insurance. [ch. 2002-194, Laws of Fla.] Effective January 7, 2003, the Division of Workers' Compensation will be transferred to the Department of Financial Services. [ch. 2002-404, Laws of Fla.]

²⁸ Section 440.01, F.S.

²⁹ Section 440.185(2), F.S.

³⁰ Rule 69L-3.025, F.A.C., incorporating DFS-F2-DWC-1 by reference.

³¹ Information in the medical reports include the name and address of the injured worker, date of accident, and procedure and diagnosis code describing the treatment and nature of the injury. Section 440.13(4)(b), F.S., and Rules 69L-7.710-7.750, F.A.C.

³² Section 440.185(4), F.S.

and Ombudsman Office under s. 440.191, F.S. Section 624.23, F.S., provides that a consumer's personal and financial information means:

- Personal health condition, disease, or injury;
- A history of a consumer's personal medical diagnosis or treatment;
- The existence, nature, source, or amount of a consumer's personal income or expenses;
- Records of or relating to a consumer's personal financial transactions of any kind;
- The existence, identification, nature, or value of a consumer's assets, liabilities, or net worth;
- The existence or content of, or any individual coverage or status under a consumer's beneficial interest in, any insurance policy or annuity contract; or
- The existence, identification, nature, or value of a consumer's interest in any insurance policy, annuity contract, or trust.

Personal financial and health information held by the DFS or Office of Insurance Regulation relating to a consumer's complaint or inquiry regarding a matter or activity regulated under the Florida Insurance Code or Employee Assistance and Ombudsman Office, are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. Further, the section provides that such confidential and exempt information may be disclosed to:

- Another governmental entity, if disclosure is necessary for the receiving entity to perform its duties and responsibilities.
- The National Association of Insurance Commissioners.
- The consumer or the legally authorized representative of the consumer.

In 1998, the Legislature enacted a public records exemption for information, pertaining to injured or deceased workers, contained in the report of injury or death submitted to the division. This exemption provided that any information contained in a report of injury or illness that was filed pursuant to s. 440.185, F.S., that would identify an ill or injured employee was confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. This exemption was not reenacted in 2003, and was repealed as a result of a 2002 Open Government Sunset Review of the public record exemption. The Senate committee staff interim report, did not recommend³³ reenacting the exemption since the statutory exemption, as implemented, did not maintain the confidentiality of an injured worker and failed to meet all of the OGSR standards necessary to be recommended for reenactment.³⁴

According to Division of Workers' Compensation (DWC), about 90 requests per month are received for requests of the names and contact information of injured workers that were reported by employers/carriers in the previous month. Pursuant to these requests, the names and contact information for approximately 4,750 injured or deceased workers are released in response to

³³ See Senate Committee on Banking and Insurance, *Open Government Sunset Review of the Public Records Exemption for Notices of Injury or Death Received by the Division of Workers' Compensation* (Nov. 2002) (on file with Senate Committee on Banking and Insurance).

³⁴ For example, interested parties could obtain records concerning an injured worker by providing the division with the name and social security number of the injured worker. In response, the division would provide the requestor with any applicable records of the injured worker with the name and social security number redacted. The exempt information concerning an injured workers' was also available to carriers and other parties, which subscribed to claims' databases provided by third parties, such as the Division of Workers' Compensation. This confidential information was readily available on other forms submitted to the division, pursuant to s. 440.185, F.S., and would not be protected by the exemption.

these monthly requests. The majority of the requesting parties are law firms.³⁵ The DWC also has an online claims database that allows users to search for claims of injured or deceased employees based on their name and social security number.³⁶

III. Effect of Proposed Changes:

Section 1 creates a public records exemption for personal identifying information of an injured or deceased worker contained in reports, notices, records, or supporting documentation held by the DFS pursuant to newly created s. 440.1851, F.S. “Personal identifying information,” means the injured or deceased employee’s name, date of birth, home mailing, or e-mail address, or telephone number.

The bill authorizes the DFS to disclose information made confidential and exempt only:

- To the injured employee, to the spouse or a dependent of the deceased employee, to the spouse or a dependent of the injured employee if authorized by the injured employee, or to the legal representative of the deceased employee’s estate;
- To a party litigant, or his or her authorized representative, in matters pending before the Office of the Judges of Compensation Claims;
- To a carrier or an employer for the purpose of investigating the compensability of a claim or for the purpose of administering its anti-fraud investigative unit established pursuant to s. 626.9891;
- In an aggregate reporting format that does not reveal the personal identifying information of any employee;
- Pursuant to a court order or subpoena;
- To an agency for administering its anti-fraud investigative function or in furtherance of the agency’s official duties and responsibilities; or
- To a federal governmental entity in the furtherance of the entity’s official duties and responsibilities.

Any carrier, employer, agency, or governmental entity receiving such information must maintain the confidentiality of the information as long as it would otherwise be confidential. The exemption applies to personally identifying information held by the DFS before, on, or after the effective date of the exemption.

The bill provides that a person who willfully and knowingly discloses personal identifying information made confidential and exempt by this bill commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S.

The public records exemption created by this bill is subject to the Open Government Sunset Review and will stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

³⁵ Section 440.192, F.S.

³⁶ See Division of Workers’ Compensation Claims Database available at <https://apps.fldfs.com/claimsweb/logon.aspx> (last viewed Apr. 5, 2017).

Section 2 provides a public necessity statement for making personal identifying information of an injured worker or employee held by the DFS pursuant to s. 440.1851, F.S., confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. Such information is of a sensitive, personal nature. Disclosure of such sensitive, personal information about an injured or deceased employee is an invasion of that employee's privacy or the privacy of a deceased employee's family. Further, the release of such information could lead to discrimination against the employee by coworkers, potential employers, and others. The harm caused to such an employee or his or her family by the release of this information outweighs any public benefit derived from its release.

Section 3 provides the bill takes effect October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. CS/SB 1244 creates a public record and public meeting exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The bill will protect personal identifying information of injured or deceased employees held by the Department of Financial Services. Since attorneys will no longer have access to the names and contact information of injured or deceased workers, the bill may reduce attorney involvement in workers' compensation disputes.

C. Government Sector Impact:

Insignificant. The DFS estimated a nonrecurring fiscal impact of \$400 for the fiscal year 2017-2018.

VI. Technical Deficiencies:

The criminal penalty provision appears to be ambiguous and may need to be modified to state that unauthorized disclosure is a misdemeanor.

The bill appears to be limited to workers' compensation claims filed under s. 440.185, F.S. An expressed reference to this section may be appropriate for context.

VII. Related Issues:

The public records exemption in s. 624.23, F.S., does not exempt personal identifying information of consumers, which includes employees seeking assistance from the Employee Assistance and Ombudsman Office under s. 440.191, F.S.

VIII. Statutes Affected:

This bill creates section 440.1851 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 Banking and Insurance on April 3, 2017:**

- Revises the definition of the term, “personal identifying information.”
- Expands the circumstances in which the Department of Financial Services may disclose personal identifying information.
- Creates a criminal penalty for a person who willfully and knowingly discloses information made confidential and exempt.

- Provides that the exemption applies to personal identifying information held by the DFS before, on, or after the effective date of the exemption.
- Revises the effective date of the bill.

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 Committee on Banking and Insurance; and Senators Perry
and Bradley

597-03360-17

20171008c1

1 A bill to be entitled
2 An act relating to public records; creating s.
3 440.1851, F.S.; providing an exemption from public
4 records requirements for the personal identifying
5 information of an injured or deceased employee which
6 is contained in reports, notices, records, or
7 supporting documentation held by the Department of
8 Financial Services; defining the term "personal
9 identifying information"; specifying circumstances
10 under which the department may disclose such
11 information; providing retroactive applicability;
12 providing a criminal penalty for willful and knowing
13 disclosure of such information; providing for future
14 review and repeal of the exemption; providing a
15 statement of public necessity; providing an effective
16 date.
17
18 Be It Enacted by the Legislature of the State of Florida:
19
20 Section 1. Section 440.1851, Florida Statutes, is created
21 to read:
22 440.1851 Personal identifying information of an injured or
23 deceased employee; public records exemption.-
24 (1) The personal identifying information of an injured or
25 deceased employee which is contained in reports, notices,
26 records, or supporting documentation held by the department is
27 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
28 of the State Constitution.
29 (a) As used in this section, the term "personal identifying

Page 1 of 4

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

597-03360-17

20171008c1

30 information" means:
31 1. The injured or deceased employee's name;
32 2. The injured or deceased employee's date of birth;
33 3. The injured or deceased employee's home address or
34 mailing address;
35 4. The injured or deceased employee's e-mail address; or
36 5. The injured or deceased employee's telephone number.
37 (b) The department may disclose information made
38 confidential and exempt under this section only:
39 1. To the injured employee, to the spouse or a dependent of
40 the deceased employee, to the spouse or a dependent of the
41 injured employee if authorized by the injured employee, or to
42 the legal representative of the deceased employee's estate;
43 2. To a party litigant, or his or her authorized
44 representative, in matters pending before the Office of the
45 Judges of Compensation Claims;
46 3. To a carrier or an employer for the purpose of
47 investigating the compensability of a claim or for the purpose
48 of administering its anti-fraud investigative unit established
49 pursuant to s. 626.9891;
50 4. In an aggregate reporting format that does not reveal
51 the personal identifying information of any employee;
52 5. Pursuant to a court order or subpoena;
53 6. To an agency for administering its anti-fraud
54 investigative function or in the furtherance of the agency's
55 official duties and responsibilities; or
56 7. To a federal governmental entity in the furtherance of
57 the entity's official duties and responsibilities.
58

Page 2 of 4

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59 Any carrier, employer, agency, or governmental entity receiving
 60 such information shall maintain the confidentiality of the
 61 information as long as it would otherwise be confidential.

62 (c) This exemption applies to personal identifying
 63 information held by the department before, on, or after the
 64 effective date of this exemption.

65 (2) A person who willfully and knowingly discloses personal
 66 identifying information made confidential and exempt under this
 67 section commits a misdemeanor of the first degree, punishable as
 68 provided in s. 775.082 or s. 775.083.

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

73 Section 2. The Legislature finds that it is a public
 74 necessity to make confidential and exempt from s. 119.07(1),
 75 Florida Statutes, and s. 24(a), Article I of the State
 76 Constitution the personal identifying information of an injured
 77 or deceased employee which is contained in reports, notices,
 78 records, or supporting documentation held by the Department of
 79 Financial Services. Such information is of a sensitive, personal
 80 nature, and disclosure of such information about an injured or
 81 deceased employee is an invasion of that employee's privacy or
 82 the privacy of his or her family. Further, the release of such
 83 information could lead to discrimination against the employee by
 84 coworkers, potential employers, and others. The harm caused to
 85 such an employee or his or her family by the release of this
 86 information outweighs any public benefit derived from its
 87 release.

Page 3 of 4

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597-03360-17 20171008c1

88 Section 3. This act shall take effect October 1, 2017.

Page 4 of 4

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/17/17 Meeting Date

1008 Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Samantha Padgett

Job Title VP & General Counsel

Address 227 S. Adams St.

Phone 822-4082

Tallahassee FL 32301

Email samantha@ret.org

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

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

Representing Florida Retail Federation

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)

4/17/17

Meeting Date

SB 1008

Bill Number (if applicable)

Topic Public Records/Workers Comp

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N Adams St

Phone 224-7173

Street

Tallahassee

FL

32312

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

4-17-17 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)
Meeting Date

1008
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Lance Lozano

Job Title Chief Operating Officer

Address 116 S. Monroe St.

Phone 850 681-6265

Tallahassee FL 32301
City State Zip

Email llozano@fuba.org

Speaking: For Against Information

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

Representing Florida United Businesses 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/17
Meeting Date

CS/ SB 1008
Bill Number (if applicable)

Topic Workers' Comp

Amendment Barcode (if applicable)

Name Buddy Dewar

Job Title _____

Address 5501 TOURNAINE DR.

Phone 850

TALHESSEE FL 32308
City State Zip

Email _____

Speaking: For Against Information

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

Representing Florida Fire Sprinkler Assn

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

4-17-17

Meeting Date

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

CS/SB 1008
Bill Number (if applicable)

Topic WORKERS' COMP PRE

Amendment Barcode (if applicable)

Name CAM FENTRISS

Job Title LEG. COUNSEL

Address 1400 VILLAGE SQUARE # 3-243
Street

Phone 850-222-2772

TALL FL 32312
City State Zip

Email AFENTRISS@AOL.COM

Speaking: For Against Information

Waive Speaking: In Support Against

(The Chair will read this information into the record.)

Representing FCA ROOFING + SHEET METAL CONTRACTORS ASSN
FCA REFRIGERATION + AC CONTRACTORS ASSN

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)

4/17/17

Meeting Date

1008

Bill Number (if applicable)

Topic Public Record - workers' Comp

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Policy Director

Address 136 S Brorough St
Street

Phone 821-1200

Tallahassee FL 32301
City State Zip

Email cjohnson@flchamber.com

Speaking: For Against Information

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

Representing FL 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)

4/17/17
Meeting Date

1008
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Tim Nungesser

Job Title Legislative Director

Address 110 E. Jefferson St.

Phone 800-445-5367

Tallahassee FL 32301
City State Zip

Email tim.nungesser@flib.org

Speaking: For Against Information

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

Representing National Federation of Independent Business

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)

4/17/17

Meeting Date

1008

Bill Number (if applicable)

Topic Pub Records Exemption

Amendment Barcode (if applicable)

Name Carol Bowen

Job Title Deputy Chief Lobbyist

Address 3930 Coconut Creek Pkwy

Phone 954-465-6811

Street

Coconut Creek FL 33006

Email cbowen@abcoastflorida.com

City

State

Zip

Speaking: For Against Information

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

Representing Associated Builders & Contractors

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)

4-17-17 Meeting Date

1008 Bill Number (if applicable)

Topic SB 1008

Amendment Barcode (if applicable)

Name Elizabeth Boyd

Job Title Director, Legislative Affairs

Address 400 N. Monroe St Street

Phone 413-2863

Tallahassee FL 32399 City State Zip

Email elizabeth.boyd@myfloridaclear.com

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

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

Representing CFO Atwater

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
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 1014

INTRODUCER: Banking and Insurance Committee and Senator Brandes

SUBJECT: Public Records/Investigation and Tracking of Insurance Fraud/Department of Financial Services

DATE: April 14, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Peacock</u>	<u>Ferrin</u>	<u>GO</u>	<u>Favorable</u>
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1014 creates a public records exemption for certain information submitted to the Department of Financial Services (DFS) by insurers to comply with insurance fraud prevention and reporting requirements. The bill provides that the following information is exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, of the Florida Constitution:

- The description of the insurer’s required anti-fraud education and training;
- The description or chart of the insurer’s anti-fraud investigative unit;
- The rationale for the level of staffing and resources provided to the insurer’s anti-fraud investigative unit;
- The number of claims referred to the anti-fraud investigative unit;
- The number of other insurance fraud matters referred to the anti-fraud investigative unit that were not claim related;
- The number of claims investigated or accepted by the anti-fraud investigative unit;
- The number of other insurance fraud matters investigated or accepted by the anti-fraud investigative unit that were not claim related; and
- The estimated dollar amount or range of damages on cases referred to the DFS’s Division of Investigative and Forensic Services or other agencies.

The bill provides that the exemption applies to records held on, before, or after the effective date.

The bill provides that the public records exemption is subject to the Open Government Sunset Review Act and will expire October 2, 2022, unless saved from repeal by the Legislature.

The bill includes a public necessity statement as required by the Florida Constitution.

The Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption.

The bill becomes effective at the same time CS/SB 1012 or similar legislation takes effect.

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” may be released at the discretion of the records custodian under certain circumstances.¹⁴

Open Government Sunset Review Act

In addition to the constitutional requirements relating to the enactment of a public records exemption, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act (OGSR).

The OGSR prescribes a legislative review process for newly created or substantially amended public records.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 In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

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). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So.2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

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. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that 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 s. 119.15(2), F.S. The OGSR process is currently being followed, however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one legislature cannot bind a future legislature. *Scott v. Williams*, 107 So.3d 379 (Fla. 2013).

¹⁶ Section 119.15(3), F.S.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than necessary.¹⁷ An exemption serves an identifiable purpose if it meets one of the following purposes and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;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

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

Under the OGSR the purpose and necessity of reenacting the exemption are reviewed. The Legislature must consider the following questions during its review of an exemption:²¹

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

If the Legislature expands an exemption, 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 otherwise provided for by law.²³

Department of Financial Services

The Department of Financial Services (DFS) regulates insurance agents, insurance agencies, and insurance adjusters. The DFS Division of Investigative and Forensic Services (Division) contains sworn law enforcement officers that investigate various types of insurance fraud including personal injury protection (PIP) fraud, workers' compensation fraud, vehicle fraud, application fraud, licensee fraud, homeowner's insurance fraud, and healthcare fraud. The Division is directed by statute to investigate fraudulent insurance acts, violations of the Unfair Insurance Trade Practices Act, false and fraudulent insurance claims, and willful violations of the Florida

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.

²² FLA. CONST., art. I, s. 24(c).

²³ Section 119.15(7), F.S.

Insurance Code and rules adopted pursuant to the code. The Division employs sworn law enforcement officers to investigate insurance fraud. In Fiscal Year 2014-2015, the Division received 17,392 referrals.²⁴

Reporting Requirements

Section 626.9891, F.S., requires each insurer admitted to do business in this state, if the insurer received \$10 million or more in direct premiums during the previous calendar year, to establish a unit to investigate possible insurance claim fraud or to contract with others to investigate such fraud. The insurer must file a detailed description of the anti-fraud unit with, or provide a copy of the contract, to the Division.²⁵

If the insurer received less than \$10 million in direct premiums during the previous calendar year, the insurer must submit an anti-fraud plan to the Division.²⁶ The anti-fraud plan must describe:

- A description of the insurer's procedures for detecting and investigating possible fraudulent insurance acts;
- A description of the insurer's procedures for the mandatory reporting of possible fraudulent insurance acts to the Division;
- A description of the insurer's plan for anti-fraud education and training of its claims adjusters or other personnel; and
- A written description or chart outlining the organizational arrangement of the insurer's anti-fraud personnel who are responsible for the investigation and reporting of possible fraudulent insurance acts.²⁷

Workers' compensation insurers are required to report the following to the DFS on or before August 1 of each year:

- The dollar amount of recoveries and losses attributable to workers' compensation fraud delineated by the type of fraud: claimant, employer, provider, agent, or other;
- The number of fraud referrals submitted to the Bureau of Workers' Compensation Fraud for the prior year;
- A description of the organization's anti-fraud investigative unit, if applicable, including the position titles and descriptions of staffing;
- The rationale for the level of staffing and resources being provided for the anti-fraud investigative unit, which may include objective criteria such as number of policies written, number of claims received on an annual basis, volume of suspected fraudulent claims currently being detected, other factors, and an assessment of optimal caseload that can be handled by an investigator on an annual basis;
- The in-service education and training provided to underwriting and claims personnel to assist in identifying and evaluating instances of suspected fraudulent activity in underwriting or claims activities; and

²⁴ See http://www.fldfs.com/Division/DIFS/resources/documents/2014-15_Annual-Report.pdf (last accessed March 29, 2017).

²⁵ Section 626.9891(1), F.S.

²⁶ Section 626.9891(2), F.S.

²⁷ Section 626.9891(3), F.S.

- A description of a public awareness program focused on the costs and frequency of insurance fraud and methods by which the public can prevent it.²⁸

If an insurer fails to comply with the requirements for anti-fraud units or anti-fraud plans or fails to comply with other provisions of law, the DFS, Office of Insurance Regulation, or Financial Services Commission may impose certain administrative fines.²⁹

CS/SB 1012: Insurer Anti-fraud Efforts

CS/SB 1012, which is linked to this bill, revises the reporting requirements and requires all insurance companies to file statistical information with the Division. Each insurer must adopt an anti-fraud plan or contract with others to investigate possible fraud. Each insurer must also establish a unit to investigate possible fraud or contract with others to investigate possible fraud. Each insurer must electronically file with the Division a detailed description of the unit established to investigate possible fraudulent insurance acts or a copy of the contract with the company that investigates fraudulent insurance acts for the insurer.

The anti-fraud plan must include:

- An acknowledgement that the insurer has established procedures for detecting and investigating possible fraudulent insurance acts relating to the different types of insurance written by that insurer;
- An acknowledgement that the insurer has established procedures for the mandatory reporting of possible fraudulent insurance acts to the Division;
- An acknowledgement that the insurer provides anti-fraud education and training to its anti-fraud investigative unit;
- A description of the anti-fraud education and training;
- A description or chart of the insurer's anti-fraud investigative unit, including position titles and descriptions of staffing; and
- The rationale for the level of staffing and resources being provided for the anti-fraud investigative unit, which may include objective criteria, such as the number of policies written, the number of claims received on an annual basis, the volume of suspected fraudulent claims detected on an annual basis, an assessment of the optimal caseload that one investigator can handle on an annual basis, and other factors.

CS/SB 1012 also requires each insurer to report data related to fraud to the DFS by March 1, 2019, and annually thereafter for each line of insurance written by the insurer during the prior calendar year. The data must include:

- The number of policies in effect;
- The amount of premiums written for policies;
- The number of claims received;
- The number of claims referred to the anti-fraud investigative unit;
- The number of other insurance fraud matters referred to the anti-fraud investigative unit that were not claim related;

²⁸ Section 626.9891(6), F.S.

²⁹ Section 626.9891(7), F.S.

- The number of claims investigated or accepted by the anti-fraud investigative unit;
- The number of other insurance fraud matters investigated or accepted by the anti-fraud investigative unit that were not claim related;
- The number of cases referred to the Division;
- The number of cases referred to other law enforcement agencies;
- The number of cases referred to other entities; and
- The estimated dollar amount or range of damages on cases referred to the Division or other agencies.

III. Effect of Proposed Changes:

The bill provides that the following information is exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, of the Florida Constitution:

- A description of the anti-fraud education and training;
- A description or chart of the insurer's anti-fraud investigative unit, including position titles and descriptions of staffing;
- The rationale for the level of staffing and resources being provided for the anti-fraud investigative unit, which may include objective criteria, such as the number of policies written, the number of claims received on an annual basis, the volume of suspected fraudulent claims detected on an annual basis, an assessment of the optimal caseload that one investigator can handle on an annual basis, and other factors;
- The number of claims referred to the anti-fraud investigative unit;
- The number of other insurance fraud matters referred to the anti-fraud investigative unit that were not claim related;
- The number of claims investigated or accepted by the anti-fraud investigative unit;
- The number of other insurance fraud matters investigated or accepted by the anti-fraud investigative unit that were not claim related; and
- The estimated dollar amount or range of damages on cases referred to the Division or other agencies.

The exemptions created by the bill apply to records held before, on, or after the effective date of the exemption.

The exemptions created by the bill are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2022, unless reviewed and saved from repeal by the Legislature.

The bill provides a public necessity statement. The bill notes that public disclosure of fraud detection strategies utilized by insurers would allow criminal elements to use this information to commit insurance fraud. Public disclosure of measures taken by insurers to deter fraud could injure a business in the marketplace by providing competitors with company statistics and insights into claim investigation processes.

The provisions of this bill cite statutory changes made by CS/SB 1012. This bill becomes effective at the same time CS/SB 1012 or similar legislation takes effect.

IV. Constitutional Issues:**A. Municipality/County Mandate 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:**Vote Requirement**

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

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. The bill 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.

The bill creates a public records exemption for certain information maintained by insurers and specified data submitted to the DFS by insurers to comply with insurance fraud prevention and reporting requirements. As such, the exemption does not appear to be in conflict with the constitutional requirements that it be no broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

Taxpayers may benefit from the DFS's increased ability to detect and prevent fraud.³⁰

³⁰ Florida Department of Financial Services, *Senate Bill 1014 Analysis* (March 8, 2017) (Copy on file with the Senate Governmental Oversight and Accountability Committee).

C. Government Sector Impact:

The DFS does not anticipate a fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 626.9891 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 Banking and Insurance on April 3, 2017:

The bill narrows the public records exemption and specifies the information that is exempt. The original bill exempted the entire anti-fraud plan rather than specific information from that plan that could damage insurers.

- B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Brandes

597-03364-17

20171014c1

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 626.9891, F.S.; providing an exemption from public
 4 records requirements for reports, documents, or other
 5 information relating to the investigation and tracking
 6 of insurance fraud submitted by insurers to the
 7 Department of Financial Services; providing for future
 8 legislative review and repeal of the exemption;
 9 providing retroactive applicability; providing a
 10 statement of public necessity; providing a contingent
 11 effective date.
 12
 13 Be It Enacted by the Legislature of the State of Florida:
 14
 15 Section 1. Subsection (10) is added to section 626.9891,
 16 Florida Statutes, to read:
 17 626.9891 Insurer anti-fraud investigative units; reporting
 18 requirements; penalties for noncompliance.—
 19 (10) (a) The information submitted to the department
 20 pursuant to paragraphs (3) (d), (e), and (f) and paragraphs
 21 (5) (d), (e), (f), (g), and (k) is exempt from s. 119.07(1) and
 22 s. 24(a), Art. I of the State Constitution.
 23 (b) This subsection is subject to the Open Government
 24 Sunset Review Act in accordance with s. 119.15 and shall stand
 25 repealed on October 2, 2022, unless reviewed and saved from
 26 repeal through reenactment by the Legislature.
 27 (c) This exemption applies to records held before, on, or
 28 after the effective date of this exemption.
 29 Section 2. (1) The Legislature finds that it is a public

Page 1 of 4

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

597-03364-17

20171014c1

30 necessity to make exempt from s. 119.07(1), Florida Statutes,
 31 and s. 24(a), Article I of the State Constitution the
 32 description of an insurer's anti-fraud education and training,
 33 the description of an insurer's anti-fraud investigative unit,
 34 and an insurer's rationale for the level of staffing and
 35 resources it provides to the anti-fraud investigative unit as
 36 required in s. 626.9891(3) (d), (e), and (f), Florida Statutes,
 37 and filed with the Division of Investigative and Forensic
 38 Services pursuant to s. 626.9891(2), Florida Statutes, and the
 39 data collected and reported to the Division of Investigative and
 40 Forensic Services pursuant to s. 626.9891(5) (d), (e), (f), (g),
 41 and (k), Florida Statutes.
 42 (2) The description of an insurer's anti-fraud education
 43 and training that assists in identifying and evaluating
 44 instances of suspected fraudulent insurance acts, the
 45 description of an insurer's anti-fraud investigative unit, and
 46 an insurer's rationale for the level of staffing and resources
 47 it provides to the anti-fraud investigative unit will allow the
 48 Department of Financial Services to ensure that insurers have
 49 adequate procedures in place to properly detect, investigate,
 50 and report potential insurance fraud. The public disclosure of
 51 this information would allow criminal elements to use such
 52 information to identify fraud prevention or detection strategies
 53 employed by insurers and use this information to commit
 54 insurance fraud. The Legislature further finds that disclosure
 55 of this information would allow persons suspected of fraud to be
 56 alerted to a potential or ongoing investigation and alter
 57 behavior to impede an investigation. To ensure the integrity of
 58 such records already in the possession of the department, this

Page 2 of 4

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597-03364-17

20171014c1

59 exemption is made retroactive in its application.

60 (3) The data submitted pursuant to s. 626.9891(5)(d), (e),
61 (f), (g), and (k), Florida Statutes, allow the department to
62 track and assess trends in insurance fraud in this state. Such
63 information includes the number of claims referred to the anti-
64 fraud investigative unit, the number of matters referred to the
65 anti-fraud investigative unit which were not claim-related, the
66 number of claims investigated or accepted by the anti-fraud
67 investigative unit, the number of other insurance fraud matters
68 investigated or accepted by the anti-fraud investigative unit
69 which were not claim-related, and the estimated dollar amount or
70 range of damages on cases referred to the Division of
71 Investigative and Forensic Services or other agencies. The
72 public disclosure of this information could injure a business in
73 the marketplace by providing its competitors with detailed
74 insights into the claim investigation processes and statistics
75 of the company, thereby diminishing the advantage that the
76 business maintains over competitors that do not possess such
77 information. Without this exemption, insurers might refrain from
78 providing accurate and unbiased data, thus impairing the
79 department's ability to track and assess insurance fraud in this
80 state. This data will allow insurance fraud investigators to
81 better track, predict, and curb fraud trends in this state by
82 providing access to data gathered by insurers' anti-fraud
83 investigative units. Information regarding the amount of
84 insurance fraud experienced, referred, and addressed internally
85 will be valuable material for the department and will better
86 enable law enforcement agencies to assist state prosecutors in
87 the successful prosecution of fraudulent behavior.

Page 3 of 4

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597-03364-17

20171014c1

88 Section 3. This act shall take effect on the same date that
89 CS/SB 1012 or similar legislation takes effect, if such
90 legislation is adopted in the same legislative session or an
91 extension thereof and becomes a law.

Page 4 of 4

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



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: April 4th, 2017

I respectfully request that **Senate Bill #1014**, relating to **Public Records/Division of Investigative and Forensic Services of the Department of Financial Services** 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)

4-17-17

Meeting Date

1014

Bill Number (if applicable)

Topic Insurance Fraud Public Records Exemption

Amendment Barcode (if applicable)

Name Elizabeth Boyd

Job Title Legislative Affairs Director

Address 406 W Monroe St.

Phone 870-413-2863

Street

Tallahassee

FL

32399

City

State

Zip

Email Elizabeth.boyd@myfloridacfo.com

Speaking: For Against Information

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

Representing Department of Financial Services

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 1072

INTRODUCER: Governmental Oversight and Accountability Committee; Ethics and Elections Committee and Senator Hutson

SUBJECT: Public Records/Voter Registration Information

DATE: April 18, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carlton</u>	<u>Ulrich</u>	<u>EE</u>	<u>Fav/CS</u>
2.	<u>Ferrin</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 1072 creates a public records exemption for voter registration information received by the Department of State (department), pursuant to an interstate agreement or membership in a nongovernmental entity as authorized in CS/SB 1070, from another state in which the information is confidential or exempt pursuant to the laws of that state.

The bill provides a statement of public necessity as required by the Florida Constitution. The bill's effective date is contingent upon, and concurrent with, passage of CS/SB 1070, which will take effect on July 1, 2017.

The bill provides that 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.

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

II. Present Situation:

Public Records 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 Record Exemptions for Voter Registration Information

Current law provides a public records exemption for certain information held by an agency for purposes of voter registration.²⁴ Specifically, the following information is confidential and exempt from public records requirements:

- All declinations to register to vote made pursuant to ss. 97.057 and 97.058, F.S.
- Information relating to the place where a person registered to vote or where a person updated a voter registration.
- The social security number, driver's license number, and Florida identification number of a voter registration applicant or voter.

Further, the signature of a voter registration applicant or a voter is exempt from *copying* requirements.²⁵

Also, the law allows voters who fall into a number of high-risk professional classes to request that certain information such as their address and phone numbers and dates of birth be exempt for themselves and their spouses and children.²⁶

Victims of domestic violence who participate in the Attorney General's Address Confidentiality Program for Victims of Domestic Violence, as well as people who are victims of stalking may have their names, addresses, and telephone numbers be exempt from public disclosure.²⁷

Florida Voter List Maintenance Information

The Secretary of State, as the chief election officer of the State, is responsible for the operation and maintenance of the statewide voter registration system implemented as part of the Help America Vote Act of 2002.²⁸ The 67 county Supervisors of Elections (Supervisors) are primarily responsible for the registration of voters under s. 98.045, F.S., and records maintenance activities including removal of voters pursuant to ss. 98.065 and 98.075, F.S. Supervisors are the only election officials with authority to register and remove voters from the registration rolls.

-
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 97.0585, F.S.

²⁵ Section 97.0585(2), F.S.

²⁶ Section 119.071(4)(d), F.S.

²⁷ Sections 741.465 and 741.4651, F.S.

²⁸ See s. 98.035, F.S.

Each Supervisor is required to retain all records concerning implementation of registration list maintenance programs and activities conducted pursuant to ss. 98.065 and 98.075, F.S., and make them available for public inspection and copying.²⁹ The records must include lists of the name and address of each person to whom a notice³⁰ was sent and information as to whether each such person responded to the mailing, but may not include any information that is otherwise confidential or exempt from public inspection.³¹

These ongoing records maintenance activities are conducted to protect the integrity of the electoral process through current and accurate records and to ensure only eligible voters are registered in the statewide voter registration system. By law, any maintenance program or activity must be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965, the National Voter Registration Act of 1993, and the Help America Vote Act of 2002.³²

CS/SB 1070 (2017)

CS/SB 1070 authorizes the department to enter into an interstate agreement or become a member of a nongovernmental entity to share voter registration information with other states to maintain the integrity of the statewide Florida Voter Registration System (FVRS). CS/SB 1070 directs the department to use that information to identify registered voters or voter registration applicants who would be potentially ineligible to vote, and directs the department to share such information with Supervisors to conduct registration list maintenance activities.

CS/SB 1070 also provides that all states and nongovernmental entities that receive voter registration information maintain the confidentiality of information given as part of the agreement, if that information was confidential in its state of origin. The bill also requires an annual report to the Governor, President of the Senate, and Speaker of the House describing the interstate agreement or membership, and providing information on the number of registered voters removed from the FVRS as a result of the agreement or membership and the reasons for their removal.

III. Effect of Proposed Changes:

This bill creates a public records exemption for voter registration information received by the department, pursuant to an interstate agreement or membership in a nongovernmental entity as authorized in CS/SB 1070, from another state in which the information is confidential or exempt pursuant to the laws of that state.

The bill provides a statement of public necessity as required by the Florida Constitution. It states that without the exemption, the department would not be able to receive information from other states that might otherwise be confidential and exempt pursuant to the laws of those states. This

²⁹ Section 98.045(3), F.S.

³⁰ See s. 98.075(7), F.S. Supervisors are required to notify the registered voter of his or her potential ineligibility by mail.

³¹ *Supra* note 29.

³² Department of State, *SB 1072 Legislative Bill Analysis (March 17, 2017)* (on file with the Senate Committee on Governmental Oversight and Accountability).

would impair the ability of the department and supervisors to maintain accurate voter rolls, which is critical to fair elections in this state.

The bill's effective date is contingent upon, and concurrent with, passage of CS/SB 1070, which will take effect on July 1, 2017.

The bill provides that the exemption is subject to the OGSR, and stands repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Voting Requirement

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

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created public records 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 public records exemption in this bill appears to be no broader than necessary to accomplish its stated purpose.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 98.075 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 April 17, 2017:

The amendment:

- Conforms to the linked substantive bill, CS/SB 1070, by adding that the department may become a member in a nongovernmental entity whose membership is composed solely of state government election officials if the sole purpose of the agreement or membership is to share and exchange information in order to verify voter registration information; and
- Relocates the public records exemption to s. 98.075(2)(c) to avoid having to republish the text of CS/SB 1070 as existing text in this bill. This technical change does not substantively impact the bill.

CS by Ethics and Elections on April 4, 2017:

The Committee Substitute is different from the original bill in that it:

- Rewords (though it does not change the substantive effect of the bill) and moves the public records exemption from an unnumbered section of the Florida Statutes to s. 98.075, F.S.; and,
- Provides that, pursuant to the Open Government Sunset Review Act, the bill will stand repealed on October 2, 2022, unless reviewed and saved from repeal by reenactment of the Legislature.

B. Amendments:

None.

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



682324

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2017	.	
	.	
	.	
	.	

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 (c) is added to subsection (2) of
section 98.075, Florida Statutes, as amended by CS/SB 1070,
enacted in the 2017 Regular Session, to read:

98.075 Registration records maintenance activities;
ineligibility determinations.—

(2) DUPLICATE REGISTRATION.—



682324

11 (c) Information received by the department from another
12 state, through an interstate agreement or a membership in a
13 nongovernmental entity that is solely composed of state
14 government election officials for the sole purpose of sharing
15 and exchanging information in order to verify voter registration
16 information, which is confidential or exempt pursuant to the
17 laws of that state, is exempt from s. 119.07(1) and s. 24(a),
18 Art. I of the State Constitution. This paragraph is subject to
19 the Open Government Sunset Review Act in accordance with s.
20 119.15 and shall stand repealed on October 2, 2022, unless
21 reviewed and saved from repeal through reenactment by the
22 Legislature.

23 Section 2. The Legislature finds that it is a public
24 necessity that information received by the Department of State
25 from another state through an interstate agreement entered into
26 under s. 98.075(2), Florida Statutes, or through a membership in
27 a nongovernmental entity that is solely composed of state
28 government election officials for the sole purpose of sharing
29 and exchanging information in order to verify voter registration
30 information, which is confidential or exempt pursuant to the
31 laws of that state be made exempt from s. 119.07(1), Florida
32 Statutes, and s. 24(a), Article I of the State Constitution.
33 Participating in interstate agreements or nongovernmental
34 entities to share and exchange information with other states in
35 order to verify voter registration information is critical to
36 ensuring the accuracy of the statewide voter registration
37 system. Maintaining an accurate statewide voter registration
38 system is critical to fair elections in this state. Without the
39 public records exemption, the department will be unable to



682324

40 receive information from other states which might otherwise be
41 confidential or exempt pursuant to the laws of those states,
42 which would impair the ability of the department and supervisors
43 of elections to maintain accurate voter rolls. As a result, the
44 effective and efficient administration of the statewide voter
45 registration system would be hindered.

46 Section 3. This act shall take effect on the same date that
47 CS/SB 1070 or similar legislation takes effect, if such
48 legislation is adopted in the same legislative session or an
49 extension thereof and becomes a law.

50
51 ===== T I T L E A M E N D M E N T =====

52 And the title is amended as follows:

53 Delete everything before the enacting clause
54 and insert:

55 A bill to be entitled
56 An act relating to public records; amending s. 98.075,
57 F.S.; creating a public records exemption for certain
58 information received by the Department of State from
59 another state, through an interstate agreement or a
60 membership in a nongovernmental entity whose
61 membership is solely composed of state government
62 election officials for the sole purpose of sharing and
63 exchanging information in order to verify voter
64 registration information, which is confidential or
65 exempt pursuant to the laws of that state; providing
66 for future legislative review and repeal of the
67 exemption; providing a statement of public necessity;
68 providing a contingent effective date.

By the Committee on Ethics and Elections; and Senator Hutson

582-03403-17

20171072c1

1 A bill to be entitled
 2 An act relating to public records; amending s. 98.075,
 3 F.S.; creating a public records exemption for certain
 4 information received by the Department of State
 5 through an interstate agreement from another state
 6 which is confidential or exempt pursuant to the laws
 7 of that state; providing for future legislative review
 8 and repeal of the exemption; providing a statement of
 9 public necessity; providing a contingent effective
 10 date.
 11
 12 Be It Enacted by the Legislature of the State of Florida:
 13
 14 Section 1. Paragraph (b) of subsection (2) of section
 15 98.075, Florida Statutes, as created by CS/SB 1070, 2017 Regular
 16 Session, is amended to read:
 17 98.075 Registration records maintenance activities;
 18 ineligibility determinations.-
 19 (2) DUPLICATE REGISTRATION.-
 20 (b)1. The department may enter into interstate agreements
 21 or become a member of a nongovernmental entity whose membership
 22 is composed solely of state government election officials if the
 23 sole purpose of the agreement or membership is to share and
 24 exchange information in order to verify voter registration
 25 information. If the department intends to become a member of
 26 such a nongovernmental entity, the agreement to join the entity
 27 must require that the Secretary of State, or his or her
 28 designee, serve as a full member with voting rights on the
 29 nongovernmental entity's board of directors. The department

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

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30 shall provide information it receives as a result of the
 31 agreements or memberships to the supervisors to conduct
 32 registration list maintenance activities.
 33 2. If the department enters into an interstate agreement or
 34 becomes a member of a nongovernmental entity pursuant to
 35 subparagraph 1., each state that is a participant in the
 36 agreement or a member of the nongovernmental entity must agree
 37 to maintain the confidentiality of personal information as
 38 required by the laws of the state supplying the information to
 39 the entity or participating states. The bylaws of a
 40 nongovernmental entity must also contain a provision requiring
 41 member states and the entity to maintain the confidentiality of
 42 personal information as required by the laws of the state
 43 supplying the information to the entity.
 44 3. The department may only participate in an interstate
 45 agreement or become a member of a nongovernmental entity as
 46 provided in subparagraph 1. if the agreement or entity is
 47 controlled and operated by the participating states. The
 48 interstate agreement or entity may not be operated or controlled
 49 by the Federal Government or any other entity acting on behalf
 50 of the Federal Government. The department must be able to
 51 withdraw at any time from any interstate agreement or membership
 52 entered into.
 53 4. If the department enters into an interstate agreement or
 54 becomes a member of a nongovernmental entity as provided in
 55 subparagraph 1., the department must submit a report to the
 56 Governor, the President of the Senate, and the Speaker of the
 57 House of Representatives by December 1 of each year. The report
 58 must describe the agreement or membership and provide

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59 information on the total number of voters removed from the voter
60 registration system as a result of the agreement or membership
61 and the reasons for their removal.

62 5. Information received by the department, pursuant to an
63 interstate agreement, from another state which is confidential
64 or exempt pursuant to the laws of that state, is exempt from s.
65 119.07(1) and s. 24(a), Art. I of the State Constitution. This
66 subparagraph is subject to the Open Government Sunset Review Act
67 in accordance with s. 119.15 and shall stand repealed on October
68 2, 2022, unless reviewed and saved from repeal through
69 reenactment by the Legislature.

70 Section 2. The Legislature finds that it is a public
71 necessity that information received by the Department of State,
72 pursuant to an interstate agreement entered into under s.
73 98.075(2)(b), Florida Statutes, from another state which is
74 confidential or exempt pursuant to the laws of that state be
75 made exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
76 Article I of the State Constitution. Participating in interstate
77 agreements to share and exchange information with other states
78 in order to verify voter registration information is critical to
79 ensuring the accuracy of the statewide voter registration
80 system. Maintaining an accurate statewide voter registration
81 system is critical to fair elections in this state. Without the
82 public records exemption, the department will be unable to
83 receive information from other states that might otherwise be
84 confidential or exempt pursuant to the laws of those states,
85 which would impair the ability of the department and supervisors
86 of elections to maintain accurate voter rolls. As a result, the
87 effective and efficient administration of the statewide voter

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582-03403-17 20171072c1

88 registration system would be hindered.

89 Section 3. This act shall take effect on the same date that
90 CS/SB 1070 or similar legislation takes effect, if such
91 legislation is adopted in the same legislative session or an
92 extension thereof and becomes a law.

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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: April 6, 2017

I respectfully request that **Senate Bill #1072**, relating to Secretary of State/Public Records, be placed on the:

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

A handwritten signature in blue ink that reads "Travis Hutson".

Senator Travis Hutson
Florida Senate, District 7

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/17/17

Meeting Date

1072

Bill Number (if applicable)

Topic Public Records Exemption - Voter Information

Amendment Barcode (if applicable)

Name Ron LABASKY

Job Title

Address 225 S. ADAMS ST. Street

Phone 222-7718

TALL City FL State 32302 Zip

Email

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

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

Representing FLA. STATE ASSOC. OF SUPERVISORS OF ELECTIONS

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)

4/17/17
Meeting Date

1072
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Kelly Quintero

Job Title Legislative Advocate

Address 540 Beverly Ct
Street

Phone 772 204 1792

Tallahassee FL 37301
City State Zip

Email lwvfadvocacy@gmail.com

Speaking: For Against Information

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

Representing League of Women Voters of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
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 1084

INTRODUCER: Banking and Insurance Committee and Senator Stargel

SUBJECT: Firefighters

DATE: April 14, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Peacock</u>	<u>Ferrin</u>	<u>GO</u>	<u>Favorable</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1084 allows a firefighter or volunteer firefighter to apply for a Lifetime Firefighter designation if he or she:

- Has at least 20 years of service;
- Has been employed with a fire service provider and is in good standing with their last most recent fire service provider;
- Has not been convicted of a felony under s. 633.412 (2), F.S.; and
- Is recorded on a fire service provider roster in the Division of the State Fire Marshal's online electronic database; or
- Was previously certified as a firefighter or volunteer firefighter in this state.

Firefighters receiving such designation must still maintain all requirements for licensure in order to engage in firefighting activities.

The Division of State Fire Marshall is authorized to investigate complaints concerning a Lifetime Firefighter and to adopt rules.

The bill takes effect on July 1, 2017.

II. Present Situation:

State law on fire prevention and control is provided in ch. 633, F.S. Section 633.104, F.S., which designates the Chief Financial Officer (CFO) as the State Fire Marshal, operating through the Department of Financial Services (DFS), Division of the State Fire Marshal (Division).¹ Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; develops firesafety standards; provides facilities for the analysis of fire debris; and operates the Florida State Fire College. Additionally, the State Fire Marshal adopts by rule the Florida Fire Prevention Code, which contains or references all firesafety laws and rules regarding public and private buildings.²

The Division consists of the two bureaus: the Bureau of Fire Standards and Training (BFST), and the Bureau of Fire Prevention.³ The BFST utilizes a database within the Fire College Department of Insurance Continuing Education (FCDICE) to support the training, certification, and re-certification of approximately 100,000 various certificates held by Florida firefighters, instructors, and inspectors.⁴ The Inspections Section, under the Bureau of Fire Prevention, annually inspects more than 14,000 state-owned buildings and facilities.⁵ Over 1.8 million fire and emergency reports are collected every year. These reports are entered into a database to form the basis for the State Fire Marshal's annual report.⁶

Firefighters Employment, Standards, and Training Council

The Firefighters Employment, Standards, and Training Council (Council) is housed at the DFS and consists of 13 members.⁷ Two are fire chiefs appointed by the Florida Fire Chiefs Association; two are firefighters, who are not officers, appointed by the Florida Professional Firefighters Association; two are firefighter officers, who are not fire chiefs, appointed by the State Fire Marshal; one individual is appointed by the Florida League of Cities; one individual is appointed by the Florida Association of Counties; one individual is appointed by the Florida Association of Special Districts; one individual is appointed by the Florida Fire Marshals' and Inspectors' Association; one employee of the Florida Forest Service of the Department of Agriculture and Consumer Services is appointed by the director of the Florida Forest Service; one individual is appointed by the State Fire Marshal; one director or instructor of a state-certified firefighting training facility is appointed by the State Fire Marshal; and the remaining member who must be appointed by the State Fire Marshal, may not be a member or representative of the firefighting profession or of any local government.

¹ The head of the (DFS is the Chief Financial Officer. The Division of the State Fire Marshal is located within the DFS.

² Section 633.202(1), F.S.

³ See <http://www.fldfs.com/Division/sfm/> (last visited on April 12, 2017).

⁴ Email from Kimberly Renspie, Cabinet and Legislative Affairs Analyst, Department of Financial Services (April 13, 2017) (Copy on file with the Senate Governmental Oversight and Accountability Committee).

⁵ Division of State Fire Marshal, *About the Florida State Fire Marshal*, <http://www.myfloridacfo.com/division/sfm/AbouttheStateFireMarshal.htm> (last viewed March 28, 2017).

⁶ *Id.*

⁷ Section 633.404(1), F.S.

The Council has special powers in connection with the employment and training of firefighters as it:⁸

- Recommends for adoption by the Division, uniform minimum standards for the employment and training of firefighters and training of volunteer firefighters.
- Recommends for adoption by the Division, minimum curriculum requirements for schools operated by or for any fire service provider for the specific purpose of training firefighter trainees, firefighters, and volunteer firefighters.
- Recommends matters for adoption by the Division, relating to the funding, general operation, and administration of the Bureau of Fire Standards and Training (Florida State Fire College), including, but not limited to, all standards, training, curriculum, and the issuance of any certificate of competency required by this chapter.
- Makes or supports studies on any aspect of firefighting employment, education, and training or recruitment.

Curriculum Requirements for Firefighters

Firefighter Certificate of Compliance (FCOC)⁹ is issued by the Division to an individual who does all of the following:¹⁰

- Satisfactorily completes the Minimum Standards Course or has satisfactorily completed training for firefighters in another state which has been determined by the Division to be at least the equivalent of the training required for the Minimum Standards Course;
- Passes the Minimum Standards Course examination within 12 months after completing the required courses; and
- Meets the character and fitness requirements in s. 633.412, F.S.¹¹

“Certification” or “certified” is defined as the act of holding a current and valid certificate and that meets the requirements for renewal of certification.¹² A “fire service provider” is defined as a municipality or county, the state, the division, or any political subdivision of the state, including authorities and special districts, that employs firefighters or uses volunteer firefighters to provide fire extinguishment or fire prevention services for the protection of life and property. The term includes any organization under contract or other agreement with such entity to provide such services.¹³

In order for a firefighter to retain/renew his or her FCOC, every 4 years he or she must:¹⁴

- Be active as a firefighter;

⁸ Section 633.404(9), F.S.

⁹ Section 633.408(1)(a), F.S.

¹⁰ Section 633.408(4), F.S.

¹¹ In accordance with s. 633.412, F.S., an applicant for firefighter must: be a high school graduate or the equivalent, be at least 18 years of age, not have been convicted of a misdemeanor relating to the certification or to perjury or false statements, or a felony or crime punishable by imprisonment of 1 year or more, have a good moral character, be in good physical condition as determined by a medical examination, and be a nonuser of tobacco products for at least 1 year preceding application.

¹² Section 633.426(1)(b), F.S.

¹³ Section 633.102(13), F.S.

¹⁴ Section 633.414(1), F.S.

- Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the 4-year period, and provide proof of such instruction to the Division, which proof must be registered in an electronic database designated by the Division;
- Within 6 months before the 4-year period expires, successfully complete a Firefighter Retention Refresher Course consisting of a minimum of 40 hours of training to be prescribed by rule; and
- Within 6 months before the 4-year period expires, successfully retake and pass the Minimum Standards Course examination pursuant to s. 633.408, F.S.

Curriculum Requirements for Volunteer Firefighters¹⁵

Volunteer firefighter training consists of Part I of the State of Florida Minimum Standards Course as required by ch. 633, F.S., and Chapters 69A-37 (Firefighters Standards and Training) and 69A-62 (Firefighter Employment Standards), F.A.C. A significant portion of this training can be completed through both on-line and practical skill courses. The on-line courses can be taken in lieu of the traditional classroom lecture and satisfies most of the required academic objectives. The following academic components make up the Part I Minimum Standards Curriculum:¹⁶

- Firefighter I Curriculum consists of classroom and live fire based core training.
- National Incident Management System focuses on the history, features, principles and organizational structure of Incident Command.
- Wildland Firefighter Training curriculum and field exercises that address the basic skills required of all wildland firefighters who must understand the behavior and factors that affect the spread of wildfires.
- EMS First Responder curriculum that is an introduction to basic life support and emergency care.

Volunteer firefighters who have successfully completed the Firefighter Part I training are able to operate in the exclusionary or hot zone¹⁷ and in an Immediately Dangerous to Life or Health environment.¹⁸

Pursuant to s. 633.414 (2), F.S., volunteer firefighters can retain their Volunteer Firefighter Certificate of Completion by:

- Serving as a volunteer firefighter; or
- Completing a 40-hour refresher course.

III. Effect of Proposed Changes:

Section 1 allows a firefighter or volunteer firefighter to apply for a Lifetime Firefighter designation if he or she:

¹⁵ Guidelines for the Firefighter Part I Certificate of Completion Program (Volunteer Firefighter), Division of the State Fire Marshal, The Bureau of Fire Standards and Training at the Florida State Fire College, Revision 2.1, March 2017. *See* http://www.fldfs.com/division/sfm/bfst/REV_2_1_Guidelines_FF1.pdf.

¹⁶ *Id.*

¹⁷ Section 633.102(17), F.S., defines the term “Hot zone” as the area immediately around an incident where serious threat of harm exists, which includes the collapse zone for a structure fire.

¹⁸ *See supra* note 15.

- Has at least 20 years of service;
- Has been employed with a fire service provider as defined in s. 633.102(13), F.S., and is in good standing with his or her most recent fire service provider;
- Has not been convicted of a felony under s. 633.412 (2), F.S.; and
- Is recorded on a fire service provider roster in the Division's online electronic database or was previously certified as a firefighter or volunteer firefighter in this state.

A firefighter may have his or her Firefighter Certificate of Compliance or a Volunteer Firefighter Certificate of Completion placed into a Lifetime Firefighter designation by applying to the Division at the time required to renew the certificate. The application must be made on a form prescribed by the Division.

A Lifetime Firefighter may not engage in firefighting activities with a fire department unless he or she holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division under s. 633.408, F.S.

After the Division approves a currently employed firefighter's Lifetime Firefighter designation, the Division shall, after the firefighter's 4-year period pursuant to s. 633.414, F.S., issue in its online electronic database the Lifetime Firefighter designation upon the end of such period.

If a firefighter's Firefighter Certificate of Compliance or Volunteer Firefighter Certificate of Completion is current upon the approval of a Lifetime Firefighter designation and he or she applies to renew such certification within the first 4 years after the date of such approval, he or she must successfully complete the Minimum Standards Course Examination for a firefighter or a volunteer firefighter task book for a volunteer firefighter, and meet all requirements in s. 633.412, F.S.

If a firefighter's Firefighter Certificate of Compliance or Volunteer Firefighter Certificate of Completion has expired upon receiving the Lifetime Firefighter designation and he or she desires to perform firefighting services within the first 4 years after the date of approval of the Lifetime Firefighter designation, the firefighter must successfully complete the Minimum Standards Course Examination for a firefighter or a volunteer firefighter task book for a volunteer firefighter, and meet all requirements in s. 633.412, F.S.

This bill also authorizes the Division to investigate any report, complaint, or felony conviction concerning a Lifetime Firefighter pursuant to s. 633.412 or s. 633.426, F.S.

The bill authorizes the Division to adopt rules pursuant to its authority under s. 633.104(1), F.S., to implement this section.

Section 2 provides an effective date of July 1, 2017.

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:

None.

C. Government Sector Impact:

The DFS may incur minimal costs for the implantation of the Lifetime Firefighter Designation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 633.414 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 Banking and Insurance on April 3, 2017:

The CS establishes the Lifetime Firefighter designation while maintaining recipients of such designation engaging in firefighting activities must still complete all requirements for licensure under ch. 633, F.S.

- 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 Committee on Banking and Insurance; and Senator Stargel

597-03365-17

20171084c1

A bill to be entitled

An act relating to firefighters; creating s. 633.415, F.S.; providing for the designation as a Lifetime Firefighter; providing requirements for such designation; providing responsibilities of the Division of State Fire Marshal within the Department of Financial Services; authorizing the division to investigate reports, complaints, or felony convictions concerning Lifetime Firefighters; authorizing the division to adopt rules; providing an effective date.

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

Section 1. Section 633.415, Florida Statutes, is created to read:

633.415 Lifetime Firefighter designation.—

(1) A firefighter or volunteer firefighter may apply for a Lifetime Firefighter designation if he or she:

(a) Has at least 20 years of service;

(b) Has been employed by a fire service provider, as defined in s. 633.102(13), and is in good standing with his or her most recent fire service provider;

(c) Has not been convicted of a felony under s. 633.412(2), and so attests; and

(d) 1. Is recorded on a fire service provider roster in the division's online electronic database; or

2. Was previously certified as a firefighter or volunteer firefighter in this state.

(2) A firefighter may have his or her Firefighter

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Certificate of Compliance or a Volunteer Firefighter Certificate of Completion placed into a Lifetime Firefighter designation by applying to the division at the time required to renew the certificate. The application shall be made on a form prescribed by the division.

(3) A Lifetime Firefighter may not engage in firefighting activities with a fire department unless he or she holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the division under s. 633.408.

(4) After the division approves a currently employed firefighter's Lifetime Firefighter designation, the division shall, after the firefighter's 4-year period pursuant to s. 633.414, issue in its online electronic database the Lifetime Firefighter designation upon the end of such period.

(5) If a firefighter's Firefighter Certificate of Compliance or Volunteer Firefighter Certificate of Completion is current upon the approval of a Lifetime Firefighter designation and he or she applies to renew such certification within the first 4 years after the date of such approval, he or she must successfully complete the Minimum Standards Course Examination for a firefighter or a volunteer firefighter task book for a volunteer firefighter, and meet all requirements in s. 633.412.

(6) If a firefighter's Firefighter Certificate of Compliance or Volunteer Firefighter Certificate of Completion has expired upon receiving the Lifetime Firefighter designation and he or she desires to perform firefighting services within the first 4 years after the date of approval of the Lifetime Firefighter designation, the firefighter must successfully

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59 complete the Minimum Standards Course Examination for a
60 firefighter or a volunteer firefighter task book for a volunteer
61 firefighter, and meet all requirements in s. 633.412.

62 (7) The division may investigate any report, complaint, or
63 felony conviction concerning a Lifetime Firefighter pursuant to
64 s. 633.412 or s. 633.426.

65 (8) The division may adopt rules pursuant to its authority
66 under s. 633.104(1) to implement this section.

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

THE FLORIDA SENATE

APPEARANCE RECORD

4/17/17
Meeting Date

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

1084
Bill Number (if applicable)

Topic Fire Fighters

Amendment Barcode (if applicable)

Name Rick Butcher

Job Title Fire Chief

Address 444 Huey Ave

Phone 727-938-3987

Tarpon Springs FL 34689
City State Zip

Email rbutcher@tsfr.us

Speaking: For Against Information

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

Representing Florida Fire 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/SB 1224

INTRODUCER: Military and Veterans Affairs, Space, and Domestic Security Committee and Senator Passidomo

SUBJECT: Public Records and Public Meetings/Campus Emergency Response for Public Postsecondary Institutions

DATE: April 14, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sanders</u>	<u>Ryon</u>	<u>MS</u>	<u>Fav/CS</u>
2.	<u>Benvenisty</u>	<u>Graf</u>	<u>ED</u>	<u>Favorable</u>
3.	<u>Kim</u>	<u>Ferrin</u>	<u>GO</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1224 provides a public record exemption for portions of a plan addressing a public postsecondary institution's response to an act of terrorism or other public safety crisis or emergency. The exemption applies to state agencies, law enforcement agencies, and public postsecondary institutions that hold such plans. The bill also provides a public meeting exemption for portions of a meeting where such plans are discussed.

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

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

The bill takes effect 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

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 Emergency Plans

The primary public records exemptions applicable to emergency plans are those addressing agency investigations²⁴ and a security system plan.²⁵ These exemptions may apply to some, but not all emergency plans.

Agency Investigations (s. 119.071(2)(d), F.S.)

The agency investigations exemption provides that any comprehensive policy or plan compiled by a criminal justice agency²⁶ pertaining to the mobilization, deployment, or tactical operations involved in responding to an emergency²⁷ are exempt and unavailable for inspection.²⁸ This exemption generally applies to any criminal justice agency and does not distinguish between a state or local law enforcement agency level.²⁹

Security System Plan (s. 119.071(3)(a), F.S.)

The exemption for a security system plan provides that such a plan or portion thereof for any property owned by or leased to the state or any of its political subdivisions, or any privately owned or leased property is exempt from the public records requirements. A security system plan includes:

- Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;
- Threat assessments conducted by any agency or any private entity;

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 s. 119.071(2)(d), F.S.

²⁵ See s. 119.071(3), F.S.

²⁶ A criminal justice agency is any law enforcement agency, court, or prosecutor; any other agency charged by law with criminal law enforcement duties; any agency having custody of criminal intelligence information or criminal investigative information; or the Department of Corrections. See s. 119.011(4), F.S.

²⁷ An emergency is any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property. See s. 252.34(4), F.S.

²⁸ *Supra* note 38.

²⁹ This would include a certified law enforcement agency at a state university and subsequently the policies or plans held by those institutions. See e-mail correspondence from FDLE on March 9, 2017 (on file with Military and Veterans Affairs, Space and Domestic Security Committee).

- Threat response plans;
- Emergency evacuation plans;
- Sheltering arrangements; or
- Manuals for security personnel, emergency equipment, or security training.³⁰

Emergency Planning

Emergency planning is a fundamental pillar of emergency management that makes it possible for response agencies to manage the entire life cycle of a potential crisis.³¹ In concurrence with federal guidance, state and local emergency planning in Florida takes an all-hazards approach. As such, each plan produced is based on the premise that the consequences of disasters are the same regardless of the hazard,³² and most of the functions performed during emergencies are not hazard-specific.³³

Comprehensive Emergency Management Plans

The Florida Division of Emergency Management (FDEM) is required by s. 252.35, F.S., to prepare a state comprehensive emergency management plan (CEMP). The CEMP³⁴ serves as the master operations document for Florida and is the framework through which the state handles emergencies and disasters.³⁵ The state CEMP is a general all-hazards plan and does not fall under the agency investigations or security system plan exemptions.³⁶

The CEMP must contain provisions to ensure that the state is prepared for emergencies and minor, major, and catastrophic disasters.³⁷ Those provisions include:

- An evacuation component;
- A shelter component;
- A post-disaster response and recovery component;
- Additional provisions addressing aspects of preparedness, response, recovery, and mitigation as determined necessary by the FDEM;

³⁰ Section 119.071(3)(a)1., F.S.

³¹ Federal Emergency Management Agency, *Plan, Introduction*, available at <https://www.fema.gov/plan> (last visited March 23, 2017).

³² A hazard is any event or condition with the potential to cause fatalities, injuries, property damage, infrastructure damage, agricultural loss, environmental damage, business interruption, or other structural and financial loss. Hazards are categorized as either natural, technological, or human-caused. See FDEM, *State of Florida Enhanced Hazard Mitigation Plan, Executive Summary*, 4 (Aug. 2013), available at <http://www.floridadisaster.org/mitigation/State/Index.htm> (last visited March 23, 2017).

³³ FDEM, *Florida CEMP, Basic Plan*, 7 (2014), available at <http://www.floridadisaster.org/documents/CEMP/2014/2014%20State%20CEMP%20Basic%20Plan.pdf> (last visited March 20, 2017).

³⁴ The state CEMP defines the responsibilities of the government, private, volunteer, and non-governmental organizations that comprise the State Emergency Response Team. The CEMP ensures that all levels of government are able to mobilize as a unified emergency organization to safeguard the well-being of the state's residents and visitors. It is the plan to which Florida's other disaster response plans are aligned. *Supra* note 40.

³⁵ FDEM, *CEMP*, available at <http://www.floridadisaster.org/cemp.htm> (last visited March 20, 2017).

³⁶ FDEM, *Senate Bill 1224 Analysis* (March 6, 2017) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

³⁷ Section 252.35(2)(a), F.S.

- A section addressing the need for coordinated and expeditious deployment of state resources, including the Florida National Guard;
- A section establishing a system of communications and warning;
- A section establishing guidelines and schedules for annual exercises; and
- Assignments for lead and support responsibilities to state agencies and personnel.³⁸

The CEMP is developed in coordination with members of the State Emergency Response Team³⁹ (SERT) that have emergency management responsibilities.⁴⁰ Members of the SERT also participate in an annual review of the CEMP to document changes in procedures, lessons learned, identification of improved capabilities, and deficiencies for corrective action.⁴¹

As part of the SERT, the Department of Education (DOE) and Board of Governors (BOG) of the State University System⁴² each contribute to the state CEMP.

The Florida Department of Education and the Board of Governors require each Florida College System (FCS) institution⁴³ and state university,⁴⁴ respectively, to produce and maintain its own CEMP. The type and level of detail contained in a college or university's CEMP and the official custodian of the CEMP would determine if portions of these plans may qualify for the agency investigations or security system plan public record exemptions.

Additionally, each county is required to establish and maintain an emergency management program and develop a county CEMP that is consistent with the state emergency management program and state CEMP.⁴⁵ Municipalities may also elect to establish an emergency management program and in doing so must comply with the guidelines for a county CEMP.⁴⁶ A county or municipality may choose to be more specific in portions of its CEMP.⁴⁷ The type and level of detail contained in a county or municipality's CEMP would determine if portions of the plan may qualify for the security system plan public record exemption.⁴⁸

Continuity of Operations Plans

Each state agency and facility, such as a prison, office building, or university, is required to have a disaster preparedness plan that is coordinated with the applicable local emergency management agency and approved by the FDEM.⁴⁹ This plan is known as a continuity of operations plan

³⁸ Id.

³⁹ The SERT is comprised of FDEM staff, other state agencies, private volunteer organizations, and non-governmental agencies. The state CEMP defines the responsibilities of each member of the SERT. Supra note 40 at 5.

⁴⁰ Supra note 47 at 50.

⁴¹ Supra note 47 at 51.

⁴² See Fla. Board of Governors. Regulation 3.001(2)(b).

⁴³ See e-mail correspondence from DOE on March 21, 2017 (on file with Military and Veterans Affairs, Space and Domestic Security Committee).

⁴⁴ Fla. Board of Governors. Regulation 3.001(2)(c).

⁴⁵ Section 252.38(1)(a), F.S. The FDEM is required to adopt standards and requirements for county CEMPs, assist local governments in preparing and maintaining their CEMP's, and periodically review local government CEMPs for consistency with the state CEMP and the standards and requirements adopted by the FDEM. See s. 252.35(2)(b), F.S.

⁴⁶ Section 252.38(2), F.S.

⁴⁷ Supra note 50.

⁴⁸ Id.

⁴⁹ Section 252.365(3), F.S.

(COOP). A COOP must outline a comprehensive and effective program to ensure the continuity of essential state functions under all circumstances.⁵⁰ It must include, at a minimum, the following elements:

- Identification of essential functions, programs, and personnel;
- Procedures to implement the plan and personnel notification and accountability;
- Delegations of authority and lines of succession;
- Identification of alternative facilities and related infrastructure, including those for communications;
- Identification and protection of vital records and databases; and
- Schedules and procedures for periodic tests, training, and exercises.⁵¹

As required in statute, the DOE maintains an agency COOP. The BOG maintains a COOP as well that contributes to the DOE's agency COOP.⁵² Both the DOE and BOG require FCS institutions and state universities, respectively, to develop and maintain a COOP.⁵³

The FDEM considers the state COOP to be exempt under the security systems exemption in s. 119.071(3), F.S.⁵⁴ Continuity of operations plans developed by state agencies and facilities, to include state colleges and universities, may also be exempt under this security systems public record exemption.

Other Emergency Plans

Emergency plans are not limited to a CEMP or a COOP. Plans such as a CEMP are often supported by a number of annexes or other plans and procedures.⁵⁵ These documents may contain information addressing specific hazards or providing details on how an agency will respond to an emergency. Each plan would need to be analyzed individually to determine whether or not a public record exemption applies.

III. Effect of Proposed Changes:

CS/SB 1224 creates s. 1004.0962, F.S., to provide a public record exemption for portions of a plan addressing a public postsecondary institution's response to an act of terrorism or other public safety crisis or emergency, and a public meeting exemption for portions of a public meeting where such plans are discussed.

⁵⁰ Section 252.365(3)(a), F.S.

⁵¹ Section 252.365(3)(b), F.S.

⁵² Supra note 56.

⁵³ Supra notes 57 and 58.

⁵⁴ Supra note 50.

⁵⁵ See supra note 47 at 55. The state CEMP is supported by nine other plans and procedures and nine annexes.

Definitions

The bill defines the following terms:

“Campus emergency response” means a public postsecondary educational institution’s response to an act of terrorism, as defined in s. 775.30, F.S.,⁵⁶ or other public safety crisis or emergency.

“Campus emergency response plan” means a plan addressing a campus emergency response which includes information relating to:

- Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof;
- Threat assessments conducted by any agency or private entity;
- Threat response plans;
- Emergency evacuation plans;
- Sheltering arrangements;
- Manuals for security personnel, emergency equipment, or security training;
- Security systems or plans;
- Vulnerability analyses;
- Postdisaster activities, including provisions for emergency power, communications, food, and water;
- Postdisaster transportation;
- Supplies, including drug caches;
- Staffing;
- Emergency equipment; or
- Individual identification of students, faculty, and staff; the transfer of records; and methods of responding to family inquiries.

“Custodial agency” includes:

- A public postsecondary institution;
- A state or local law enforcement agency;
- A county or municipal emergency management agency;
- The Executive Office of the Governor;
- The Department of Education;
- The Board of Governors of the State University System; and
- The Division of Emergency Management.

Public Record and Public Meeting Exemptions

The bill provides that any portion of a campus emergency response plan addressing the items defined in the term “campus emergency response plan” that is held by a custodial agency is exempt from s. 119.07(1), F.S., and Article I, section 24(a) of the State Constitution. The public

⁵⁶ Section 775.30, F.S., defines terrorism as a violent act or an act dangerous to human life which is a violation of the criminal laws of this state or of the United States that intends to intimidate, injure, or coerce a civilian population; influence the policy of a government by intimidation or coercion; or affect the conduct of a government through destruction of property; assassination, murder, kidnapping, or aircraft piracy.

record exemption provided in the bill is remedial in nature and applies to plans held by a custodial agency before, on, or after the effective date of the bill.

Information made exempt by the bill may be disclosed to another government entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities, or upon showing of good cause before a court of competent jurisdiction.

The bill also provides that any portion of a public meeting which would reveal information related to a campus emergency response plan is exempt from s. 286.011, F.S. and Article I, section 24(b) of the State Constitution.

The public record and public meeting exemptions created by this bill are subject to the Open Government Sunset Review Act and will stand repealed on October, 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides statements of public necessity as required by the State Constitution.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. CS/SB 1244 creates a public record and public meeting exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may 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.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill defines “campus emergency response” to mean a public postsecondary education institution’s response to an act of terrorism or other public safety crisis or emergency. The Florida Statutes nor the bill define the term “public safety crisis.”

VIII. Statutes Affected:

This bill creates section 1004.0962 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 Military and Veterans Affairs, Space, and Domestic Security on March 22, 2017:

The CS:

- Places the public records and meeting exemption in ch. 1004, F.S., as opposed to in ch. 250, F.S.;
- Defines the terms “campus emergency response,” “campus emergency response plan,” and “custodial agency;”
- Removes private postsecondary institutions from the bill;
- Broadens the exemption to include portions of a campus emergency response plan that address a public safety crisis or emergency;
- Expands the list of items addressed in a campus emergency response plan that are to be exempt from public disclosure;
- Makes certain custodial agencies exempt from public records laws rather than confidential and exempt; and
- Allows exempt information to be disclosed to another governmental entity or upon showing of good cause before a court of competent jurisdiction.

- B. **Amendments:**

None.

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

583-02711-17

20171224c1

1 A bill to be entitled
 2 An act relating to public records and public meetings;
 3 creating s. 1004.0962, F.S.; defining terms; providing
 4 an exemption from public records requirements for a
 5 public postsecondary educational institution's campus
 6 emergency response plan when held by specified
 7 custodial agencies; providing for retroactive
 8 application; authorizing disclosure of exempt
 9 information under specified circumstances; providing
 10 an exemption from public meetings requirements for any
 11 portion of a public meeting at which certain
 12 components of a campus emergency response plan are
 13 discussed; providing for future legislative review and
 14 repeal of the exemptions; providing a statement of
 15 public necessity; providing an effective date.
 16
 17 Be It Enacted by the Legislature of the State of Florida:
 18
 19 Section 1. Section 1004.0962, Florida Statutes, is created
 20 to read:
 21 1004.0962 Campus emergency response of a public
 22 postsecondary educational institution; public records exemption;
 23 public meetings exemption.-
 24 (1) As used in this section, the term:
 25 (a) "Campus emergency response" means a public
 26 postsecondary educational institution's response to an act of
 27 terrorism, as defined in s. 775.30, or other public safety
 28 crisis or emergency.
 29 (b) "Campus emergency response plan" means a plan

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30 addressing a campus emergency response which includes
 31 information relating to:
 32 1. Records, information, photographs, audio and visual
 33 presentations, schematic diagrams, surveys, recommendations, or
 34 consultations or portions thereof;
 35 2. Threat assessments conducted by any agency or private
 36 entity;
 37 3. Threat response plans;
 38 4. Emergency evacuation plans;
 39 5. Sheltering arrangements;
 40 6. Manuals for security personnel, emergency equipment, or
 41 security training;
 42 7. Security systems or plans;
 43 8. Vulnerability analyses;
 44 9. Postdisaster activities, including provisions for
 45 emergency power, communications, food, and water;
 46 10. Postdisaster transportation;
 47 11. Supplies, including drug caches;
 48 12. Staffing;
 49 13. Emergency equipment; or
 50 14. Individual identification of students, faculty, and
 51 staff; the transfer of records; and methods of responding to
 52 family inquiries.
 53 (c) "Custodial agency" includes:
 54 1. A public postsecondary institution;
 55 2. A state or local law enforcement agency;
 56 3. A county or municipal emergency management agency;
 57 4. The Executive Office of the Governor;
 58 5. The Department of Education;

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59 6. The Board of Governors of the State University system;

60 and

61 7. The Division of Emergency Management.

62 (2) Any portion of a campus emergency response plan
 63 addressing the items described in subparagraphs (1)(b)1.-14.
 64 held by a custodial agency is exempt from s. 119.07(1) and s.
 65 24(a), Art. I of the State Constitution.

66 (3) The public records exemption provided by this section
 67 is remedial in nature, and it is the intent of the Legislature
 68 that the exemption apply to portions of campus emergency
 69 response plans addressing the items described in subparagraphs
 70 (1)(b)1.-14. held by a custodial agency before, on, or after the
 71 effective date of this section.

72 (4) Information made exempt by this section may be
 73 disclosed:

74 (a) To another governmental entity if disclosure is
 75 necessary for the receiving entity to perform its duties and
 76 responsibilities; or

77 (b) Upon showing of good cause before a court of competent
 78 jurisdiction.

79 (5) Any portion of a public meeting which would reveal
 80 information related to a campus emergency response plan is
 81 exempt from s. 286.011 and s. 24(b), Art. I of the State
 82 Constitution.

83 (6) This section is subject to the Open Government Sunset
 84 Review Act in accordance with s. 119.15 and shall stand repealed
 85 on October 2, 2022, unless reviewed and saved from repeal
 86 through reenactment by the Legislature.

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

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20171224c1

88 necessity that those portions of a campus emergency response
 89 plan of a public postsecondary educational institution held by a
 90 custodial agency be exempt from s. 119.07(1), Florida Statutes,
 91 and s. 24(a), Article I of the State Constitution. The
 92 Legislature also finds that it is a public necessity that any
 93 portion of a public meeting which would reveal information
 94 related to a campus emergency response plan be made exempt from
 95 s. 286.011, Florida Statutes, and s. 24(b), Article I of the
 96 State Constitution. A campus emergency response affects the
 97 health and safety of the students, faculty, staff, and the
 98 public at large. If campus emergency response plans were made
 99 publicly available for inspection or copying, they could be used
 100 to hamper or disable a campus emergency response. If a campus
 101 emergency response were hampered or disabled, an increase in the
 102 number of Floridians subjected to fatal injury would occur.
 103 There is ample existing evidence of the capabilities of
 104 terrorists and other criminals to plot, plan, and coordinate
 105 complicated acts of terror and violence on university and
 106 college campuses all over the country. The aftermath of these
 107 events has also shown the importance of viable campus emergency
 108 response plans by which public postsecondary educational
 109 institutions can respond to terrorist attacks and other public
 110 safety crises or emergencies.

111 Section 3. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: April 3, 2017

I respectfully request that **Senate Bill #1224**, relating to Public Records Exemptions - Terrorism/Emergency Plans, be placed on the:

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

A handwritten signature in black ink, appearing to read "K. Passidomo", with a horizontal line extending to the right.

Senator Kathleen Passidomo
Florida Senate, District 28

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 1408

INTRODUCER: Senator Broxson

SUBJECT: Public Records/Confidentiality/Department of Elderly Affairs

DATE: April 14, 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 1408 creates a public records exemption for certain information held by the Department of Elderly Affairs in connection with a complaint filed against or an investigation of a professional guardian.

The investigative information that is confidential and exempt indefinitely are: the names and identifying information of a ward and guardian; the ward's personal health and financial records; and all photographs and video recordings. All other investigative information become public once an investigation concludes.

The exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2022 unless reviewed and saved by the Legislature.

The bill is not expected to have a fiscal impact on the state and has an effective date of July 1, 2017.

II. Present Situation:

Guardianship

Guardianship is a concept whereby a "guardian" acts for another, called a "ward," whom the law regards as incapable of managing his or her own affairs due to age or incapacity. Guardianships are generally disfavored due to the loss of individual civil rights, and a guardian may be appointed only if the court finds there is no sufficient alternative to guardianship.

There are two main forms of guardianship: guardianship over a person or guardianship over property, which may be limited or plenary.¹ For adults, a guardianship may be established when a person has demonstrated that he or she is unable to manage his or her own affairs. If the adult is competent, this can be accomplished voluntarily. However, in situations where an individual's mental competence is in question, an involuntary guardianship may be established through the adjudication of incompetence which is based on the determination of a court appointed examination committee.²

Section 744.362, F.S., imposes specific duties upon a guardian consistent with the basic duties of a fiduciary including protecting and preserving the property of the ward's overall physical and social health. A guardian must file with the court an initial guardianship report,³ an annual guardianship report,⁴ and an annual accounting of the ward's property.⁵ The reports provide evidence of the guardian's faithful execution of his or her fiduciary duties.⁶

In 2016, the Legislature passed and the Governor signed, CS/SB 232 to expand and rename the Statewide Public Guardianship Office within the Department of Elder Affairs (DOEA) as the Office of Public and Professional Guardians (office).⁷ In its new capacity, the office is given authority to regulate professional guardians. The office is to establish standards of practice for public and professional guardians, receive and investigate complaints, establish procedures for disciplinary oversight, conduct hearings, and take administrative action pursuant to ch. 120, F.S. In conducting these investigations, the office may collect identifying information, medical records and financial records.

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.⁸ 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.⁹

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.¹⁰ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.¹¹ The Public Records Act states that

¹ Section 744.102(9), F.S.

² Section 744.102(12), F.S.

³ Section 744.362, F.S.

⁴ Section 744.367, F.S.

⁵ Section 744.3678, F.S.

⁶ Section 744.368(1), F.S.

⁷ Ch. 2016-40, Laws of Florida

⁸ FLA. CONST., art. I, s. 24(a).

⁹ *Id.*

¹⁰ 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.

¹¹ Public records laws are found throughout the Florida Statutes.

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.¹²

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.¹³ 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.”¹⁴ A violation of the Public Records Act may result in civil or criminal liability.¹⁵

The Legislature may create an exemption to public records requirements.¹⁶ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁷ 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.¹⁸ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹⁹

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”²⁰ 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.²¹

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

¹² Section 119.01(1), F.S.

¹³ 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.”

¹⁴ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

¹⁵ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁶ FLA. CONST., art. I, s. 24(c).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *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).

²⁰ 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).

²¹ *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

meetings exemptions.²² 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.²³

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.²⁴ 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;²⁵
- 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;²⁶ or
- It protects trade or business secrets.²⁷

The OGSR also requires specified questions to be considered during the review process.²⁸ 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.²⁹ 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.³⁰

III. Effect of Proposed Changes:

The bill creates s. 744.20042, F.S., which makes the following information in a complaint and investigation held by DOEA confidential and exempt from public disclosure indefinitely:

- A complainant's identity;

²² 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.

²³ Section 119.15(3), F.S.

²⁴ Section 119.15(6)(b), F.S.

²⁵ Section 119.15(6)(b)1., F.S.

²⁶ Section 119.15(6)(b)2., F.S.

²⁷ Section 119.15(6)(b)3., F.S.

²⁸ 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?

²⁹ FLA. CONST. art. I, s. 24(c).

³⁰ Section 119.15(7), F.S.

- A ward's identity, health information and financial records; and,
- All photographs and video records.

All other investigative information would become public when DOEA completes its investigation or the investigation ceases to be active. The bill provides that the DOEA may release confidential and records to the law enforcement, regulatory agencies, the clerk of court, and pursuant to a court order.

The bill provides a public necessity statement as required by the State Constitution, specifying that it is a public necessity to protect the identity of a complainant because revealing the identity of the complainant may damage their good name and the complainant could be put at risk of retaliation.

The bill also provides that investigative information should be exempt from public disclosure because an investigation could lead to legal action and the loss of a license. Releasing investigative information may also frustrate the purpose of an investigation and impair DOEA's ability to regulate guardians. The public necessity statement also provides that the records DOEA provides to law enforcement, regulatory agencies and clerks of court should maintain their confidential and exempt status. The bill itself does not expressly provide that the confidential and exempt status of investigative records travels with the records; the bill only provides that records are confidential and exempt when they are held by DOEA.

The bill provides for repeal of the exemption on October 2, 2022, unless reviewed and reenacted by the Legislature.

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

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 newly created public records exemption must "state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the state purpose of the law."

The bill exempts certain identifying information of a complainant contained in the DOEA's investigations of complaints filed on a professional guardian, which is supported by a public necessity statement.

Portions of the public exemption are not as well supported by public necessity statements. The bill does not provide a public necessity statement supporting the confidential and exempt status of the identity of the ward. The bill exempts the health and financial records of a ward, as well as photos and videos taken during the investigation, however, the specific necessity for the exemption are not apparent. Although the bill contains a general statement about investigatory information, the public necessity statement could be interpreted as lacking sufficient specificity.

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:

The bill does not provide that records are confidential and exempt once they are transferred to law enforcement, regulatory agencies and the clerks of court, however the public necessity statement says that confidentiality travels with the documents.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 744.20042 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.

By Senator Broxson

1-00979A-17

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1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 744.20042, F.S.; creating an exemption from public
 4 records requirements for certain personal identifying
 5 information, personal health and financial records,
 6 and photographs and video recordings held by the
 7 Department of Elderly Affairs in connection with a
 8 complaint filed or an investigation conducted pursuant
 9 to part II of ch. 744, F.S.; specifying that
 10 information retains its confidential and exempt status
 11 for the duration of an investigation; authorizing
 12 disclosure to specified entities and officers;
 13 providing for future legislative review and repeal;
 14 providing a statement of public necessity; providing
 15 an effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Section 744.20042, Florida Statutes, is created
 20 to read:

21 744.20042 Confidentiality.—

22 (1) The following are confidential and exempt from s.
 23 119.07(1) and s. 24(a), Art. I of the State Constitution when
 24 held by the Department of Elderly Affairs in connection with a
 25 complaint filed and any subsequent investigation conducted
 26 pursuant to this part, unless the disclosure is required by
 27 court order:

28 (a) The names or identities of the complainants and the
 29 ward involved in a complaint or subsequent investigation.

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30 (b) All personal health and financial records of the ward
 31 related to a complaint or obtained during the course of an
 32 investigation.

33 (c) All photographs and video recordings related to a
 34 complaint or obtained during the course of an investigation.

35 (2) Except as otherwise provided in this section,
 36 information held by the department pursuant to an investigation
 37 under this part is confidential and exempt from s. 119.07(1) and
 38 s. 24(a), Art. I of the State Constitution until the
 39 investigation is completed or ceases to be active, unless
 40 disclosure is required by court order.

41 (3) This section does not prohibit the department from
 42 providing such information to any law enforcement agency, any
 43 other regulatory agency in the performance of its official
 44 duties and responsibilities, or the clerk of the circuit court
 45 pursuant to s. 744.368.

46 (4) This section is subject to the Open Government Sunset
 47 Review Act in accordance with s. 119.15 and shall stand repealed
 48 on October 2, 2022, unless reviewed and saved from repeal
 49 through reenactment by the Legislature.

50 Section 2. The Legislature finds that it is a public
 51 necessity that information held by the Department of Elderly
 52 Affairs pursuant to an investigation conducted under part II of
 53 chapter 744, Florida Statutes, be made confidential and exempt
 54 from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of
 55 the State Constitution for the following reasons:

56 (1) If the complainants are identifiable, the disclosure of
 57 their identity to the public could cause unwarranted damage to
 58 their good name or reputation, especially if the information

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59 associated with them is inaccurate. Furthermore, if the
60 complainants are identifiable, public access to such information
61 could jeopardize the safety of such individuals by placing them
62 at risk for retaliation.

63 (2) An investigation of a complaint conducted by the
64 Department of Elderly Affairs may lead to the filing of an
65 administrative, civil, or criminal proceeding or to the denial
66 or conditional granting of a registration. The release could
67 frustrate or thwart the investigation and impair the ability of
68 the department to effectively and efficiently administer part II
69 of chapter 744, Florida Statutes. Information held by the
70 Department of Elderly Affairs that is provided to a law
71 enforcement agency, any other regulatory agency in the
72 performance of its official duties and responsibilities, or the
73 clerk of the circuit court pursuant to s. 744.368, Florida
74 Statutes, should remain confidential and exempt from public
75 records requirements. The release of this information could
76 jeopardize the integrity of the investigation and impair the
77 ability of other entities to carry out their statutory duties.

78 Section 3. 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)

4/17/17
Meeting Date

1408
Bill Number (if applicable)

Topic SB 1408 - support

Amendment Barcode (if applicable)

Name Jon Conley

Job Title Director Legislative Affairs

Address 4040 Esplanade way

Phone (850) 414-2155

Tallahassee FL 32399

Email conleyj@elderaffairs.org

Speaking: For Against Information

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

Representing Department of Elder Affairs

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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 1478

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Baxley

SUBJECT: Inspectors General and Auditors

DATE: April 19, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Ferrin	GO	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1478 requires the Chief Inspector General to meet the same educational and experience qualifications required of agency inspector generals. The Chief Inspector General must, at all times, have open and direct access to the Governor. The Chief Inspector General is also required to prepare an annual report that summarizes activities and includes certain budget information provided by agency inspector general reports.

Additionally, the bill adds experience in fraud examination to the list of qualifications that must be considered in the selection of an inspector general for an agency under the jurisdiction of the Governor. The bill adds information technology and managing programs in information security as types of experiences that an agency inspector general may have in order to meet minimum experience requirements.

The bill specifies that agency inspectors general must be appointed without regard to political affiliation. The bill authorizes an agency inspector general to take and record testimony or statements of any person as reasonably necessary for the furtherance of an investigation.

Agency inspector generals must include certain budget information in their annual reports.

The bill specifies that all employees of an office of inspector general and certain auditors employed by the Department of Financial Services are included in the Selected Exempt Service; an agency inspector general is included in the Senior Management Service.

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

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;
- Acting as a 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;

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.

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.*

- 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.

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

Qualifications

Inspectors general must possess minimum educational and experience qualifications, and the investigations they conduct must adhere to specific internal auditing standards.¹³ To ensure agency audits are performed in accordance with applicable auditing standards, the inspector general or the director of auditing within the OIG must possess the following qualifications:

- A bachelor's degree from an accredited college or university with a major in accounting, or with a major in business that includes five courses in accounting, and five years of experience as an internal auditor or independent postauditor, electronic data processing auditor, accountant, or any combination thereof. The experience must at a minimum consist

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 See s. 20.055(4), F.S.

of audits of units of government or private business enterprises, operating for profit or not for profit; or

- A master's degree in accounting, business administration, or public administration from an accredited college or university and four years of experience; or
- A certified public accountant licensed pursuant to Chapter 473, F.S., or certified internal audit certificate issued by the Institute of Internal Auditors or earned by examination, and four years of experience.¹⁴

For agencies under the jurisdiction of the Governor, the inspector general must be selected on the basis of integrity, leadership capability, and experience in accounting, auditing, financial analysis, law, management analysis, program evaluation, public administration, investigation, criminal justice administration, or other closely related field. The inspector general must also have a four-year degree from an accredited institution of higher learning or have at least five years of experience in at least one of the following areas:

- Inspector general.
- Supervisory experience in an OIG or an investigative public agency similar to an OIG.
- Local, state, or federal law enforcement officer.
- Local, state, or federal court judge.
- Senior-level auditor or comptroller.
- The administration and management of complex audits and investigations.
- Managing programs for prevention, examination, detection, or elimination of fraud, waste, abuse, mismanagement, malfeasance, or misconduct in government or other organizations.¹⁵

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.¹⁶

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

¹⁴ Section 20.055(4)(a), F.S.

¹⁵ Section 20.055(4)(b), F.S.

¹⁶ Section 20.055(3)(a), 1., F.S.

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.¹⁷ 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.¹⁸ If the inspector general does not possess the specified qualifications, the director of auditing must perform the auditing functions.¹⁹

Annual Reports

By September 30 of each year, each inspector general is required to prepare an annual report summarizing the activities of the OIG during the immediately preceding fiscal year.²⁰ However, the inspector general of the Florida Housing Finance Corporation is required to prepare the report within 90 days after the end of the fiscal year.²¹ The report must be provided to the agency head or, for state agencies under the jurisdiction of the Governor, to the CIG.²² The reports must include:

- A description of activities relating to the development, assessment, and validation of performance measures;
- A description of significant abuses and deficiencies relating to the administration of programs and operations of the agency disclosed by investigations, audits, reviews, or other activities during the reporting period;
- A description of the recommendations for corrective action made by the inspector general during the reporting period with respect to significant problems, abuses, or deficiencies identified;
- The identification of each significant recommendation described in previous annual reports on which corrective action has not been completed; and
- A summary of each audit and investigation completed during the reporting period.²³

Employment Classification

Chapter 110, F.S., establishes the state's personnel management system. The system must provide means to recruit, select, train, develop, and maintain an effective and responsible workforce and must include policies and procedures for employee hiring and advancement, training and career development, position classification, salary administration, benefits, discipline, discharge, employee performance evaluations, affirmative action, and other related activities.²⁴

¹⁷ Section 20.055(6), F.S.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Section 20.055(8)(a), F.S.

²¹ Section 20.055(8)(b), F.S.

²² Section 20.055(8)(c), F.S.

²³ *Id.*

²⁴ Section 110.105(1), F.S.

The Department of Management Services is charged with establishing and maintaining a classification and compensation program addressing Career Service, Selected Exempt Service, and Senior Management Service positions.²⁵ The classification of a position determines the types of benefits assigned to the position and the compensation and collective bargaining status of the position. A position must be classified as Career Service unless it is specifically exempted by statute.²⁶

A Career Service employee who has satisfactorily completed at least a one-year probationary period may only be suspended or dismissed for cause. Cause includes poor performance, negligence, inefficiency or inability to perform assigned duties, insubordination, violation of the provisions of law or agency rules, conduct unbecoming a public employee, misconduct, habitual drug abuse, or conviction of any crime.²⁷ Career Service employees that have completed the probationary period are also entitled to a grievance process²⁸ and have the right to appeal a suspension, reduction in pay, demotion, involuntary transfer of more than 50 miles by highway, or dismissal.²⁹

Selected Exempt Service is a separate system of personnel administration for positions that are exempt from the Career Service System.³⁰ Employees in the Selected Exempt Service serve at the pleasure of the agency head and are subject to suspension, dismissal, reduction in pay, demotion, transfer, or other personnel action at the discretion of the agency head.³¹ The Selected Exempt Service provides greater pay and benefits overall than are provided for Career Service employees, but less pay and benefits overall than are provided for the Senior Management Service.³²

The Senior Management Service is another separate system of personnel administration for positions in the executive branch whose duties and responsibilities are primarily and essentially policymaking or managerial in nature.³³ Employees in the Senior Management Service serve at the pleasure of the agency head and are subject to suspension, dismissal, reduction in pay, demotion, transfer, or other personnel action at the discretion of the agency head.³⁴ The Senior Management Service provides a salary and benefit plan that provides appropriate incentives for the recruitment and retention of outstanding management personnel and provides for salary increases based on performance.³⁵

²⁵ Section 110.2035(1), F.S.

²⁶ Section 110.205(1), F.S.

²⁷ Section 110.227(1), F.S.

²⁸ Section 110.227(4), F.S.

²⁹ Section 110.227(5) and (6), F.S.

³⁰ Section 110.602, F.S.

³¹ Section 110.604, F.S.

³² Section 110.603(2), F.S.

³³ Section 110.402(1), F.S.

³⁴ Section 110.403(1)(a), F.S.

³⁵ Section 110.403(1)(c), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 14.32, F.S., and requires the Chief Inspector General to meet the educational and experience qualifications required for agency inspector generals as specified in s. 20.055(4), F.S. The Chief Inspector General must, at all times, have open and direct access to the Governor.

This section also requires the Chief Inspector General to prepare an annual report that summarizes the activities performed in compliance with this provision and includes an aggregate of significant budgetary or administrative changes contained in annual reports prepared by inspectors general for state agencies under the jurisdiction of the Governor pursuant to s. 20.055(8).

Section 2 amends s. 20.055, F.S., and adds information technology and managing programs for information security as types of experiences that an agency inspector general may have in order to meet minimum experience requirements.

Also, the bill adds experience in fraud examination to the list of qualifications that must be considered in the selection of an inspector general for an agency under the jurisdiction of the Governor.

The bill specifies that agency inspectors general must be appointed without regard to political affiliation.

The bill authorizes an inspector general and his or her staff to take and record testimony or statements of any person as reasonably necessary for the furtherance of an investigation or a review undertaken by the inspector general.

The annual report that each agency inspector general is required to prepare must include any increase or decrease in the total allocations or total expenditures in the inspector general's budget for the preceding state fiscal year compared to the total allocations or total expenditures in the budget for the prior state fiscal year and any increase or decrease in the number of permanent, temporary, loaned, or grant-funded, full-time equivalent staff within the office of inspector general.

The bill changes the term "electronic data processing" to "information technology" in various provisions to conform to current agency and industry terminology.

Section 3 amends s. 110.205, F.S., and specifies that all employees of an agency inspector general must be assigned to the Selected Exempt Service, except for agency inspectors general, who must be included in the Senior Management Service.

In addition, auditors employed within the Department of Financial Services' Division of Accounting and Auditing (DFS) are included in the Selected Exempt Service. Unless otherwise fixed by law, the DFS must establish the salary and benefits for these positions in accordance with the rules established for the Selected Exempt Service.

Section 4 provides an effective date of July 1, 2017.

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:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 14.32, 20.055, and 110.205.

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 April 17, 2017:**

- Adds requirement for Chief Inspector General to have open and direct access to the Governor at all times;
- Deletes provisions allowing termination of Chief Inspector General appointment at any time by a majority vote of both houses of the Legislature;
- Deletes requirement for State Board of Administration to appoint an inspector general;
- Deletes forensic auditing and certified fraud examiner as types of experience that an inspector general may have in order to meet minimum experience requirements;
- Adds information technology and managing programs for information security and as types of experience that an agency inspector general may have in order to meet minimum experience requirements;
- Adds experience in fraud examination to the list of qualifications that must be considered in the selection of an inspector general for an agency under the jurisdiction of the Governor;
- Specifies that an agency inspector general must be appointed without regard to political affiliation;
- Deletes references to forensic audits or auditing;
- Authorizes an agency inspector general to take and record testimony or statements of any person as reasonably necessary for the furtherance of an investigation;
- Revises certain budget information agency inspectors general are required to include in their annual reports;
- Changes the term “electronic data processing” to “information technology” in various provisions to conform to current agency and industry terminology; and
- Specifies that all employees of an agency inspector general are assigned to the Select Exempt Service, except for agency inspectors general who are included in the Senior Management Service.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (1) of section 14.32, Florida
Statutes, is amended, and paragraph (1) is added to subsection
(2) of that section, to read:

14.32 Office of Chief Inspector General.—

(1) There is created in the Executive Office of the
Governor the Office of Chief Inspector General. The Chief



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11 Inspector General is responsible for promoting accountability,
12 integrity, and efficiency in the agencies under the jurisdiction
13 of the Governor. The Chief Inspector General shall be appointed
14 by and serve at the pleasure of the Governor and must meet the
15 qualifications specified in s. 20.055(4). However, upon a change
16 in Governors or reelection of the Governor, the Governor shall
17 appoint, or may reappoint, a Chief Inspector General before
18 adjournment sine die of the first regular session of the
19 Legislature that convenes after such change in Governors or
20 reelection of the Governor. The Chief Inspector General shall,
21 at all times, have open and direct access to the Governor.

22 (2) The Chief Inspector General shall:

23 (1) Prepare an annual report that summarizes the activities
24 performed in compliance with this section and includes an
25 aggregate of significant budgetary or administrative changes
26 contained in annual reports prepared by inspectors general for
27 state agencies under the jurisdiction of the Governor pursuant
28 to s. 20.055(8).

29 Section 2. Subsections (4), (6), and (7), paragraph (c) of
30 subsection (8), and subsection (10) of section 20.055, Florida
31 Statutes, are amended to read:

32 20.055 Agency inspectors general.—

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

37 1. A bachelor's degree from an accredited college or
38 university with a major in accounting, or with a major in
39 business which includes five courses in accounting, and 5 years



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40 of experience as an internal auditor or independent postauditor,
41 information technology ~~electronic data processing~~ auditor,
42 accountant, or any combination thereof. The experience shall at
43 a minimum consist of audits of units of government or private
44 business enterprises, operating for profit or not for profit; or

45 2. A master's degree in accounting, business
46 administration, or public administration from an accredited
47 college or university and 4 years of experience as required in
48 subparagraph 1.; or

49 3. A certified public accountant license issued pursuant to
50 chapter 473 or a certified internal audit certificate issued by
51 the Institute of Internal Auditors or earned by examination, and
52 4 years of experience as required in subparagraph 1.

53 (b) For agencies under the jurisdiction of the Governor,
54 the inspector general shall be selected on the basis of
55 integrity, leadership capability, and experience in accounting,
56 auditing, fraud examination, financial analysis, law, management
57 analysis, program evaluation, public administration,
58 investigation, criminal justice administration, or other closely
59 related field. The inspector general is subject to a level 2
60 background screening pursuant to chapter 435. The inspector
61 general shall have a 4-year degree from an accredited
62 institution of higher learning or have at least 5 years of
63 experience in at least one of the following areas:

64 1. Inspector general.

65 2. Supervisory experience in an office of inspector general
66 or an investigative public agency similar to an office of
67 inspector general.

68 3. Local, state, or federal law enforcement officer.



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69 4. Local, state, or federal court judge.
70 5. Senior-level auditor or comptroller.
71 6. The administration and management of complex audits and
72 investigations.
73 7. Managing programs for information security, prevention,
74 examination, detection, elimination of fraud, waste, abuse,
75 mismanagement, malfeasance, or misconduct in government or other
76 organizations.
77
78 An advanced degree in law, accounting, public administration, or
79 other relevant field may substitute for 1 year of required
80 experience.
81 (c) The inspector general shall possess at appointment, or
82 obtain within the first year after appointment, a certification
83 from the Association of Inspectors General as a certified
84 inspector general. The inspector general must have one or more
85 other professional certifications, such as certified inspector
86 general investigator, certified inspector general auditor,
87 certified public accountant, certified internal auditor,
88 certified governmental financial manager, or certified fraud
89 examiner, certified financial crimes investigator or other
90 related certification, or be a licensed attorney.
91 (d) The inspector general may not hold, or be a candidate
92 for, an elective office of the state or a municipality, county,
93 or other political subdivision of the state while inspector
94 general, and a current officer or employee of an office of
95 inspector general may not hold, or be a candidate for, an
96 elective office of the state or a municipality, county, or other
97 political subdivision of the state. The inspector general shall



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98 be appointed without regard to political affiliation. The
99 inspector general may not hold office in a political party or
100 political committee. An employee of an office of inspector
101 general may not hold office in a political party or political
102 committee while employed in the office of inspector general.

103 (6) In carrying out the auditing duties and
104 responsibilities of this section ~~act~~, each inspector general
105 shall review and evaluate internal controls necessary to ensure
106 the fiscal accountability of the state agency. The inspector
107 general shall conduct financial, compliance, information
108 technology ~~electronic data processing~~, and performance audits of
109 the agency and prepare audit reports of his or her findings. The
110 scope and assignment of the audits shall be determined by the
111 inspector general; however, the agency head may at any time
112 request the inspector general to perform an audit of a special
113 program, function, or organizational unit. The performance of
114 the audit shall be under the direction of the inspector general,
115 except that if the inspector general does not possess the
116 qualifications specified in subsection (4), the director of
117 auditing shall perform the functions listed in this subsection.

118 (a) Such audits shall be conducted in accordance with the
119 current International Standards for the Professional Practice of
120 Internal Auditing as published by the Institute of Internal
121 Auditors, Inc., or, where appropriate, in accordance with
122 generally accepted governmental auditing standards. All audit
123 reports issued by internal audit staff shall include a statement
124 that the audit was conducted pursuant to the appropriate
125 standards.

126 (b) Audit workpapers and reports shall be public records to



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127 the extent that they do not include information which has been
128 made confidential and exempt from the provisions of s. 119.07(1)
129 pursuant to law. However, when the inspector general or a member
130 of the staff receives from an individual a complaint or
131 information that falls within the definition provided in s.
132 112.3187(5), the name or identity of the individual may not be
133 disclosed to anyone else without the written consent of the
134 individual, unless the inspector general determines that such
135 disclosure is unavoidable during the course of the audit or
136 investigation.

137 (c) The inspector general and the staff shall have access
138 to any records, data, and other information of the state agency
139 he or she deems necessary to carry out his or her duties. The
140 inspector general may also request such information or
141 assistance as may be necessary from the state agency or from any
142 federal, state, or local government entity.

143 (d) At the conclusion of each audit, the inspector general
144 shall submit preliminary findings and recommendations to the
145 person responsible for supervision of the program function or
146 operational unit who shall respond to any adverse findings
147 within 20 working days after receipt of the preliminary
148 findings. Such response and the inspector general's rebuttal to
149 the response shall be included in the final audit report.

150 (e) At the conclusion of an audit in which the subject of
151 the audit is a specific entity contracting with the state or an
152 individual substantially affected, if the audit is not
153 confidential or otherwise exempt from disclosure by law, the
154 inspector general shall, consistent with s. 119.07(1), submit
155 the findings to the entity contracting with the state or the



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156 individual substantially affected, who shall be advised in
157 writing that they may submit a written response within 20
158 working days after receipt of the findings. The response and the
159 inspector general's rebuttal to the response, if any, must be
160 included in the final audit report.

161 (f) The inspector general shall submit the final report to
162 the agency head, the Auditor General, and, for state agencies
163 under the jurisdiction of the Governor, the Chief Inspector
164 General.

165 (g) The Auditor General, in connection with the independent
166 postaudit of the same agency pursuant to s. 11.45, shall give
167 appropriate consideration to internal audit reports and the
168 resolution of findings therein. The Legislative Auditing
169 Committee may inquire into the reasons or justifications for
170 failure of the agency head to correct the deficiencies reported
171 in internal audits that are also reported by the Auditor General
172 and shall take appropriate action.

173 (h) The inspector general shall monitor the implementation
174 of the state agency's response to any report on the state agency
175 issued by the Auditor General or by the Office of Program Policy
176 Analysis and Government Accountability. No later than 6 months
177 after the Auditor General or the Office of Program Policy
178 Analysis and Government Accountability publishes a report on the
179 state agency, the inspector general shall provide a written
180 response to the agency head or, for state agencies under the
181 jurisdiction of the Governor, the Chief Inspector General on the
182 status of corrective actions taken. The inspector general shall
183 file a copy of such response with the Legislative Auditing
184 Committee.



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185 (i) The inspector general shall develop long-term and
186 annual audit plans based on the findings of periodic risk
187 assessments. The plan, where appropriate, should include
188 postaudit samplings of payments and accounts. The plan shall
189 show the individual audits to be conducted during each year and
190 related resources to be devoted to the respective audits. The
191 Chief Financial Officer, to assist in fulfilling the
192 responsibilities for examining, auditing, and settling accounts,
193 claims, and demands pursuant to s. 17.03(1), and examining,
194 auditing, adjusting, and settling accounts pursuant to s. 17.04,
195 may use audits performed by the inspectors general and internal
196 auditors. For state agencies under the jurisdiction of the
197 Governor, the audit plans shall be submitted to the Chief
198 Inspector General. The plan shall be submitted to the agency
199 head for approval. A copy of the approved plan shall be
200 submitted to the Auditor General.

201 (7) (a) In carrying out the investigative duties and
202 responsibilities specified in this section, each inspector
203 general shall initiate, conduct, supervise, and coordinate
204 investigations designed to detect, deter, prevent, and eradicate
205 fraud, waste, mismanagement, misconduct, and other abuses in
206 state government. For these purposes, each inspector general
207 shall:

208 1. (a) Receive complaints and coordinate all activities of
209 the agency as required by the Whistle-blower's Act pursuant to
210 ss. 112.3187-112.31895.

211 2. (b) Receive and consider the complaints that ~~which~~ do not
212 meet the criteria for an investigation under the Whistle-
213 blower's Act and conduct, supervise, or coordinate such



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214 inquiries, investigations, or reviews as the inspector general
215 deems appropriate.

216 3.~~(e)~~ Report expeditiously to the Department of Law
217 Enforcement or other law enforcement agencies, as appropriate,
218 whenever the inspector general has reasonable grounds to believe
219 that there has been a violation of criminal law.

220 4.~~(d)~~ Conduct investigations and other inquiries free of
221 actual or perceived impairment to the independence of the
222 inspector general or the inspector general's office. This shall
223 include freedom from any interference with investigations and
224 timely access to records and other sources of information.

225 5.~~(e)~~ At the conclusion of each investigation in which the
226 subject of the investigation is a specific entity contracting
227 with the state or an individual substantially affected as
228 defined by this section, and if the investigation is not
229 confidential or otherwise exempt from disclosure by law, the
230 inspector general shall, consistent with s. 119.07(1), submit
231 findings to the subject that is a specific entity contracting
232 with the state or an individual substantially affected, who
233 shall be advised in writing that they may submit a written
234 response within 20 working days after receipt of the findings.
235 Such response and the inspector general's rebuttal to the
236 response, if any, shall be included in the final investigative
237 report.

238 6.~~(f)~~ Submit in a timely fashion final reports on
239 investigations conducted by the inspector general to the agency
240 head, except for whistle-blower's investigations, which shall be
241 conducted and reported pursuant to s. 112.3189.

242 (b) The inspector general and his or her staff may take and



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243 record testimony or statements of any person as reasonably
244 necessary for the furtherance of an investigation or a review
245 undertaken by the inspector general.

246 (8)

247 (c) The final reports prepared pursuant to paragraphs (a)
248 and (b) shall be provided to the heads of the respective
249 agencies and, for state agencies under the jurisdiction of the
250 Governor, the Chief Inspector General. Such reports shall
251 include, but need not be limited to:

252 1. A description of activities relating to the development,
253 assessment, and validation of performance measures.

254 2. A description of significant abuses and deficiencies
255 relating to the administration of programs and operations of the
256 agency disclosed by investigations, audits, reviews, or other
257 activities during the reporting period.

258 3. A description of the recommendations for corrective
259 action made by the inspector general during the reporting period
260 with respect to significant problems, abuses, or deficiencies
261 identified.

262 4. The identification of each significant recommendation
263 described in previous annual reports on which corrective action
264 has not been completed.

265 5. A summary of each audit and investigation completed
266 during the reporting period.

267 6. Any increase or decrease in the total allocations or
268 total expenditures in the inspector general's budget for the
269 preceding state fiscal year compared to the total allocations or
270 total expenditures in the budget for the prior state fiscal year
271 and any increase or decrease in the number of permanent,



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272 temporary, loaned, grant-funded, or full-time equivalent staff
273 within the office of the inspector general.

274 (10) Each agency inspector general shall, to the extent
275 both necessary and practicable, include on his or her staff
276 individuals with information technology ~~electronic data~~
277 ~~processing~~ auditing experience.

278 Section 3. Paragraphs (y) and (z) are added to subsection
279 (2) of section 110.205, Florida Statutes, to read:

280 110.205 Career service; exemptions.—

281 (2) EXEMPT POSITIONS.—The exempt positions that are not
282 covered by this part include the following:

283 (y) All employees of an office of an agency inspector
284 general shall be assigned to the Selected Exempt Service, except
285 for agency inspectors general, who shall be included in the
286 Senior Management Service.

287 (z) Auditors employed within the Division of Accounting and
288 Auditing of the Department of Financial Services. Unless
289 otherwise fixed by law, the Department of Financial Services
290 shall establish the salary and benefits for these positions in
291 accordance with the rules established for the Selected Exempt
292 Service.

293 Section 4. This act shall take effect July 1, 2017.

294
295 ===== T I T L E A M E N D M E N T =====

296 And the title is amended as follows:

297 Delete everything before the enacting clause
298 and insert:

299 A bill to be entitled

300 An act relating to inspectors general and auditors;



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301 amending s. 14.32, F.S.; requiring the Chief Inspector
302 General to meet specified qualifications applicable to
303 agency inspectors general, to have open and direct
304 access to the Governor, and to prepare an annual
305 report containing specified information; amending s.
306 20.055, F.S.; revising the qualifications of agency
307 inspectors general; revising the auditing duties and
308 responsibilities of agency inspectors general to
309 include the performance of information technology
310 audits; authorizing an agency inspector general and
311 staff to take and record testimony or statements
312 necessary to conduct an investigation or a review;
313 requiring each agency inspector general to include
314 specified budgetary and staffing information in an
315 annual report; revising terminology; amending s.
316 110.205, F.S.; exempting employees of an office of an
317 agency inspector general and auditors of the Division
318 of Accounting and Auditing of the Department of
319 Financial Services from the Career Service System;
320 providing an effective date.

By Senator Baxley

12-01483-17

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1 A bill to be entitled
 2 An act relating to inspectors general and auditors;
 3 amending s. 14.32, F.S.; removing a provision that
 4 requires the Chief Inspector General to serve at the
 5 pleasure of the Governor; authorizing the termination
 6 of the Chief Inspector General's appointment by a
 7 majority vote of both houses of the Legislature;
 8 requiring the Chief Inspector General to meet
 9 specified qualifications applicable to agency
 10 inspectors general; requiring the Chief Inspector
 11 General to prepare an annual report containing
 12 specified information; amending s. 20.055, F.S.;
 13 revising definitions; revising provisions relating to
 14 duties and responsibilities of agency inspectors
 15 general to include forensic audits; providing that an
 16 investigator or auditor employed within an office of
 17 the inspector general is a Selected Exempt Service
 18 employee; revising the qualifications of agency
 19 inspectors general; conforming provisions; requiring
 20 each agency inspector general to include specified
 21 budgetary and staffing information in an annual
 22 report; amending s. 20.121, F.S.; providing that an
 23 auditor employed within the Division of Accounting and
 24 Auditing of the Department of Financial Services is a
 25 Selected Exempt Service employee; amending s. 215.44,
 26 F.S.; requiring the State Board of Administration to
 27 appoint an inspector general; providing duties and
 28 responsibilities for the inspector general necessary
 29 to conduct investigations; providing an effective

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30 date.
 31
 32 Be It Enacted by the Legislature of the State of Florida:
 33
 34 Section 1. Subsection (1) of section 14.32, Florida
 35 Statutes, is amended, and paragraph (1) is added to subsection
 36 (2) of that section, to read:
 37 14.32 Office of Chief Inspector General.—
 38 (1) There is created in the Executive Office of the
 39 Governor the Office of Chief Inspector General. The Chief
 40 Inspector General is responsible for promoting accountability,
 41 integrity, and efficiency in the agencies under the jurisdiction
 42 of the Governor. The Chief Inspector General shall be appointed
 43 by and serve at the pleasure of the Governor and must meet the
 44 qualifications specified in s. 20.055(4). The appointment of the
 45 Chief Inspector General may be terminated at any time by a
 46 majority vote of both houses of the Legislature. However, upon a
 47 change in Governors or reelection of the Governor, the Governor
 48 shall appoint, or may reappoint, a Chief Inspector General
 49 before adjournment sine die of the first regular session of the
 50 Legislature that convenes after such change in Governors or
 51 reelection of the Governor.
 52 (2) The Chief Inspector General shall:
 53 (1) Prepare an annual report that summarizes the activities
 54 performed in compliance with this section and includes an
 55 aggregate of significant budgetary or administrative changes
 56 contained in annual reports prepared by inspectors general for
 57 state agencies under the jurisdiction of the Governor pursuant
 58 to s. 20.055(8).

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59 Section 2. Paragraphs (a) and (d) of subsection (1),
 60 paragraph (d) of subsection (2), paragraph (b) of subsection
 61 (3), paragraph (b) of subsection (4), subsection (6), and
 62 paragraph (c) of subsection (8) of section 20.055, Florida
 63 Statutes, are amended to read:

64 20.055 Agency inspectors general.—

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

66 (a) "Agency head" means the Governor, a Cabinet officer, or
 67 a secretary or executive director as those terms are defined in
 68 s. 20.03, the chair of the Public Service Commission, the
 69 Director of the Office of Insurance Regulation of the Financial
 70 Services Commission, the Director of the Office of Financial
 71 Regulation of the Financial Services Commission, the board of
 72 directors of the Florida Housing Finance Corporation, the
 73 executive director of the Office of Early Learning, the
 74 executive director of the State Board of Administration, and the
 75 Chief Justice of the State Supreme Court.

76 (d) "State agency" means each department created pursuant
 77 to this chapter and the Executive Office of the Governor, the
 78 Department of Military Affairs, the Fish and Wildlife
 79 Conservation Commission, the Office of Insurance Regulation of
 80 the Financial Services Commission, the Office of Financial
 81 Regulation of the Financial Services Commission, the Public
 82 Service Commission, the Board of Governors of the State
 83 University System, the Florida Housing Finance Corporation, the
 84 Agency for State Technology, the Office of Early Learning, the
 85 State Board of Administration, and the state courts system.

86 (2) An office of inspector general is established in each
 87 state agency to provide a central point for coordination of and

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88 responsibility for activities that promote accountability,
 89 integrity, and efficiency in government. It is the duty and
 90 responsibility of each inspector general, with respect to the
 91 state agency in which the office is established, to:

92 (d) Provide direction for, supervise, and coordinate
 93 audits, forensic audits, investigations, and management reviews
 94 relating to the programs and operations of the state agency,
 95 except that when the inspector general does not possess the
 96 qualifications specified in subsection (4), the director of
 97 auditing shall conduct such audits.

98 (3)

99 (b) The inspector general shall report to and be under the
 100 general supervision of the agency head and is not subject to
 101 supervision by any other employee of the state agency in which
 102 the office is established. For state agencies under the
 103 jurisdiction of the Governor, the inspector general shall be
 104 under the general supervision of the agency head for
 105 administrative purposes, shall report to the Chief Inspector
 106 General, and may hire and remove staff within the office of the
 107 inspector general in consultation with the Chief Inspector
 108 General but independently of the agency. Any investigator or
 109 auditor employed within the office of an inspector general is
 110 included in the Selected Exempt Service as provided in chapter
 111 110.

112 (4)

113 (b) For agencies under the jurisdiction of the Governor,
 114 the inspector general shall be selected on the basis of
 115 integrity, leadership capability, and experience in accounting,
 116 auditing, forensic auditing, financial analysis, law, management

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117 analysis, program evaluation, public administration,
 118 investigation, criminal justice administration, or other closely
 119 related field. The inspector general is subject to a level 2
 120 background screening pursuant to chapter 435. The inspector
 121 general shall have a 4-year degree from an accredited
 122 institution of higher learning or have at least 5 years of
 123 experience in at least one of the following areas:

- 124 1. Inspector general.
- 125 2. Supervisory experience in an office of inspector general
 126 or an investigative public agency similar to an office of
 127 inspector general.
- 128 3. Local, state, or federal law enforcement officer.
- 129 4. Local, state, or federal court judge.
- 130 5. Senior-level auditor or comptroller.
- 131 6. The administration and management of complex audits and
 132 investigations.
- 133 7. Managing programs for prevention, examination,
 134 detection, elimination of fraud, waste, abuse, mismanagement,
 135 malfeasance, or misconduct in government or other organizations.
- 136 8. Certified fraud examiner.

137
 138 An advanced degree in law, accounting, public administration, or
 139 other relevant field may substitute for 1 year of required
 140 experience.

141 (6) In carrying out the auditing duties and
 142 responsibilities of this section ~~act~~, each inspector general
 143 shall review and evaluate internal controls necessary to ensure
 144 the fiscal accountability of the state agency. The inspector
 145 general shall conduct financial, compliance, electronic data

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146 processing, and forensic or performance audits of the agency and
 147 prepare audit reports of his or her findings. The scope and
 148 assignment of the audits shall be determined by the inspector
 149 general; however, the agency head may at any time request the
 150 inspector general to perform an audit of a special program,
 151 function, or organizational unit. The performance of the audit
 152 shall be under the direction of the inspector general, except
 153 that if the inspector general does not possess the
 154 qualifications specified in subsection (4), the director of
 155 auditing shall perform the functions listed in this subsection.

156 (a) Such audits shall be conducted in accordance with the
 157 current International Standards for the Professional Practice of
 158 Internal Auditing as published by the Institute of Internal
 159 Auditors, Inc., or, where appropriate, in accordance with
 160 generally accepted governmental auditing standards. All audit
 161 reports issued by internal audit staff shall include a statement
 162 that the audit was conducted pursuant to the appropriate
 163 standards.

164 (b) Audit workpapers and reports shall be public records to
 165 the extent that they do not include information which has been
 166 made confidential and exempt from the provisions of s. 119.07(1)
 167 pursuant to law. However, when the inspector general or a member
 168 of the staff receives from an individual a complaint or
 169 information that falls within the definition provided in s.
 170 112.3187(5), the name or identity of the individual may not be
 171 disclosed to anyone else without the written consent of the
 172 individual, unless the inspector general determines that such
 173 disclosure is unavoidable during the course of the audit or
 174 investigation.

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175 (c) The inspector general and the staff shall have access
 176 to any records, data, and other information of the state agency
 177 he or she deems necessary to carry out his or her duties. The
 178 inspector general may also request such information or
 179 assistance as may be necessary from the state agency or from any
 180 federal, state, or local government entity.

181 (d) At the conclusion of each audit, the inspector general
 182 shall submit preliminary findings and recommendations to the
 183 person responsible for supervision of the program function or
 184 operational unit who shall respond to any adverse findings
 185 within 20 working days after receipt of the preliminary
 186 findings. Such response and the inspector general's rebuttal to
 187 the response shall be included in the final audit report.

188 (e) At the conclusion of an audit in which the subject of
 189 the audit is a specific entity contracting with the state or an
 190 individual substantially affected, if the audit is not
 191 confidential or otherwise exempt from disclosure by law, the
 192 inspector general shall, consistent with s. 119.07(1), submit
 193 the findings to the entity contracting with the state or the
 194 individual substantially affected, who shall be advised in
 195 writing that they may submit a written response within 20
 196 working days after receipt of the findings. The response and the
 197 inspector general's rebuttal to the response, if any, must be
 198 included in the final audit report.

199 (f) The inspector general shall submit the final report to
 200 the agency head, the Auditor General, and, for state agencies
 201 under the jurisdiction of the Governor, the Chief Inspector
 202 General.

203 (g) The Auditor General, in connection with the independent

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204 postaudit of the same agency pursuant to s. 11.45, shall give
 205 appropriate consideration to internal audit reports and the
 206 resolution of findings therein. The Legislative Auditing
 207 Committee may inquire into the reasons or justifications for
 208 failure of the agency head to correct the deficiencies reported
 209 in internal audits that are also reported by the Auditor General
 210 and shall take appropriate action.

211 (h) The inspector general shall monitor the implementation
 212 of the state agency's response to any report on the state agency
 213 issued by the Auditor General or by the Office of Program Policy
 214 Analysis and Government Accountability. No later than 6 months
 215 after the Auditor General or the Office of Program Policy
 216 Analysis and Government Accountability publishes a report on the
 217 state agency, the inspector general shall provide a written
 218 response to the agency head or, for state agencies under the
 219 jurisdiction of the Governor, the Chief Inspector General on the
 220 status of corrective actions taken. The inspector general shall
 221 file a copy of such response with the Legislative Auditing
 222 Committee.

223 (i) The inspector general shall develop long-term and
 224 annual audit plans based on the findings of periodic risk
 225 assessments. The plan, where appropriate, should include
 226 postaudit samplings of payments and accounts. The plan shall
 227 show the individual audits to be conducted during each year and
 228 related resources to be devoted to the respective audits. The
 229 Chief Financial Officer, to assist in fulfilling the
 230 responsibilities for examining, auditing, and settling accounts,
 231 claims, and demands pursuant to s. 17.03(1), and examining,
 232 auditing, adjusting, and settling accounts pursuant to s. 17.04,

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233 may use audits performed by the inspectors general and internal
 234 auditors. For state agencies under the jurisdiction of the
 235 Governor, the audit plans shall be submitted to the Chief
 236 Inspector General. The plan shall be submitted to the agency
 237 head for approval. A copy of the approved plan shall be
 238 submitted to the Auditor General.

239 (8)

240 (c) The final reports prepared pursuant to paragraphs (a)
 241 and (b) shall be provided to the heads of the respective
 242 agencies and, for state agencies under the jurisdiction of the
 243 Governor, the Chief Inspector General. Such reports shall
 244 include, but need not be limited to:

245 1. A description of activities relating to the development,
 246 assessment, and validation of performance measures.

247 2. A description of significant abuses and deficiencies
 248 relating to the administration of programs and operations of the
 249 agency disclosed by investigations, audits, reviews, or other
 250 activities during the reporting period.

251 3. A description of the recommendations for corrective
 252 action made by the inspector general during the reporting period
 253 with respect to significant problems, abuses, or deficiencies
 254 identified.

255 4. The identification of each significant recommendation
 256 described in previous annual reports on which corrective action
 257 has not been completed.

258 5. A summary of each audit and investigation completed
 259 during the reporting period.

260 6. Any increase or decrease in expenditures estimating 10
 261 percent or more of the inspector general's total budget during

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262 the preceding state fiscal year and any significant increase or
 263 decrease in the number of permanent, temporary, loaned, or
 264 grant-funded, full-time equivalent staff within the office of
 265 the inspector general.

266 Section 3. Paragraph (a) of subsection (2) of section
 267 20.121, Florida Statutes, is amended to read:

268 20.121 Department of Financial Services.—There is created a
 269 Department of Financial Services.

270 (2) DIVISIONS.—The Department of Financial Services shall
 271 consist of the following divisions and office:

272 (a) The Division of Accounting and Auditing. Any auditor
 273 employed within the division is included in the Selected Exempt
 274 Service as provided in chapter 110.

275 Section 4. Present paragraphs (d) and (e) of subsection (2)
 276 of section 215.44, Florida Statutes, are redesignated as
 277 paragraphs (e) and (f), respectively, and a new paragraph (d) is
 278 added to that subsection, to read:

279 215.44 Board of Administration; powers and duties in
 280 relation to investment of trust funds.—

281 (2)

282 (d) The board shall appoint an inspector general who shall
 283 perform the duties and responsibilities required in s. 20.055.
 284 The office of inspector general shall assess and resolve
 285 grievances and conduct internal affairs investigations and
 286 management reviews. The inspector general, or his or her
 287 designee, may enter any place where the board has an office and
 288 may review files, consult with employees, or obtain any
 289 information as necessary to conduct an investigation.

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

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 1480

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Baxley

SUBJECT: Public Records/Active Audit or Investigation/Agency Inspector General

DATE: April 19, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Ferrin	GO	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1480 creates a public record exemption for any audit or investigative workpapers, records, reports, reviews, inquiries, or other documentation obtained or created during or in relation to any audit or investigation conducted by the Chief Inspector General or an agency inspector general.

The exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2022, unless reviewed and reenacted by the Legislature.

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

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

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

¹ Section 14.32(1), F.S.

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;
- Acting as a 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,

² *Id.*

³ The Whistle-blower's Act can be found in ss. 112.3187-112.31895, F.S.

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.*

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.

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.

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.

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

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.¹⁷ 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.¹⁸

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.¹⁹ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.²⁰ 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.²¹

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.²² 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.”²³ A violation of the Public Records Act may result in civil or criminal liability.²⁴

¹⁴ Section 20.055(6), F.S.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ FLA. CONST., art. I, s. 24(a).

¹⁸ *Id.*

¹⁹ 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.

²⁰ Public records laws are found throughout the Florida Statutes.

²¹ Section 119.01(1), F.S.

²² 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.”

²³ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

²⁴ 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.²⁵ An exemption must pass by a two-thirds vote of the House and the Senate.²⁶ 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.²⁷ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.²⁸

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”²⁹ 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.³⁰

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.³¹ 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.³² Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.³³

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than necessary.³⁴ An exemption serves an identifiable purpose if it meets one of the following purposes and cannot be accomplished without the exemption:

²⁵ FLA. CONST., art. I, s. 24(c).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

²⁹ 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).

³⁰ *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

³¹ 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.

³² Section 119.15(3), F.S.

³³ Section 119.15(5)(a), F.S.

³⁴ Section 119.15(6)(b), F.S.

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;³⁵
- 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;³⁶ or
- It protects trade or business secrets.³⁷

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

The OGSR also requires specified questions to be considered during the review process.³⁸ 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.³⁹ 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.⁴⁰

III. Effect of Proposed Changes:

Section 1 amends s. 14.32, F.S., and creates a public records exemption for any audit or investigative workpapers, records, reports, reviews, inquiries, or other documentation obtained or created during or in relation to any audit or investigation conducted by the Chief Inspector General. Such information is confidential and exempt from public records requirements until completion of the audit or investigation or upon issuance of a final report. Upon completion of the audit or investigation or upon issuance of a final report, the information is subject to disclosure to the extent that it does not include information that has been made exempt or confidential and exempt by another exemption.

The bill provides for the repeal of the exemption on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

³⁵ Section 119.15(6)(b)1., F.S.

³⁶ Section 119.15(6)(b)2., F.S.

³⁷ Section 119.15(6)(b)3., F.S.

³⁸ Section 119.15(6)(a), F.S. The specified questions are:

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

³⁹ FLA. CONST., art. I, s. 24(c).

⁴⁰ Section 119.15(7), F.S.

Section 2 amends s. 20.055, F.S., and creates a public records exemption for any audit workpapers, records, reports, reviews, inquiries, or other documentation obtained or created during or in relation to any audit conducted by an agency inspector general. Such information is confidential and exempt from public records requirements until completion of the audit or issuance of a final report. Upon completion of the audit or upon issuance of a final report, the information is subject to disclosure to the extent that it does not include information that has been made exempt or confidential and exempt by another exemption.

The bill provides for the repeal of the exemption on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also creates a public records exemption for any investigative workpapers, records, reports, reviews, inquiries, or other documentation obtained or created during or in relation to any investigation conducted by an agency inspector general. Such information is confidential and exempt from public records requirements until completion of the investigation or issuance of a final report. Upon completion of the investigation or upon issuance of a final report, the information is subject to disclosure to the extent that it does not include information that has been made exempt or confidential and exempt by another exemption.

The bill provides for the repeal of the exemption on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3 provides a public necessity statement for the public records exemption as required by the Florida Constitution.

The bill states that it is a public necessity to protect such information because the public release of such audit or investigative workpapers, records, reports, reviews, inquiries, or other documentation during any audit or investigation could jeopardize the overall integrity of such audit or investigation and any subsequent findings and recommendations issued by the Chief Inspector General or an agency inspector general. The bill states that this exemption is necessary to ensure that the Chief Inspector General and agency inspectors general are able to reasonably and effectively conduct independent and complete audits or investigations as necessary to fulfill their duties and responsibilities specified in ss. 14.32 and 20.055, F.S.

Section 4 provides that the bill becomes effective at the same time CS/SB 1478 or similar legislation takes effect.

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:**Vote Requirement**

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

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. The bill 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.

The bill creates a public records exemption for any audit or investigative workpapers, records, reports, reviews, inquiries, or other documentation obtained or created during or in relation to any audit or investigation conducted by the Chief Inspector General or an agency inspector general pursuant to ss. 14.32 and 20.055, F.S. As such, the exemption does not appear to be in conflict with the constitutional requirements that it be no broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The bill could have a minimal fiscal impact on state agencies since agency staff responsible for complying with public records requests may require training related to creation of this public records exemption. Additionally, agencies could incur costs associated with redacting the exempt information prior to releasing a record. The costs,

however, should be absorbed, as they are part of the day-to-day responsibilities of state agencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends sections 14.32 and 20.055 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 April 17, 2017:

- Revises the public records exemptions created by the original bill for records related to an active audit or investigation conducted by agency inspectors general, to include reviews and inquiries, and to provide that the exemptions apply until completion of an audit or investigation or until issuance of a final report; and
- Adds a public records exemption for any audit or investigative workpapers, records, reports, reviews, inquiries, or other documentation obtained or created during or in relation to any audit or investigation conducted by the Chief Inspector General.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (6) is added to section 14.32,
Florida Statutes, to read:

14.32 Office of Chief Inspector General.—

(6) Any audit or investigative workpapers, records,
reports, reviews, inquiries, or other documentation obtained or
created during or in relation to any audit or investigation



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11 conducted pursuant to this section are confidential and exempt
12 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution
13 until completion of such audit or investigation or upon issuance
14 of a final report. Upon completion of such audit or
15 investigation or upon issuance of a final report, the audit or
16 investigative workpapers, records, reports, reviews, inquiries,
17 or other documentation obtained or created during or in relation
18 to the audit or investigation shall be public records to the
19 extent that they do not include information that has been made
20 exempt or confidential and exempt from s. 119.07(1) or s. 24(a),
21 Art. I of the State Constitution. This subsection is subject to
22 the Open Government Sunset Review Act in accordance with s.
23 119.15 and shall stand repealed on October 2, 2022, unless
24 reviewed and saved from repeal through reenactment by the
25 Legislature.

26 Section 2. Paragraph (b) of subsection (6) and subsection
27 (7) of section 20.055, Florida Statutes, are amended to read:

28 20.055 Agency inspectors general.—

29 (6) In carrying out the auditing duties and
30 responsibilities of this act, each inspector general shall
31 review and evaluate internal controls necessary to ensure the
32 fiscal accountability of the state agency. The inspector general
33 shall conduct financial, compliance, electronic data processing,
34 and performance audits of the agency and prepare audit reports
35 of his or her findings. The scope and assignment of the audits
36 shall be determined by the inspector general; however, the
37 agency head may at any time request the inspector general to
38 perform an audit of a special program, function, or
39 organizational unit. The performance of the audit shall be under



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40 the direction of the inspector general, except that if the
41 inspector general does not possess the qualifications specified
42 in subsection (4), the director of auditing shall perform the
43 functions listed in this subsection.

44 (b) Any audit workpapers, records, reports, reviews,
45 inquiries, or other documentation obtained or created during or
46 in relation to any audit conducted pursuant to this section are
47 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
48 of the State Constitution until completion of such audit or upon
49 issuance of a final report. Upon completion of such audit or
50 upon issuance of a final report, the audit workpapers, records,
51 and reports, reviews, inquiries, or other documentation obtained
52 or created during or in relation to the audit shall be public
53 records to the extent that they do not include information that
54 which has been made exempt or confidential and exempt from the
55 provisions of s. 119.07(1) or s. 24(a), Art. I of the State
56 Constitution pursuant to law. However, When the inspector
57 general or a member of the staff receives from an individual a
58 complaint or information that falls within the definition
59 provided in s. 112.3187(5), the name or identity of the
60 individual may not be disclosed to anyone else without the
61 written consent of the individual, unless the inspector general
62 determines that such disclosure is unavoidable during the course
63 of the audit or investigation. This paragraph is subject to the
64 Open Government Sunset Review Act in accordance with s. 119.15
65 and shall stand repealed on October 2, 2022, unless reviewed and
66 saved from repeal through reenactment by the Legislature.

67 (7) (a) In carrying out the investigative duties and
68 responsibilities specified in this section, each inspector



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69 general shall initiate, conduct, supervise, and coordinate
70 investigations designed to detect, deter, prevent, and eradicate
71 fraud, waste, mismanagement, misconduct, and other abuses in
72 state government. For these purposes, each inspector general
73 shall:

74 1.~~(a)~~ Receive complaints and coordinate all activities of
75 the agency as required by the Whistle-blower's Act pursuant to
76 ss. 112.3187-112.31895.

77 2.~~(b)~~ Receive and consider the complaints which do not meet
78 the criteria for an investigation under the Whistle-blower's Act
79 and conduct, supervise, or coordinate such inquiries,
80 investigations, or reviews as the inspector general deems
81 appropriate.

82 3.~~(c)~~ Report expeditiously to the Department of Law
83 Enforcement or other law enforcement agencies, as appropriate,
84 whenever the inspector general has reasonable grounds to believe
85 there has been a violation of criminal law.

86 4.~~(d)~~ Conduct investigations and other inquiries free of
87 actual or perceived impairment to the independence of the
88 inspector general or the inspector general's office. This shall
89 include freedom from any interference with investigations and
90 timely access to records and other sources of information.

91 5.~~(e)~~ At the conclusion of each investigation in which the
92 subject of the investigation is a specific entity contracting
93 with the state or an individual substantially affected as
94 defined by this section, and if the investigation is not
95 confidential or otherwise exempt from disclosure by law, the
96 inspector general shall, consistent with s. 119.07(1) and s.
97 24(a), Art. I of the State Constitution, submit findings to the



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98 subject that is a specific entity contracting with the state or
99 an individual substantially affected, who shall be advised in
100 writing that they may submit a written response within 20
101 working days after receipt of the findings. Such response and
102 the inspector general's rebuttal to the response, if any, shall
103 be included in the final investigative report.

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

108 (b) Any investigative workpapers, records, reports,
109 reviews, inquiries, or other documentation obtained or created
110 during or in relation to an investigation conducted pursuant to
111 this section are confidential and exempt from s. 119.07(1) and
112 s. 24(a), Art. I of the State Constitution until completion of
113 such investigation or upon issuance of a final report. Upon
114 completion of an investigation or upon issuance of a final
115 report, the investigative workpapers, records, reports, reviews,
116 inquiries, or other documentation obtained or created during or
117 in relation to an investigation shall be public records to the
118 extent that they do not include information that has been made
119 exempt or confidential and exempt from s. 119.07(1) or s. 24(a),
120 Art. I of the State Constitution. This paragraph is subject to
121 the Open Government Sunset Review Act in accordance with s.
122 119.15 and shall stand repealed on October 2, 2022, unless
123 reviewed and saved from repeal through reenactment by the
124 Legislature.

125 Section 3. The Legislature finds that it is a public
126 necessity that any audit or investigative workpapers, records,



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127 reports, reviews, inquiries, or other documentation obtained or
128 created during or in relation to any audit or investigation
129 conducted by the Chief Inspector General or an agency inspector
130 general be made confidential and exempt from s. 119.07(1),
131 Florida Statutes, and s. 24(a), Article I of the State
132 Constitution until completion of such audit or investigation or
133 issuance of a final report. The Legislature further finds that
134 the public release of any such audit or investigative
135 workpapers, records, reports, reviews, inquiries, or other
136 documentation during an audit or investigation prior to
137 completion of such audit or investigaton or issuance of a final
138 report could jeopardize the overall integrity of such audit or
139 investigation and any subsequent findings and recommendations
140 issued by the Chief Inspector General or an agency inspector
141 general. The exemptions from public records requirements are
142 necessary to ensure that the Chief Inspector General and agency
143 inspectors general are able to reasonably and effectively
144 conduct independent and complete audits or investigations as
145 necessary to fulfill their duties and responsibilities specified
146 in ss. 14.32 and 20.055, Florida Statutes, respectively.

147 Section 4. This act shall take effect on the same date that
148 SB 1478 or similar legislation takes effect, if such legislation
149 is adopted in the same legislative session or an extension
150 thereof and becomes law.

151
152 ===== T I T L E A M E N D M E N T =====

153 And the title is amended as follows:

154 Delete everything before the enacting clause
155 and insert:



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156 A bill to be entitled
157 An act relating to public records; amending ss. 14.32
158 and 20.055, F.S.; providing exemptions from public
159 records requirements for audit or investigative
160 workpapers, records, reports, reviews, inquiries, or
161 other documentation obtained or created during or in
162 relation to any audit or investigation by the Chief
163 Inspector General or an agency inspector general until
164 completion of such audit or investigation or issuance
165 of a final report; providing for future legislative
166 review and repeal of the exemptions; providing a
167 statement of public necessity; providing a contingent
168 effective date.

By Senator Baxley

12-01484-17

20171480__

A bill to be entitled

An act relating to public records; amending s. 20.055, F.S.; providing an exemption from public records requirements for audit workpapers, records, reports, or other documentation obtained or created during or in relation to an active audit or investigation by an agency inspector general until completion of such audit or investigation or issuance of a final report; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Paragraph (b) of subsection (6) of section 20.055, Florida Statutes, is amended to read:

20.055 Agency inspectors general.—

(6) In carrying out the auditing duties and responsibilities of this act, each inspector general shall review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency. The inspector general shall conduct financial, compliance, electronic data processing, and performance audits of the agency and prepare audit reports of his or her findings. The scope and assignment of the audits shall be determined by the inspector general; however, the agency head may at any time request the inspector general to perform an audit of a special program, function, or organizational unit. The performance of the audit shall be under the direction of the inspector general, except that if the

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

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inspector general does not possess the qualifications specified in subsection (4), the director of auditing shall perform the functions listed in this subsection.

(b) Any audit workpapers, records, reports, or other documentation obtained or created during or in relation to an active audit or investigation conducted pursuant to this section are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until completion of such audit or investigation or issuance of a final report. Upon completion of an audit or investigation or issuance of a final report, such audit workpapers, records, ~~and~~ reports, or other documentation shall be public records to the extent that they do not include information which has been made confidential and exempt from the provisions of s. 119.07(1) pursuant to law. However, When the inspector general or a member of the staff receives from an individual a complaint or information that falls within the definition provided in s. 112.3187(5), the name or identity of the individual may not be disclosed to anyone else without the written consent of the individual, unless the inspector general determines that such disclosure is unavoidable during the course of an active ~~the~~ audit or investigation. This paragraph 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 any audit workpapers, records, reports, or other documentation obtained or created during or in relation to an active audit or investigation conducted by an agency inspector

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59 general be made confidential and exempt from s. 119.07(1),
60 Florida Statutes, and s. 24(a), Article I of the State
61 Constitution. The Legislature further finds that the public
62 release of such audit workpapers, records, reports, or other
63 documentation during an active audit or investigation could
64 jeopardize the overall integrity of such audit or investigation
65 and any subsequent findings and recommendations issued by an
66 agency inspector general. The exemption from public records
67 requirements is necessary to ensure that agency inspectors
68 general are able to reasonably and effectively conduct
69 independent and complete audits or investigations as necessary
70 to fulfill their duties and responsibilities specified in s.
71 20.055, Florida Statutes.

72 Section 3. This act shall take effect on the same date that
73 SB ____ or similar legislation takes effect, if such legislation
74 is adopted in the same legislative session or an extension
75 thereof and becomes law.

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 1844

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Bradley

SUBJECT: Public Records/Compassionate Use Registry

DATE: April 18, 2017

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1844 expands the public records exemption for the Compassionate Use Registry (registry) to conform its provisions to changes being made to s. 381.986, F.S., regarding the compassionate use of low-THC and medical cannabis by CS/SB 406 (2017). Specifically, the bill makes a qualifying patient's and a caregiver's personal identifying information held in the registry confidential and exempt from public records laws; clarifies that law enforcement access to the registry is for the purpose of verifying the authorization of a qualifying patient or caregiver to possess marijuana; and expands access to information within the registry to:

- Allopathic and osteopathic physician's licensed under chs. 458 and 459, F.S., (respectively);
- Practitioners licensed to prescribe prescription drugs to ensure proper care for patients before prescribing medications that may interact with marijuana; and
- Employees of the Department of Health (DOH) for the purpose of monitoring physician registration in the registry and monitoring physician certifications for practices that could facilitate diversion or misuse of marijuana.

The bill also extends the open government sunset review date to October 2, 2022, includes the constitutionally required public necessity statement, and makes other conforming changes to provisions amended by CS/SB 406 (2017).

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

The bill's provisions take effect on the same date as CS/SB 406 (2017) or other similar legislation takes effect.

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

Medical Marijuana in Florida

The Compassionate Medical Cannabis Act of 2014²⁴ (act) legalized a low tetrahydrocannabinol (THC) and high cannabidiol (CBD) form of cannabis (low-THC cannabis)²⁵ for medical use²⁶ by patients suffering from cancer or a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms.

In 2016, Florida voters approved Amendment 2 that added s. 29, Art. X to the State Constitution. This new constitutional provision approved the medical use of marijuana by certain patients with debilitating medical conditions pursuant to a physician's certification. CS/SB 406 (2017) is proposed legislation that amends Florida's current low-THC and medical cannabis law to implement the provisions of s. 29, Art. X of the State Constitution. Along with other requirements, s. 29(d)(4), Art. X of the State Constitution requires that the DOH protect the confidentiality of all qualifying patients and makes all records containing the identity of qualifying patients confidential except for valid medical or law enforcement purposes.

For more details on current medical marijuana laws in Florida and other states including details on Amendment 2 and s. 29, Art. X of the State Constitution, please see the analysis for CS/SB 406 (2017).

Compassionate Use Registry and Identification Cards

Section 381.986, F.S., requires the DOH to create a secure, electronic, and online registry for the registration of physicians and patients and for the verification of patient orders by dispensing organizations (DOs), which is accessible to law enforcement.²⁷ The registry must allow DOs to

-
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 Chapter 2014-157, Laws of Fla., codified in s. 381.986, F.S.

²⁵ Section 381.986(b), F.S., defines "low-THC cannabis," as the dried flowers of the plant *Cannabis* which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight, or the seeds, resin, or any compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.

²⁶ Section 381.986(1)(c), F.S., defines "medical use" as administration of the ordered amount of low-THC cannabis; and the term does not include the possession, use, or administration by smoking, or the transfer of low-THC cannabis to a person other than the qualified patient for whom it was ordered or the qualified patient's legal representative. Section 381.986(1)(e), F.S., defines "smoking" as burning or igniting a substance and inhaling the smoke; smoking does not include the use of a vaporizer.

²⁷ Section 381.986(5)(a), F.S.

record the dispensing of low-THC cannabis, and must prevent an active registration of a patient by multiple physicians. Physicians must register qualified patients with the registry and DOs are required to verify that the patient has an active registration in the registry, that the order presented matches the order contents as recorded in the registry, and that the order has not already been filled before dispensing any low-THC cannabis. The DOs are also required to record in the registry the date, time, quantity, and form of low-THC cannabis dispensed.²⁸ The registry became operational on July 11, 2016.²⁹ As of the end of February, 2017, there were 4,079 patients registered with the registry.³⁰

On February 19, 2017, the DOH adopted Rule 64-4.011, F.A.C., that governs the issuance and renewal of registry identification cards (ID card). The rule requires patients and legal representatives to obtain ID cards to obtain low-THC cannabis, medical cannabis, or a cannabis delivery device. In order to obtain an ID card a patient or legal representative must submit an application form³¹ created by the DOH. The form requires the patient or legal representative to submit personal identifying information to the DOH including his or her name, address, social security number, telephone number, date of birth, a passport style photo, and proof of residency including a driver's license, utility bill, or voter registration card.

CS/SB 406 (2017) amends the section of law governing both the registry and issuing of ID cards³² to conform terms to definitions provided in s. 29, Art. X of the State Constitution (such as changing the term "legal representative" to "caregiver") and to provide more statutory detail on what is required to be on an ID card. CS/SB 406 (2017) requires that all patient and caregiver ID cards include, at a minimum:

- The name, address, and date of birth of the patient or caregiver, as appropriate;
- A full-face, passport-type, color photograph of the patient or caregiver, as appropriate, taken within the 90 days immediately preceding registration;
- Designation of the cardholder as a patient or caregiver;
- A unique numeric identifier for the patient or caregiver which is matched to the identifier used for such person in the department's compassionate use registry. A caregiver's identification number and file in the compassionate use registry must be linked to the file of the patient or patients the caregiver is assisting so that the caregiver's status may be verified for each patient individually;
- The expiration date, which shall be one year after issuance or the date treatment ends as provided in the patient's physician certification, whichever occurs first; and
- For caregivers who are assisting three or fewer qualifying patients, the names and unique numeric identifiers of the qualifying patient or patients that the caregiver is assisting.

²⁸ Section 381.986(6), F.S.

²⁹ Office of Compassionate Use, *Implementation Timeline* (October 2016) available at <http://www.floridahealth.gov/programs-and-services/office-of-compassionate-use/documents/ocu-timeline.pdf>, (last visited Mar. 21, 2017).

³⁰ Revenue Estimating Conference, *Use of Marijuana for Debilitating Medical Conditions* (March 2, 2017), p. 3, (on file with the Senate Committee on Health Policy).

³¹ For patients form DH8009-OCU-10/2016, available at <https://www.flrules.org/Gateway/reference.asp?No=Ref-07855>, (last visited on April 12, 2017) and for legal representatives form DH8010-OCU-10/2016 available at <https://www.flrules.org/Gateway/reference.asp?No=Ref-07856>, (last visited on April 12, 2017).

³² Section 381.986, F.S.

Additionally, CS/SB 406 (2017)³³ allows non-Florida residents to receive ID cards if they qualify for an ID card in Florida and if the DOH confirms that they are able to legally receive marijuana in their state of residency. This confirmation will likely require the submission of some additional personal identifying information to the DOH but which is not detailed in the bill.

III. Effect of Proposed Changes:

The bill amends s. 381.987, F.S., to conform its provisions to changes made to s. 381.986, F.S., by CS/SB 406 (2017).

Section 1 of the bill:

- Makes a qualifying patient's or caregiver's personal identifying information that is held in the Compassionate Use Registry (registry) confidential and exempt from public records laws. Protected information includes, but is not limited to:
 - The patient's name, address, date of birth, photograph, telephone number, and government-issued identification number;
 - All information collected for the purpose of issuing a qualifying patient's or caregiver's registry identification card;³⁴ and
 - All information pertaining to a physician certification for marijuana;
- Clarifies that law enforcement access to the registry is for the purpose of verifying the authorization of a qualifying patient or caregiver to possess marijuana; and
- Expands access to information within the registry to:
 - Allopathic and osteopathic physician's licensed under chs. 458 and 459, F.S., (respectively);
 - Practitioner's licensed to prescribe prescription drugs to ensure proper care for patients before prescribing medications that may interact with marijuana; and
 - Employees of the Department of Health (DOH) for the purpose of monitoring physician registration in the compassionate use registry and monitoring physician certifications for practices that could facilitating diversion or misuse of marijuana.

The bill also extends the open government sunset review date to October 2, 2022 and makes other conforming and technical changes.

Section 2 of the bill provides legislative findings. The bill states that the Legislature finds it is a public necessity to protect the information of qualifying patients' and caregivers' information in the registry, including all information pertaining to the physician's certification of marijuana for the patient, in order to protect their privacy. The Legislature finds that the public availability of registry information could make the public aware of a patient's medical diseases or conditions and may also expose patients and caregivers to discrimination for their use, or assisting with the use, of marijuana.

³³ As originally filed, SB 406 (2017) restricted ID cards to Florida residents, however as amended by the Health Policy Committee on April 3, 2017, CS/SB 406 (2017) allows non-Florida residents to receive ID cards.

³⁴ This information includes the caregiver's name, address, date of birth, photograph, and registry ID card number.

Section 3 of the bill provides that the bill's provisions take effect on the same date that CS/SB 406 (2017) or similar legislation takes effect, provided both are adopted in the same legislative session.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Voting Requirement

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

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill exempts certain identifying information of caregiver's which is held by the DOH within the registry. The public necessity for the exemption provides that it is necessary to protect patient and caregiver information from disclosure to protect their privacy and to protect them from potential discrimination. 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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 381.987 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 April 17, 2017:

The following changes were made to align the public records exemption in SB 1844 with provisions in CS/SB 406 (2017), its linked substantive bill:

- Including the “date of birth” and “photograph” on an ID card to the specified information exempted from public disclosure; and
- Clarifying that all information collected for the purpose of issuing an ID card is exempt, rather than just the information on the ID card.

B. Amendments:

None.



457760

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2017	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 27 - 31

and insert:

including, but not limited to, the qualifying patient's or
caregiver's name, address, date of birth, photograph, telephone
number, and government-issued identification number, all
information collected for the purposed of issuing a qualifying
patient's or caregiver's compassionate use registry
identification card issued in accordance with s. 381.986;7 and



457760

11 all information

12 Delete lines 122 - 125

13 and insert:

14 public records requirements the names, addresses, dates of
15 birth, photographs, telephone numbers, and government-issued
16 identification numbers of a qualifying patient and the patient's
17 caregiver, any other information collected for the purpose of
18 issuing the qualifying patient's or caregiver's

By Senator Bradley

5-03019B-17

20171844__

A bill to be entitled

An act relating to public records; amending s.

381.987, F.S.; providing an exemption from public records requirements for a qualifying patient's or caregiver's personal identifying information, all information contained on their compassionate use registry identification cards, and all information pertaining to a physician certification for marijuana; requiring the Department of Health to allow access to the compassionate use registry to a law enforcement agency, a medical marijuana treatment center, certain licensed practitioners, and certain employees of the department for specified purposes; extending the date of future review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 381.987, Florida Statutes, is amended to read:

381.987 Public records exemption for personal identifying information in the compassionate use registry.—

(1) A qualifying patient's or a caregiver's personal identifying information held by the department in the compassionate use registry established under s. 381.986, including, but not limited to, the qualifying patient's name, address, telephone number, and government-issued identification number; all information contained on the qualifying patient's or

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

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caregiver's compassionate use registry identification card issued in accordance with s. 381.986; ~~and all information pertaining to a physician certification for marijuana the physician's order for low-THC cannabis~~ and the dispensing thereof are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2) A physician's identifying information held by the department in the compassionate use registry established under s. 381.986, including, but not limited to, the physician's name, address, telephone number, government-issued identification number, and Drug Enforcement Administration number, and all information pertaining to the physician certification for marijuana ~~physician's order for low-THC cannabis~~ and the dispensing thereof are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(3) The department shall allow access to the registry, including access to confidential and exempt information, to:

(a) A law enforcement agency to verify the authorization of a qualifying patient or a qualifying patient's caregiver to possess marijuana or a marijuana delivery device ~~that is investigating a violation of law regarding cannabis in which the subject of the investigation claims an exception established~~ under s. 381.986.

(b) A medical marijuana treatment center registered with ~~dispensing organization approved by~~ the department pursuant to s. 381.986 which is attempting to verify the authenticity of a physician certification ~~physician's order for marijuana low-THC cannabis~~, including whether the physician certification ~~order~~ had been previously filled and whether the physician

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59 ~~certification order~~ was written for the person attempting to
60 have it filled.

61 (c) A physician licensed under chapter 458 or chapter 459
62 to ensure proper care for patients who has written an order for
63 low THC cannabis for the purpose of monitoring the patient's use
64 of such cannabis or for the purpose of determining, before
65 issuing an order for low-THC cannabis, whether another physician
66 has ordered the patient's use of low-THC cannabis. The physician
67 may access the confidential and exempt information only for the
68 patient for whom he or she has ordered or is determining whether
69 to order the use of low-THC cannabis pursuant to s. 381.986.

70 (d) A practitioner licensed to prescribe prescription
71 drugs, to ensure proper care for patients before prescribing
72 medications that may interact with marijuana.

73 (e) An employee of the department for the purposes of
74 maintaining the registry and periodic reporting or disclosure of
75 information that has been redacted to exclude personal
76 identifying information.

77 (f) An employee of the department for the purpose of
78 monitoring physician registration in the compassionate use
79 registry and the issuance of physician certifications as
80 authorized in s. 381.986 for practices that could facilitate
81 unlawful diversion or misuse of marijuana or cannabis delivery
82 devices.

83 (g) ~~(e)~~ The department's relevant health care regulatory
84 boards responsible for the licensure, regulation, or discipline
85 of a physician if he or she is involved in a specific
86 investigation of a violation of s. 381.986. If a health care
87 regulatory board's investigation reveals potential criminal

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88 activity, the board may provide any relevant information to the
89 appropriate law enforcement agency.

90 ~~(h)(f)~~ A person engaged in bona fide research if the person
91 agrees:

92 1. To submit a research plan to the department which
93 specifies the exact nature of the information requested and the
94 intended use of the information;

95 2. To maintain the confidentiality of the records or
96 information if personal identifying information is made
97 available to the researcher;

98 3. To destroy any confidential and exempt records or
99 information obtained after the research is concluded; and

100 4. Not to contact, directly or indirectly, for any purpose,
101 a patient or physician whose information is in the registry.

102 (4) All information released from the registry under
103 subsection (3) remains confidential and exempt, and a person who
104 receives access to such information must maintain the
105 confidential and exempt status of the information received.

106 (5) A person who willfully and knowingly violates this
107 section commits a felony of the third degree, punishable as
108 provided in s. 775.082, s. 775.083, or s. 775.084.

109 (6) This section is subject to the Open Government Sunset
110 Review Act in accordance with s. 119.15 and shall stand repealed
111 on October 2, 2022 ~~2019~~, unless reviewed and saved from repeal
112 through reenactment by the Legislature.

113 Section 2. The Legislature finds that it is a public
114 necessity that the personal identifying information of
115 qualifying patients who use marijuana for medical reasons and of
116 these patients' caregivers held by the Department of Health in

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117 the compassionate use registry established under s. 381.986,
 118 Florida Statutes, be made confidential and exempt from s.
 119 119.07(1), Florida Statutes, and s. 24(a), Article I of the
 120 State Constitution. Specifically, the Legislature finds that it
 121 is a public necessity to make confidential and exempt from
 122 public records requirements the names, addresses, telephone
 123 numbers, and government-issued identification numbers of a
 124 qualifying patient and the patient's caregiver, any other
 125 information contained on the qualifying patient's or caregiver's
 126 compassionate use registry identification card issued pursuant
 127 to s. 381.986, Florida Statutes, and all information pertaining
 128 to a physician certification for marijuana issued in accordance
 129 with s. 381.986, Florida Statutes, which are held in the
 130 registry. The choice to use marijuana to treat a qualifying
 131 patient's medical condition or symptom and the choice to assist
 132 a qualifying patient with the medical use of marijuana are
 133 personal and private matters. The availability of such
 134 information to the public could make the public aware of both
 135 the qualifying patient's use of marijuana and the qualifying
 136 patient's disease or other medical conditions for which the
 137 qualifying patient is using marijuana. The knowledge of the
 138 qualifying patient's use of marijuana, the knowledge of the
 139 qualifying patient's medical condition, and the knowledge that a
 140 caregiver is assisting a qualifying patient with the use of
 141 marijuana could be exploited to embarrass, harass, or
 142 discriminate against the qualifying patient and the patient's
 143 caregiver and could also be used as a discriminatory tool by an
 144 employer who disapproves of the qualifying patient's use of
 145 marijuana or the caregiver's assistance in the use of marijuana.

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146 However, despite the potential hazards of collecting such
 147 information, maintaining the compassionate use registry
 148 established under s. 381.986, Florida Statutes, is necessary to
 149 prevent the diversion and nonmedical use of any marijuana as
 150 well as to aid and improve research done on the efficacy of
 151 marijuana. Thus, the Legislature finds that it is a public
 152 necessity to make confidential and exempt from public records
 153 requirements the personal identifying information of qualifying
 154 patients and caregivers held by the Department of Health in the
 155 compassionate use registry established under s. 381.986, Florida
 156 Statutes.

157 Section 3. This act shall take effect on the same date that
 158 SB 406 or similar legislation takes effect, if such legislation
 159 is adopted in the same legislative session or an extension
 160 thereof and becomes a law.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/17/17

Meeting Date

1844

Bill Number (if applicable)

Topic MMJ Patient Registry

Amendment Barcode (if applicable)

Name Christopher Cano

Job Title Exec. Dir.

Address 1529 W. River LN

Phone 813-767-5295

Street Tampa FL 33603

Email cano@cflnorml.org

City State Zip

Speaking: For Against Information

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

Representing CFL NORML

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 7028

INTRODUCER: Judiciary Committee

SUBJECT: OGSR/Injunction for Protection Against Domestic Violence, Repeat Violence, Sexual Violence, and Dating Violence

DATE: April 14, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Brown</u>	<u>Cibula</u>		JU Submitted as Committee Bill
1.	<u>Kim</u>	<u>Ferrin</u>	<u>GO</u>	Favorable
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 7028 is based on an Open Government Sunset Review of public records exemptions by the staff of the Senate Judiciary Committee. The reviewed exemptions generally prohibit the disclosure of contact information for a petitioner who is granted an injunction for protection against domestic violence or repeat, sexual, or dating violence. These exemptions are scheduled for repeal on October 2, 2017.

This information protected from disclosure will be stored in a database that will send an automated notice to the petitioner within 12 hours after the respondent is served with the injunction.

Because the system has not yet been fully developed or activated, the need for the exemptions cannot be fully evaluated at this time consistent with the requirements of the Open Government Sunset Review Act. Accordingly, the bill delays the scheduled repeal of the exemptions by two years so that they may be evaluated after the automated system is in place.

This bill provides an effective date of 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

¹ FLA. CONST., art. I, s. 24(a).

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

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.*

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).

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.

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:

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

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

Injunction for Protection

A person may file a petition for an injunction for protection against domestic violence,²⁴ or repeat, sexual, or dating violence.²⁵

Filing a petition for a protective injunction is a civil cause of action.²⁶

Process for Injunction for Protection

Filing of the Petition

A person wishing to initiate an injunction for protection against domestic violence must file a sworn petition for the injunction at the clerk's office for the circuit court.²⁷ Clerks' offices must provide a simplified petition form for the injunction for protection, including instructions for the petitioner to follow.²⁸ A sample form for a petition for injunction for protection against domestic violence is provided in statute and requires:²⁹

- A detailed description of the respondent;
- The residential and employment address of the respondent;
- The relationship between the respondent and the petitioner;
- A detailed description of the violence or threat of violence;
- An indication of prior or pending attempts by the petitioner to obtain an injunction;
- An indication that minor children reside with the petitioner or that the petitioner needs the exclusive use and possession of the dwelling that is shared with the respondent; and
- The address of the petitioner.

²² FLA. CONST. art. I, s. 24(c).

²³ Section 119.15(7), F.S.

²⁴ Section 741.30(1), F.S., creates a cause of action for an injunction for protection against domestic violence. Section 741.30(1)(a), F.S., requires a petitioner to either be the victim of domestic violence or reasonably believe he or she is in imminent danger of becoming a victim.

²⁵ Section 784.046(2), F.S., creates a cause of action for an injunction for protection individually against repeat violence, dating violence, and sexual violence. Section 784.046(2)(a), F.S., requires a petitioner to either be the victim or the parent or guardian of a minor child who is a victim of repeat violence. Section 784.046(2)(b), F.S., requires a petitioner to either have reasonable cause to believe he or she is in imminent danger to another act of dating violence, whether or not he or she has previously been the victim of dating violence, or if a minor, be the parent or guardian of the minor. Section 784.046(2)(c), F.S., requires the petitioner to either be the victim of sexual violence, or a parent or legal guardian of a child victim living at home provided that the petitioner reported the sexual violence to a law enforcement agency and is cooperating in a criminal proceeding against the respondent or that the respondent was sentenced to prison for the sexual violence and the term of imprisonment has, or is about to expire within 90 days after the filing of the petition.

²⁶ *H.K. by & Through Colton v. Vocelle*, 667 So. 2d 892 (Fla. 4th DCA 1996).

²⁷ Sections 741.30(1) and 784.046(2), F.S.

²⁸ Sections 741.30(2)(c)2, and 784.046(3)(a), F.S.

²⁹ Section 741.30(3)(b), F.S.

The form addresses whether the petitioner seeks an injunction providing a temporary parenting plan, including a temporary time-sharing schedule and temporary support for minor children.³⁰

The form for the petition for injunction provides language authorizing a petitioner to provide his or her address to the court in a separate confidential filing, if necessary for safety reasons.³¹ The clerk of the court must, to the extent possible, ensure the petitioner's privacy while completing the form for injunction for protection against domestic violence.³²

A similar form, though more streamlined, is authorized for a petition for injunction for protection against repeat violence, sexual violence, or dating violence.³³ A petitioner may file a separate confidential filing of his or her address, just as for petitions based on domestic violence.³⁴

Service of the Petition

The clerk of the court must furnish a copy of the petition for injunction, notice of hearing, and temporary injunction, if any, to the sheriff or law enforcement agency of the county where the respondent resides or can be found.³⁵ The sheriff or other law enforcement agency must then personally serve the respondent the petition and other documents as soon as possible.³⁶

The Court Process

Upon the filing of the petition, the court must hold a hearing as soon as possible.³⁷ If the court determines that an immediate and present danger of violence exists, the court may grant a temporary injunction. The temporary injunction may be granted in an ex parte hearing, pending a full hearing.³⁸ A temporary injunction is effective only for a period of up to 15 days, during which time the court generally must hold a full hearing.³⁹

Service of the Injunction for Protection

Within 24 hours after the court issues an injunction for protection, the clerk of the court must forward a copy of the injunction to the sheriff to serve the petitioner.⁴⁰ Within 24 hours after the

³⁰ *Id.*

³¹ *Id.*

³² Section 741.30(2)(c)4., F.S.

³³ Section 784.046(4)(b), F.S., requires the petition to include the residential address of the respondent, a description of the violence perpetrated by the respondent, and an affirmation that the petitioner genuinely fears repeat violence by the respondent.

³⁴ *Id.*

³⁵ Sections 741.30(8)(a)1., and 784.046(8)(a)1., F.S.

³⁶ Section 741.30(4), F.S.

³⁷ Sections 741.30(4) and 784.046(5), F.S.

³⁸ Sections 741.30(5)(a) and 784.046(6)(a), F.S. A temporary injunction is authorized in instances in which it appears to the court that an immediate and present danger of violence exists. If so, the court, may grant a temporary injunction at an ex parte hearing. Sections 741.30(5)(a) and 784.046(6)(a), F.S.

³⁹ Sections 741.30(5)(c) and 784.046(5)(c), F.S.

⁴⁰ Sections 741.30(8)(c)1., and 784.046(8)(c)1., F.S. The Legislature created both a Domestic and Repeat Violence Injunction Statewide Verification System and a Domestic, Dating, Sexual and Repeat Violence Injunction Statewide System (Systems) within the Florida Department of Law Enforcement (FDLE). The Systems require the FDLE to maintain a statewide communication system to electronically transmit information on protective injunctions to and between criminal justice agencies. Sections 741.30(8)(b), and 784.046(8)(b), F.S.

injunction is served on the respondent, the law enforcement officer must forward the written proof of service of process to the sheriff who has jurisdiction over the residence of the petitioner.⁴¹

Public Records Exemptions and Protections from Disclosure of Contact Information

Section 119.071(2)(j)1., F.S., exempts from disclosure any document that reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime. In addition to this exemption, other public records exemptions protect the contact information of a petitioner who files a petition for an injunction for protection.

Separate Confidential Filing of Address with Injunction for Protection

The exemption that protects the contact information of a petitioner seeking an injunction applies if the person, for safety reasons, submits his or her address to the court in a separate confidential filing.⁴²

Address Confidentiality Program

The Legislature enacted the Address Confidentiality Program (Program) to protect a victim of domestic violence by keeping his or her address confidential.⁴³ The program allows

[a]n adult person, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of a person adjudicated incapacitated [to] apply to the Attorney General to have an address designated by the Attorney General serve as the person's address or the address of the minor or incapacitated person.⁴⁴

An application must include all of the following:

- A sworn statement by the applicant that the applicant has good reason to believe that the applicant, minor, or incapacitated person is a victim of domestic violence in fear of his or her safety.
- A designation of the Attorney General as agent for purposes of service of process and receipt of mail.
- The mailing address where the applicant can be contacted by the Attorney General and the phone number or numbers where the applicant can be called by the Attorney General.
- A statement that the new address that the applicant requests must not be disclosed as disclosure will increase the risk of domestic violence.
- The signature of the applicant and any person who assisted with the application, including the date of signature.⁴⁵

⁴¹ Sections 741.30(8)(c)2., and 784.046(8)(c)2., F.S.

⁴² The language authorizing a petitioner to submit his or her address in a separate confidential filing is contained in the actual petition form provided in sections 741.30(3)(b) and 784.046(4)(b), F.S.

⁴³ Section 741.403, F.S. Victims of stalking or aggravated stalking are also eligible to receive the benefit of the Address Confidentiality Program (s. 741.4651, F.S.).

⁴⁴ Section 741.403(1), F.S.

⁴⁵ Section 741.403(1)(a) through (e), F.S.

A public records exemption for the Address Confidentiality Program makes exempt from disclosure addresses, telephone numbers, and social security numbers of program participants.⁴⁶ A limited exception authorizes disclosure of the information:

- To a law enforcement agency to assist in executing a valid arrest warrant;
- If directed by a court order, including to a person identified in the order; or
- After the exemption has been cancelled.⁴⁷

The public records exemption under the Program also protects contact information for participants maintained by the supervisor of elections in voter registration and voting records. An exception is provided for disclosure to:

- A law enforcement agency to assist in serving an arrest warrant; or
- A person identified in a court order, if directed by the court order.⁴⁸

The Office of the Attorney General provides training on the availability of the Address Confidentiality Program to local governments and non-profit organizations. The office estimates that it has trained individuals from approximately 100 local entities or organizations.⁴⁹

Automated Process for the Clerk of the Court

In 2011, the Legislature required the Florida Association of Court Clerks and Comptrollers to establish, subject to available funding, an automated process to provide notice to a petitioner that the injunction for protection has been served on the respondent.⁵⁰ Once the automated process is established, the petitioner may request an automated notice that that protective injunction has been served on the respondent. The notice will be sent within 12 hours after service and will include the date, time, and location where the officer served the injunction.

In 2012, the Legislature created a public records exemption relating to the automated process to protect the petitioner's contact information listed on the request to receive an automated notice.⁵¹ A petitioner who signs up for the automated notice process may request that his or her contact information be held exempt from public disclosure. The specific information protected from disclosure includes the petitioner's:

- Home or employment telephone number;
- Home or employment address;
- Cell phone number;

⁴⁶ Section 741.465(1), F.S.

⁴⁷ *Id.*

⁴⁸ Section 741.465(2), F.S.

⁴⁹ The Office of the Attorney General notes that 1,274 victims of domestic violence, stalking, or aggravated stalking have participated in the Program. Under the Program, participants may use a mailing address established by the office. Mail received at the office for a participant is diverted to the Office of Victim Services, which then forwards the mail to an address of the participant. Once a person qualifies to participate, based on the office finding a reasonable belief that domestic violence, stalking, or aggravated stalking has occurred, the person may receive services for up to 4 years. After that time, the person may reapply for another 4-year eligibility. Phone conference with Rob Johnson and Andrew Fay, Office of the Attorney General (Nov. 28, 2016).

⁵⁰ Chapter 2011-187, Laws of Fla., (CS/CS HB 563); Sections 741.30(8)(c)5.a., and 784.046(8)(c)5.a., F.S.

⁵¹ Chapter 2012-154, Laws of Fla., (HB 1193).

- Electronic mail address; or
- Other electronic means of identification.⁵²

The public records exemption protects the contact information from disclosure for five years.

In its statement of public necessity justifying the exemption, the Legislature explained that, if made publicly available, the contact information:

could expose the victims of domestic violence, repeat violence, sexual violence, and dating violence to public humiliation and shame and could inhibit the victim from availing herself or himself of relief provided under state law. Additionally ... it could be used by the partner or former partner of the victim of domestic violence, repeat violence, sexual violence, or dating violence to determine the location of the victim, thus placing the victim in jeopardy.⁵³

In keeping with the required Open Government Sunset Review Act, the public records exemption will repeal on October 2, 2017, unless the Legislature saves the exemption through reenactment before that time.⁵⁴

Open Government Sunset Review of the Public Records Exemption

The Senate Judiciary Committee professional staff contacted the Clerks of Court regarding the public records exemption in ss. 741.30(8)(c)5.b. and 784.046(8)(c)5.b., F.S. Because the Florida Association of Court Clerks and Comptrollers has not fully developed and implemented the automated notification system, the exemptions cannot be evaluated at this time consistent with the requirements of the Open Government Sunset Review Act.⁵⁵ Accordingly, professional staff recommends that the sunset date be extended by two years.

By extending the repeal of the exemptions for two years, the continued need for the exemptions will be reviewed again before October 2, 2019.

III. Effect of Proposed Changes:

The repeal date of the public records exemptions provided in ss. 741.30(8)(c)5.b. and 784.046(8)(c)5.b., F.S., is extended to October 2, 2019. This should give the Clerks of Court and Law Enforcement sufficient time to get necessary processes in place for the automatic notification system to fully function.

The bill takes effect October 1, 2017.

⁵² Sections 741.30(8)(c)5.b., and 784.046(8)(c)5.b., F.S.

⁵³ Chapter 2012-154, Laws of Fla.

⁵⁴ Section 119.15(3), F.S.

⁵⁵ The Court Clerks and Comptrollers explained that the clerks applied for a federal grant to updated their shared computer systems, in the Spring of 2014. The grand was awarded in the fall of 2014.

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

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

B. Public Records/Open Meetings Issues:

This bill continues a current exemption but does not expand the scope of an existing public records exemption. Therefore, a simple majority vote of the members present and voting in each house of the Legislature is required for passage.

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:

Current law requires automated notice to be provided to a petitioner who has requested notification within 12 hours after the law enforcement officer has served the injunction upon the respondent.⁵⁶ Representatives from the Clerks of the Court and the Sheriffs Association indicate that the 12-hour requirement may be impossible to meet, given that a delay exists between the time a law enforcement officer serves a respondent and delivers a copy of the served petition to the clerk. Moreover, if a law enforcement officer serves an injunction just before the weekend, a clerk may not be able to input the information on the Comprehensive Case Information System

⁵⁶ Sections 741.30(8)(c)5.a., and 784.046(8)(c)5.a., F.S., provide, “The automated notice shall be made within 12 hours after the sheriff or other law enforcement officer serves the injunction upon the respondent.”

(CCIS) until the following week. These potential causes of delays in providing notifications may be resolved with the activation of the CCIS, particularly if law enforcement agencies are granted access to the system to upload notice that an injunction has been served, which will then cause an automated notice to be sent to the petitioner. If law enforcement agencies are not given access to CCIS, the Legislature may wish to revise the 12-hour requirement after the CCIS is implemented.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 741.30 and 784.046.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By the Committee on Judiciary

590-03017-17

20177028__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending ss. 741.30 and 784.046, F.S.; extending the repeal dates for exemptions from public records requirements for personal identifying and location information of a petitioner who requests notification of service of an injunction for protection against domestic violence, repeat violence, sexual violence, and dating violence and other court actions related to the injunction held by clerks of the court and law enforcement agencies; providing an effective date.

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

Section 1. Paragraph (c) of subsection (8) of section 741.30, Florida Statutes, is amended to read:

741.30 Domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement; public records exemption.—

(8)

(c)1. Within 24 hours after the court issues an injunction for protection against domestic violence or changes, continues, extends, or vacates an injunction for protection against domestic violence, the clerk of the court must forward a certified copy of the injunction for service to the sheriff with jurisdiction over the residence of the petitioner. The injunction must be served in accordance with this subsection.

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2. Within 24 hours after service of process of an injunction for protection against domestic violence upon a respondent, the law enforcement officer must forward the written proof of service of process to the sheriff with jurisdiction over the residence of the petitioner.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against domestic violence, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the department.

4. Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the department.

5.a. Subject to available funding, the Florida Association of Court Clerks and Comptrollers shall develop an automated process by which a petitioner may request notification of service of the injunction for protection against domestic violence and other court actions related to the injunction for protection. The automated notice shall be made within 12 hours after the sheriff or other law enforcement officer serves the injunction upon the respondent. The notification must include, at a minimum, the date, time, and location where the injunction for protection against domestic violence was served. When a petitioner makes a request for notification, the clerk must apprise the petitioner of her or his right to request in writing that the information specified in sub-subparagraph b. be held

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59 exempt from public records requirements for 5 years. The Florida
 60 Association of Court Clerks and Comptrollers may apply for any
 61 available grants to fund the development of the automated
 62 process.

63 b. Upon implementation of the automated process,
 64 information held by clerks and law enforcement agencies in
 65 conjunction with the automated process developed under sub-
 66 subparagraph a. which reveals the home or employment telephone
 67 number, cellular telephone number, home or employment address,
 68 electronic mail address, or other electronic means of
 69 identification of a petitioner requesting notification of
 70 service of an injunction for protection against domestic
 71 violence and other court actions related to the injunction for
 72 protection is exempt from s. 119.07(1) and s. 24(a), Art. I of
 73 the State Constitution, upon written request by the petitioner.
 74 Such information shall cease to be exempt 5 years after the
 75 receipt of the written request. Any state or federal agency that
 76 is authorized to have access to such documents by any provision
 77 of law shall be granted such access in the furtherance of such
 78 agency's statutory duties, notwithstanding this sub-
 79 subparagraph. This sub-subparagraph is subject to the Open
 80 Government Sunset Review Act in accordance with s. 119.15 and
 81 shall stand repealed on October 2, 2019 ~~2017~~, unless reviewed
 82 and saved from repeal through reenactment by the Legislature.

83 6. Within 24 hours after an injunction for protection
 84 against domestic violence is vacated, terminated, or otherwise
 85 rendered no longer effective by ruling of the court, the clerk
 86 of the court must notify the sheriff receiving original
 87 notification of the injunction as provided in subparagraph 2.

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88 That agency shall, within 24 hours after receiving such
 89 notification from the clerk of the court, notify the department
 90 of such action of the court.

91 Section 2. Paragraph (c) of subsection (8) of section
 92 784.046, Florida Statutes, is amended to read:

93 784.046 Action by victim of repeat violence, sexual
 94 violence, or dating violence for protective injunction; dating
 95 violence investigations, notice to victims, and reporting;
 96 pretrial release violations; public records exemption.—
 97 (8)

98 (c)1. Within 24 hours after the court issues an injunction
 99 for protection against repeat violence, sexual violence, or
 100 dating violence or changes or vacates an injunction for
 101 protection against repeat violence, sexual violence, or dating
 102 violence, the clerk of the court must forward a copy of the
 103 injunction to the sheriff with jurisdiction over the residence
 104 of the petitioner.

105 2. Within 24 hours after service of process of an
 106 injunction for protection against repeat violence, sexual
 107 violence, or dating violence upon a respondent, the law
 108 enforcement officer must forward the written proof of service of
 109 process to the sheriff with jurisdiction over the residence of
 110 the petitioner.

111 3. Within 24 hours after the sheriff receives a certified
 112 copy of the injunction for protection against repeat violence,
 113 sexual violence, or dating violence, the sheriff must make
 114 information relating to the injunction available to other law
 115 enforcement agencies by electronically transmitting such
 116 information to the department.

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117 4. Within 24 hours after the sheriff or other law
 118 enforcement officer has made service upon the respondent and the
 119 sheriff has been so notified, the sheriff must make information
 120 relating to the service available to other law enforcement
 121 agencies by electronically transmitting such information to the
 122 department.

123 5.a. Subject to available funding, the Florida Association
 124 of Court Clerks and Comptrollers shall develop an automated
 125 process by which a petitioner may request notification of
 126 service of the injunction for protection against repeat
 127 violence, sexual violence, or dating violence and other court
 128 actions related to the injunction for protection. The automated
 129 notice shall be made within 12 hours after the sheriff or other
 130 law enforcement officer serves the injunction upon the
 131 respondent. The notification must include, at a minimum, the
 132 date, time, and location where the injunction for protection
 133 against repeat violence, sexual violence, or dating violence was
 134 served. When a petitioner makes a request for notification, the
 135 clerk must apprise the petitioner of her or his right to request
 136 in writing that the information specified in sub-subparagraph b.
 137 be held exempt from public records requirements for 5 years. The
 138 Florida Association of Court Clerks and Comptrollers may apply
 139 for any available grants to fund the development of the
 140 automated process.

141 b. Upon implementation of the automated process,
 142 information held by clerks and law enforcement agencies in
 143 conjunction with the automated process developed under sub-
 144 subparagraph a. which reveals the home or employment telephone
 145 number, cellular telephone number, home or employment address,

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146 electronic mail address, or other electronic means of
 147 identification of a petitioner requesting notification of
 148 service of an injunction for protection against repeat violence,
 149 sexual violence, or dating violence and other court actions
 150 related to the injunction for protection is exempt from s.
 151 119.07(1) and s. 24(a), Art. I of the State Constitution, upon
 152 written request by the petitioner. Such information shall cease
 153 to be exempt 5 years after the receipt of the written request.
 154 Any state or federal agency that is authorized to have access to
 155 such documents by any provision of law shall be granted such
 156 access in the furtherance of such agency's statutory duties,
 157 notwithstanding this sub-subparagraph. This sub-subparagraph is
 158 subject to the Open Government Sunset Review Act in accordance
 159 with s. 119.15 and shall stand repealed on October 2, 2019 ~~2017~~,
 160 unless reviewed and saved from repeal through reenactment by the
 161 Legislature.

162 6. Within 24 hours after an injunction for protection
 163 against repeat violence, sexual violence, or dating violence is
 164 lifted, terminated, or otherwise rendered no longer effective by
 165 ruling of the court, the clerk of the court must notify the
 166 sheriff or local law enforcement agency receiving original
 167 notification of the injunction as provided in subparagraph 2.
 168 That agency shall, within 24 hours after receiving such
 169 notification from the clerk of the court, notify the department
 170 of such action of the court.

171 Section 3. This act shall take effect July 1, 2017.

1280

**STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections**

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

Peter H. Collins

is duly appointed a member of the

Investment Advisory Council

for a term beginning on the First day of January, A.D., 2017,
until the Thirty-First day of December, A.D., 2021 and is subject
to be confirmed by the Senate during the next regular session of
the Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Twenty-Second day of March, A.D., 2017.*

Ken Detzner

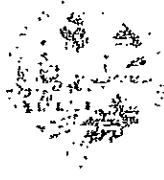
Secretary of State



DSDE 99 (3/03)

If photocopied or chemically altered, the word "VOID" will appear.

"State of Florida" appears in small letters across the face of this 8 1/2 x 11" document.



CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

17 MAR 17 AM 9:24
ELECTIONS
SECRETARY OF STATE

January 20, 2017

Mr. Peter H. Collins
Co-Founder and Managing Principal
Forge Capital Partners
102 W. Whiting Street, Suite 600
Tampa, FL 33602

Dear Mr. Collins:

Pursuant to section 215.444, Florida Statutes, at the recommendation of the Board of Trustees of the State Board of Administration, it is my pleasure to reappoint you to serve on the State Board of Administration Investment Advisory Council. Your term will begin January 1, 2017 and expire on December 31, 2021.

Thank you for your willingness to continue serving.

Sincerely,

Jeff Atwater
Chief Financial Officer

/kd

c: Ash Williams

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

DEPARTMENT OF STATE

STATE OF FLORIDA

2017 MAR -6 PM 2:42

County of Hillsborough

DIVISION OF ELECTIONS
TALLAHASSEE, FL

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

Investment Advisory Council
(Title of Office)

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

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

P.H.M.

Signature

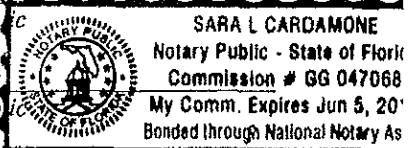
Sworn to and subscribed before me this 31 day of JANUARY, 2017.

S.L.C.

Signature of Officer Administering Oath or of Notary Public

SARA L CARDAMONE

Print, Type, or Stamp Commissioned Name of Notary Public



Personally Known OR Produced Identification

Type of Identification Produced _____

ACCEPTANCE

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

Mailing Address: Home Office

2501 S. MAULDIN Ave
Street or Post Office Box

Peter H. Collins
Print Name

Tampa FL 33629
City, State, Zip Code

P.H.M.
Signature

1 STATE OF FLORIDA

2
3
4 IN RE: MEETING OF THE GOVERNOR AND
5 CABINET /
6
7
89 CABINET MEMBERS: GOVERNOR RICK SCOTT
10 ATTORNEY GENERAL PAM BONDI
11 CHIEF FINANCIAL OFFICER JEFF
12 ATWATER
13 COMMISSIONER OF AGRICULTURE
14 ADAM PUTNAM

15 DATE: TUESDAY, FEBRUARY 7, 2017

16 LOCATION: CABINET MEETING ROOM
17 LOWER LEVEL, THE CAPITOL
18 TALLAHASSEE, FLORIDA19 REPORTED BY: NANCY S. METZKE, RPR, FPR
20 COURT REPORTER
2122 C & N REPORTERS
23 POST OFFICE BOX 3093
24 TALLAHASSEE, FLORIDA 32315-3093
25 (850) 697-8314 / FAX (850) 697-8715
nancy@metzke.com
candnreporters.com

1 DIRECTOR WILLIAMS: Thank you.

2 Item 5, request approval of the reappointment
3 of Mr. Peter Collins to the Investment Advisory
4 Council. Mr. Collins has served his first term
5 with distinction. He's served -- he's currently
6 Vice Chair of the Council. He has done a terrific
7 job, and we'd like to reappoint him.

8 GOVERNOR SCOTT: Is there a motion?

9 ATTORNEY GENERAL BONDI: So move.

10 GOVERNOR SCOTT: Second?

11 CFO ATWATER: Second.

12 GOVERNOR SCOTT: Any comments or objections?

13 (NO RESPONSE).

14 GOVERNOR SCOTT: Hearing none, the motion
15 carries.

16 DIRECTOR WILLIAMS: Thank you.

17 Item 6, request approval of a draft letter to
18 the Joint Legislative Auditing Committee affirming
19 that the SBA trustees have reviewed and approved
20 the Auditor General's annual financial audit of the
21 Local Governments Surplus Funds Trust Fund and
22 taken action on any material impacts. There were
23 no material findings.

24 GOVERNOR SCOTT: Thanks, Ash. How much
25 money is left -- how much money is in this, in

The Florida Senate
**COMMITTEE RECOMMENDATION ON
EXECUTIVE APPOINTMENT**

COMMITTEE: Committee on Governmental Oversight and Accountability
MEETING DATE: Monday, April 17, 2017
TIME: 4:00—6:00 p.m.
PLACE: James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building

TO: The Honorable Joe Negron, President
FROM: Committee on Governmental Oversight and Accountability

The committee was referred the following executive appointment subject to confirmation by the Senate:

Office: Investment Advisory Council

Appointee: Collins, Peter H.

Term: 1/1/2017-12/31/2021

After inquiry and due consideration, the committee recommends that the Senate **confirm** the aforesaid executive appointment made by the Board of Administration.

CourtSmart Tag Report

Room: SB 401

Case No.:

Type:

Caption: Senate Committee on Governmental Oversight and Accountability

Judge:

Started: 4/17/2017 4:02:31 PM

Ends: 4/17/2017 4:53:43 PM

Length: 00:51:13

4:02:29 PM Meeting called to order- Roll call
4:02:53 PM Quorum
4:02:58 PM Tab 7 CS/SB 1014
4:03:25 PM Senator Brandes recognized
4:04:45 PM Roll Call
4:04:46 PM CS/SB 1014 Favorable
4:05:15 PM Tab 5 SB 856
4:05:20 PM Senator Broxon recognized
4:05:33 PM Late filed Amendment barcode 700896
4:07:01 PM Lynda Russell, Florida Education Association
4:08:20 PM Senator Stewart
4:08:50 PM Senator Artiles
4:09:50 PM Bill as amended
4:10:24 PM Senator Rouson
4:11:53 PM Senator Rader
4:12:53 PM Motion by Senator Galvano to Temporarily Postpone SB 856
4:13:45 PM Tab 1 SB 248
4:14:11 PM Senator Broxon recognized
4:15:03 PM Roll Call
4:15:07 PM SB 248 favorable
4:15:19 PM Tab 11 SB 1408
4:15:29 PM Senator Broxon recognized
4:15:57 PM Roll call
4:16:31 PM SB 1408 favorable
4:16:44 PM Tab 4 CS/SB 840
4:17:01 PM Senator Clemens recognized
4:17:09 PM Amendment barcode 199576
4:17:39 PM Amendment to the Amendment barcode 198366
4:17:59 PM Amendment to the Amendment adopted
4:18:29 PM Main amendment barcode 199576 adopted; Back on bill as amended
4:19:10 PM CS/SB 840 favorable as a committee substitute
4:20:10 PM Tab 6 CS/SB 1008
4:20:19 PM Senator Perry recognized
4:21:50 PM Roll Call
4:21:55 PM CS/SB 1008 favorable
4:22:06 PM Tab 15 SB 7028
4:23:06 PM Roll Call
4:24:04 PM SB 7028 favorable
4:24:15 PM Tab 2 CS/SB 600
4:25:21 PM Roll Call
4:26:12 PM CS/SB 600 favorable
4:26:23 PM Tab 14 SB 1844
4:27:54 PM Amendment barcode 457760
4:28:06 PM Bill as amended
4:28:27 PM Christopher Cano, CFL NORML
4:28:53 PM Senator Bradley
4:29:24 PM Roll Call
4:29:32 PM SB 1844 Favorable as a committee substitute
4:30:02 PM Tab 9 CS/SB 1084
4:30:26 PM Roll Call
4:30:53 PM CS/SB 1084 Favorable
4:31:14 PM Tab 16 Confirmation, Peter H. Collins

4:31:54 PM Roll Call
4:32:23 PM Confirmation of Peter H. Collins Favorable
4:33:12 PM Tab 8 CS/SB 1072
4:33:38 PM Strike all amendment barcode 682324
4:34:38 PM Amendment adopted
4:35:06 PM Bill as amended
4:35:09 PM Roll Call
4:35:36 PM CS/SB 1072 favorable as a committee substitute
4:35:53 PM Tab 10 CS/SB 1224
4:36:05 PM Senator Hutson
4:36:54 PM Roll Call
4:36:59 PM CS/SB 1224 favorable
4:37:12 PM Motion by Senator Rouson
4:37:13 PM Recording Paused
4:37:13 PM Recording Resumed
4:37:37 PM Recording Paused
4:41:09 PM Recording Resumed
4:41:18 PM Tab 3 CS/SB 686
4:42:18 PM Senator Baxley
4:42:42 PM Roll Call
4:42:59 PM CS/SB 686 favorable
4:43:14 PM Tab 12 SB 1478
4:43:43 PM Strike all amendment barcode 112248
4:47:19 PM Amendment adopted
4:47:25 PM Bill as amended
4:47:28 PM Roll Call
4:47:40 PM SB 1478 Favorable as a committee substitute
4:47:54 PM Tab 13 SB 1480
4:48:03 PM Strike all amendment barcode 652786
4:48:26 PM Senator Baxley
4:49:21 PM Bill as amended
4:49:50 PM Roll Call
4:49:57 PM SB 1480 favorable as a committee substitute
4:50:19 PM Senator Baxley
4:50:23 PM Motion to Adjourn
4:50:50 PM Senator Rader
4:52:39 PM Meeting Adjourned