

Tab 1	SB 278 by Hutson (CO-INTRODUCERS) Baxley ; (Similar to H 00087) Public Records/Department of State
535642	D S RCS GO, Hutson Delete everything after 12/05 02:00 PM

Tab 2	SB 286 by Rouson ; (Similar to H 00067) Florida Slavery Memorial
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Tab 3	CS/SB 510 by HP, Young (CO-INTRODUCERS) Mayfield ; (Similar to H 00673) Reporting of Adverse Incidents in Planned out-of-hospital Births
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Tab 4	SB 648 by Baxley ; Employment Services for Persons with Disabilities
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Tab 5	SB 7004 by JU ; OGSR/Petitioner Information/Notification of Service of an Injunction for Protection
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Tab 6	SB 7006 by JU ; (Identical to H 07013) OGSR/Investigation of a Violation of the Florida False Claims Act/Department of Legal Affairs
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY

Senator Baxley, Chair
Senator Mayfield, Vice Chair

MEETING DATE: Tuesday, December 5, 2017

TIME: 10:00 a.m.—12:00 noon

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

MEMBERS: Senator Baxley, Chair; Senator Mayfield, Vice Chair; Senators Galvano, Rader, Rouson, Stargel, and Stewart

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 278 Hutson (Similar H 87, Compare H 85, Linked S 276)	Public Records/Department of State ; Providing an exemption from public records requirements for certain information received by the Department of State 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 11/07/2017 Favorable GO 12/05/2017 Fav/CS RC	Fav/CS Yeas 7 Nays 0
2	SB 286 Rouson (Similar H 67)	Florida Slavery Memorial; Establishing the Florida Slavery Memorial; providing for administration of the memorial by the Department of Management Services; directing the department to develop a specified plan for the design, placement, and cost of the memorial and submit the plan to the Governor and Legislature, etc. GO 12/05/2017 Favorable AGG AP	Favorable Yeas 7 Nays 0
3	CS/SB 510 Health Policy / Young (Similar H 673)	Reporting of Adverse Incidents in Planned out-of-hospital Births; Defining the term "adverse incident"; requiring licensed physicians, certified nurse midwives, and licensed midwives to report an adverse incident and a medical summary of events to the Department of Health within a specified timeframe; requiring the department to review adverse incident reports and determine if conduct occurred that is subject to disciplinary action, etc. HP 11/07/2017 Fav/CS GO 12/05/2017 Favorable RC	Favorable Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Tuesday, December 5, 2017, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 648 Baxley	Employment Services for Persons with Disabilities; Specifying that participants in certain disabled persons' work experience activities are considered state employees for workers' compensation purposes, etc. GO 12/05/2017 Favorable AGG AP	Favorable Yeas 7 Nays 0
5	SB 7004 Judiciary	OGSR/Petitioner Information/Notification of Service of an Injunction for Protection; Amending provisions relating to the 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 for other court actions related to the injunction which are held by clerks of the court and law enforcement agencies; removing the scheduled repeal of the exemptions, etc. GO 12/05/2017 Favorable RC	Favorable Yeas 7 Nays 0
6	SB 7006 Judiciary (Identical H 7013)	OGSR/Investigation of a Violation of the Florida False Claims Act/Department of Legal Affairs; Amending provisions relating to an exemption from public record requirements for the complaint and information held by the Department of Legal Affairs pursuant to an investigation of a violation of the Florida False Claims Act; abrogating the scheduled repeal of the exemption, etc. GO 12/05/2017 Favorable RC	Favorable Yeas 7 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 278

INTRODUCER: Governmental Oversight and Accountability Committee; and Senators Hutson and Baxley

SUBJECT: Public Records/Department of State

DATE: December 6, 2017 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carlton</u>	<u>Ulrich</u>	<u>EE</u>	Favorable
2.	<u>Peacock</u>	<u>Caldwell</u>	<u>GO</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 278 creates a public records exemption for voter registration information received by the Department of State, pursuant to membership in a nongovernmental entity, from another state or the District of Columbia in which the information is confidential or exempt pursuant to the laws of those jurisdictions.

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 SB 276, which will take effect on January 1, 2019.

The bill provides that the exemption is subject to the Open Government Sunset Review Act, and stands repealed on October 2, 2023, 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:

[i]t 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 Legislature 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

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 683 (Fla. 5th DCA 1991).

¹⁵ 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 s. 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.

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

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

The names, addresses, and telephone numbers of 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 be exempt from public disclosure.²⁷

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 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.

Florida Voter List Maintenance Information

The Secretary of State is head of the Department of State²⁸ (Department) and acts as the chief election officer of the State and is responsible for the operation and maintenance of the statewide voter registration system implemented as part of the Help America Vote Act of 2002.²⁹ 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 who may register and remove voters from the registration rolls.

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.³⁰ The records must include a list containing the name and address of each person to whom a notice of potential ineligibility³¹ 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.³²

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 2002.³³

SB 276 (2018)

SB 276 authorizes the Department of State (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). That bill also 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.

SB 276 also requires all states and nongovernmental entities that receive any voter registration information to maintain the confidentiality of such 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 of Representatives describing the interstate agreement or membership, and providing information on the number of registered

²⁸ Section 20.10, F.S. The Secretary of State is appointed by the Governor, subject to confirmation by the Senate, and serves at the pleasure of the Governor. The Secretary of State also performs functions conferred by the State Constitution upon the custodian of state records. The Department of State is composed of the following divisions: Elections, Historical Resources, Corporations, Library and Information Services, Cultural Affairs, and Administration.

²⁹ See s. 98.035, F.S.

³⁰ Section 98.045(3), F.S.

³¹ See s. 98.075(7), F.S. Supervisors are required to notify by mail the registered voter of his or her potential ineligibility to be registered to vote.

³² *Supra* note 30.

³³ Sections 98.065(1) and 98.075(1), F.S.

voters removed from the FVRS as a result of the agreement or membership and the reasons for their removal.

III. Effect of Proposed Changes:

Section 1 of the bill creates a public records exemption for voter registration information received by the Department, pursuant to membership in a nongovernmental entity, from another state or the District of Columbia in which the information is confidential or exempt pursuant to the laws of that state or jurisdiction.

This section further provides that the exemption is subject to the OGSR, and stands repealed on October 2, 2023, 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.

Section 2 of 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 or the District of Columbia that might otherwise be confidential and exempt pursuant to the laws of those jurisdictions. This would impair the ability of the Department and Supervisors to maintain accurate voter rolls, which is critical to fair elections in this state.

Section 3 of the bill provides an effective date that is contingent upon, and concurrent with, passage of SB 276, which will take effect on January 1, 2019.

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:

SB 276 requires an amendment to conform to the instant bill.

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 by Governmental Oversight and Accountability on December 5, 2017:

- Adds references to SB 276 which is the linked substantive bill;
- Deletes from the bill information received by the Department from another state pursuant to an interstate agreement; and
- Adds information received by the Department from the District of Columbia.

B. Amendments:

None.

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



535642

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/05/2017	.	
	.	
	.	
	.	

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 SB 276, 2018
Regular Session, to read:

98.075 Registration records maintenance activities;
ineligibility determinations.—

(2) DUPLICATE REGISTRATION.—



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11 (c) Information received by the department from another
12 state or the District of Columbia upon the department becoming a
13 member of a nongovernmental entity as provided in subparagraph
14 (b)1., which is confidential or exempt pursuant to the laws of
15 that state or the District of Columbia, is exempt from s.
16 119.07(1) and s. 24(a), Art. I of the State Constitution. The
17 department shall provide such information to the supervisors to
18 conduct registration list maintenance activities. This paragraph
19 is subject to the Open Government Sunset Review Act in
20 accordance with s. 119.15 and shall stand repealed on October 2,
21 2023, unless reviewed and saved from repeal through reenactment
22 by the 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 or the District of Columbia pursuant to its
26 membership in a nongovernmental entity as provided in s.
27 98.075(2)(b), Florida Statutes, which is confidential or exempt
28 pursuant to the laws of that state or the District of Columbia,
29 be made exempt from s. 119.07(1), Florida Statutes, and s.
30 24(a), Article I of the State Constitution. Becoming a member of
31 a nongovernmental entity for the purpose of sharing and
32 exchanging information to verify voter registration information
33 is critical to ensuring the accuracy of the statewide voter
34 registration system. Maintaining an accurate statewide voter
35 registration system is critical to fair elections in this state.
36 Without the public records exemption, the department will be
37 unable to receive information from other states or the District
38 of Columbia which might otherwise be confidential or exempt
39 pursuant to the laws of those jurisdictions, which would impair



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40 the ability of the department and supervisors of elections to
41 maintain accurate voter rolls. As a result, the effective and
42 efficient administration of the statewide voter registration
43 system would be hindered. For these reasons, the Legislature
44 finds that it is a public necessity to maintain the exempt
45 status of such information received by the department.

46 Section 3. This act shall take effect on the same date that
47 SB 276 or similar legislation takes effect, if such legislation
48 is adopted in the same legislative session or an extension
49 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.; providing an exemption from public records
58 requirements for certain information received by the
59 Department of State from another state or the District
60 of Columbia which is confidential or exempt pursuant
61 to the laws of that jurisdiction; providing for
62 release of such information to specified persons;
63 providing for future legislative review and repeal of
64 the exemption; providing a statement of public
65 necessity; providing a contingent effective date.

By Senator Hutson

7-00464-18

2018278__

A bill to be entitled

An act relating to public records; amending s. 98.075, F.S.; providing an exemption from public records requirements for certain information received by the Department of State from another state which is confidential or exempt pursuant to the laws of that state; providing for release of such information to specified persons; 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 (c) is added to subsection (2) of section 98.075, Florida Statutes, as amended by SB __, 2018 Regular Session, to read:

98.075 Registration records maintenance activities; ineligibility determinations.-

(2) DUPLICATE REGISTRATION.-

(c) Information received by the department from another state, pursuant to an interstate agreement or upon the department becoming a member of a nongovernmental entity as provided in subparagraph (b)1., which is confidential or exempt pursuant to the laws of that state, is exempt from s. 119.071(1) and s. 24(a), Art. I of the State Constitution. The department shall provide such information to the supervisors to conduct registration list maintenance activities. This paragraph is subject to the Open Government Sunset Review Act in accordance

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

7-00464-18

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with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that information received by the Department of State from another state, pursuant to an interstate agreement entered into under s. 98.075(2)(b), Florida Statutes, or pursuant to its membership in a nongovernmental entity as provided in s. 98.075(2)(b), Florida Statutes, which is confidential or exempt pursuant to the laws of that state, be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Participating in interstate agreements or becoming a member of a nongovernmental entity for the purpose of sharing and exchanging information to verify voter registration information is critical to ensuring the accuracy of the statewide voter registration system. Maintaining an accurate statewide voter registration system is critical to fair elections in this state. Without the public records exemption, the department will be unable to receive information from other states which might otherwise be confidential or exempt pursuant to the laws of those states, which would impair the ability of the department and supervisors of elections to maintain accurate voter rolls. As a result, the effective and efficient administration of the statewide voter registration system would be hindered. For these reasons, the Legislature finds that it is a public necessity to maintain the exempt status of such information received by the department.

Section 3. This act shall take effect on the same date that SB __ or similar legislation takes effect, if such legislation

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59 is adopted in the same legislative session or an extension
60 thereof and becomes a law.



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: November 8, 2017

I respectfully request that **Senate Bill #278**, relating to Public Records/Department of State, 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)

12/15

Meeting Date

HB 278

Bill Number (if applicable)

Topic Public Record / Dept of State

Amendment Barcode (if applicable)

Name Evan Power

Job Title

Address 120 S Monroe St

Phone 850 519 1062

Street

Tallahassee FL 32301

Email evan@pambaconsolidity.com

City

State

Zip

Speaking: [] For [] Against [] Information

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

Representing Florida State Association of Supervisors of elections

Appearing at request of Chair: [] Yes [] 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: SB 286

INTRODUCER: Senator Rouson

SUBJECT: Florida Slavery Memorial

DATE: December 4, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Caldwell	GO	Favorable
2.			AGG	
3.			AP	

I. Summary:

SB 286 adds a new memorial to be placed at the downtown Capitol Complex. The downtown Capitol Complex currently houses numerous outdoor memorials. This bill establishes the Florida Slavery Memorial.

The bill requires the Department of Management Services (department) to administer the memorial.

Accordingly, the department will, in consultation with the Division of Historical Resources of the Department of State:

- Develop a plan for the design, placement, and cost of the memorial; and
- Select an appropriate placement for the memorial, after considering the recommendation of the Florida Historical Commission.

By November 1, 2018, the department must submit the plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

II. Present Situation:

Capitol Complex

The Capitol Complex located in Tallahassee, includes the inside and the curtilage outside of the downtown Capitol, Historic Capitol, Senate Office Building, House Office Building, Knott Building, Pepper Building, and Holland Building. State-owned lands and public streets adjacent

to these buildings are also included.¹ The rest of the Capitol Complex, the State Capital Circle Office Complex, is located in the southeast section of the city.²

Memorials and Monuments

A monument is defined as:

a permanent structure such as a marker, statue, sculpture, plaque, or other artifice, including living plant material, placed in remembrance or recognition of a significant person or event in Florida history.³

The term “monument” does not include an Official Florida Historical Marker.⁴

Legislative approval is required before any building or placement of a monument on the premises of the Capitol Complex. After the Legislature designates in law a new monument, the department must approve the design and placement of the monument after considering the recommendation of the Florida Historical Commission.⁵

Chapter 265, F.S., recognizes various memorials and monuments for placement both inside and outside at the downtown Capitol Complex. To date, the Legislature has approved the following memorials:

- Florida Women’s Hall of Fame;⁶
- Florida Medal of Honor Wall;⁷
- Florida Veterans’ Hall of Fame;⁸
- POW-MIA Chair of Honor Memorial;⁹
- Florida Veterans’ Walk of Honor and Florida Veterans’ Memorial Garden;¹⁰
- Florida Tourism Hall of Fame;¹¹
- Florida Law Enforcement Officers’ Hall of Fame;¹²
- Florida Holocaust Memorial,¹³ and
- Arthur G. Dozier School for Boys Memorial.¹⁴

¹ Section 281.01, F.S.

² Department of Management Services, *Capitol Complex Information*, Available at https://www.dms.myflorida.com/business_operations/real_estate_development_and_management/facilities_management/building_information/capitol_complex_information (last visited Nov. 22, 2017).

³ Section 265.111(1), F.S.

⁴ *Id.* An Official Florida Historical Marker is any marker, plaque, or similar device awarded, approved, or administered by the Division of Historical Resources to recognize and inform the public about historical properties, persons, events, and other topics relating to the history and culture of the state (s. 267.021(8), F.S.)

⁵ Section 265.111(2), F.S. One of the duties of the Florida Historical Commission is to provide recommendations to the department on the design and placement of monuments authorized in general law. (s. 267.0612(9), F.S.)

⁶ Section 265.001, F.S.

⁷ Section 265.002, F.S.

⁸ Section 265.003, F.S.

⁹ Section 265.00301, F.S.

¹⁰ Section 265.0031, F.S.

¹¹ Section 265.004, F.S.

¹² Section 265.0041, F.S.

¹³ Section 265.005, F.S.

¹⁴ Section 265.007, F.S.

Additionally, the Legislature approved a memorial garden to house approved monuments at the downtown Capitol Complex. One of the monuments designated for placement in the memorial garden is a monument in remembrance of the 241 members of the United States Air Forces who died on October, 23, 1983, in Beirut, Lebanon.¹⁵

III. Effect of Proposed Changes:

This bill establishes a Florida Slavery Memorial, to be placed alongside other memorials at the downtown Capitol Complex.

The bill requires the Department of Management Services (department) to administer the memorial. Accordingly, the department will, in consultation with the Division of Historical Resources of the Department of State:

- Develop a plan for the design, placement, and cost of the memorial; and
- Select an appropriate placement for the memorial, after considering the recommendation of the Florida Historical Commission.

By November 1, 2018, the department must submit the plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The bill takes effect July 1, 2018.

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:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹⁵ Section 265.111(3), F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

To the extent that the bill does not allocate an appropriation to the department, the department expects to absorb costs within current resources. Whether a fiscal impact is insignificant is unknown at this time.¹⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 265.006, 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.

¹⁶ Department of Management Services, *2018 Agency Legislative Bill Analysis* (Nov. 29, 2017).

By Senator Rouson

19-00371A-18

2018286__

1 A bill to be entitled
 2 An act relating to the Florida Slavery Memorial;
 3 creating s. 265.006, F.S.; providing legislative
 4 intent; establishing the Florida Slavery Memorial;
 5 providing for administration of the memorial by the
 6 Department of Management Services; directing the
 7 department to develop a specified plan for the design,
 8 placement, and cost of the memorial and submit the
 9 plan to the Governor and Legislature; providing an
 10 effective date.
 11
 12 Be It Enacted by the Legislature of the State of Florida:
 13
 14 Section 1. Section 265.006, Florida Statutes, is created to
 15 read:
 16 265.006 Florida Slavery Memorial.—
 17 (1) It is the intent of the Legislature to recognize the
 18 fundamental injustice, cruelty, brutality, and inhumanity of
 19 slavery in the United States and the American Colonies and to
 20 honor the nameless and forgotten men, women, and children who
 21 have gone unrecognized for their undeniable and weighty
 22 contributions to the United States.
 23 (2) There is established the Florida Slavery Memorial.
 24 (a) The memorial is administered by the Department of
 25 Management Services.
 26 (b) The Department of Management Services shall develop a
 27 plan for the design, placement, and cost of the memorial. The
 28 plan shall include the designation of an appropriate public area
 29 for the memorial on the premises of the Capitol Complex, as

Page 1 of 2

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

19-00371A-18

2018286__

30 defined in s. 281.01, not including the State Capital Circle
 31 Office Complex. The department shall consider the
 32 recommendations of the Florida Historical Commission as required
 33 pursuant to ss. 265.111 and 267.0612(9) and shall coordinate
 34 with the Division of Historical Resources of the Department of
 35 State in developing the plan. By November 1, 2018, the
 36 department shall submit the plan to the Governor, the President
 37 of the Senate, and the Speaker of the House of Representatives.
 38 Section 2. This act shall take effect July 1, 2018.

Page 2 of 2

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

525K ✓



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: October 9, 2017

I respectfully request that **Senate Bill 286**, relating to the Florida Slavery Memorial, be placed on the:

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

Handwritten signature of Darryl Rouson in cursive.

Senator Darryl Rouson
Florida Senate, District 19

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

12-5-17 Meeting Date

286 Proposal Number (if applicable)

*Topic Slavery Memorial

Amendment Barcode (if applicable)

*Name Barbara DeRose

Address 625 E. Broadway St

Phone 850-251-4380

Jallahance FL 32308

Email barbaraderose1@jhs.com

*Speaking: For Against Information Only

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

Are you representing someone other than yourself? Yes No

If yes, who? FL NOW (National Organization for Women)

Are you a registered lobbyist? Yes No

Are you an elected official or judge? Yes No

While the Commission encourages 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.

Information submitted on this form is public record.

*Required

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 510

INTRODUCER: Health Policy Committee and Senator Young

SUBJECT: Reporting of Adverse Incidents in Planned out-of-hospital Births

DATE: December 4, 2017 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	Fav/CS
2.	Caldwell	Caldwell	GO	Favorable
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 510 requires physicians, certified advanced registered nurse midwives (ARNP-CNMs), and licensed midwives (LMs) to report to the Department of Health (DOH) adverse incidents occurring as a result of an attempted or completed, planned birthing center or out-of-hospital birth. The bill defines an adverse incident and requires the reporting within 15 days after the occurrence of the adverse incident. It further requires the DOH to review each adverse incident report and determine whether the incident involves conduct by the health care practitioner which is subject to disciplinary action, and to take disciplinary action if appropriate.

The bill takes effect upon becoming law.

II. Present Situation:

Childbirth Settings

The Legislature has recognized the need for a person to have the freedom to choose the manner, cost, and setting for childbirth.¹ There are three typical settings² from which a woman may

¹ See s. 467.002, F.S.

² See chs. 395, 383.30 – 383.335, and 467, F.S., and Rules 59A-11 and 64B24-7, F.A.C.

choose and plan for childbirth: at home, at a licensed birthing center, or at a hospital.^{3,4} There are also four types of licensed health care practitioners from which a woman may choose to attend to her prenatally and at childbirth: a physician, physician assistant (PA), certified nurse midwife (ARNP-CNM), and a licensed midwife (LM).⁵

Hospitals

Hospitals are licensed and regulated under ch. 395, F.S., and part II, ch. 408, F.S., by the Agency for Health Care Administration (ACHA). As of November 2, 2017, 147 hospitals provide obstetrical services.⁶

Section 395.0191, F.S., requires a hospital to establish rules and procedures to grant clinical privileges to provide, among other services, obstetrical and gynecological services by a physician licensed under chs. 458 and 459, F.S., his or her respective PAs, and ARNP-CNMs certified under part I of ch. 464, F.S., if the hospital provides obstetrical services. All health care providers, agents, and employees of a hospital have an affirmative duty to report all adverse incidents occurring in the hospital to the hospital's risk manager within three business days after the occurrence.⁷

An "adverse incident," which must be reported to the hospital's risk manager, is an event over which health care personnel could exercise control, which is associated with medical intervention, and which results in:

- One of the following injuries:
 - Death;
 - Brain or spinal damage;
 - Permanent disfigurement;
 - Fracture or dislocation of bones or joints;
 - A limitation of neurological, physical, or sensory function which continues after discharge from the facility;
 - Any condition that required specialized medical attention or surgical intervention resulting from nonemergency medical intervention to which the patient has not given his or her informed consent; or
 - Any condition that required the transfer of the patient, within or outside the facility, to a unit providing a more acute level of care due to the adverse incident, rather than the patient's condition prior to the adverse incident;
- The performance of a surgical procedure on the wrong patient, a wrong surgical procedure, a wrong-site surgical procedure, or a surgical procedure otherwise unrelated to the patient's diagnosis or medical condition;

³ Ambulatory Surgical Centers (ASCs) and hospitals are facilities that are licensed and regulated under ch. 395, F.S., similarly. Although an ASC is not prohibited from providing birthing services, it is not a typical birth setting because patients are not authorized to stay in the ASC overnight. Accordingly, this analysis refers to hospitals only.

⁴ See ss. 458.331(1)(t), 459.015(1)(w), 456.50(1)(g), and 766.202(7), F.S.; Rules 64B8-9.007 and 64B-15-14.006, F.A.C.

⁵ Agency for Health Care Administration, FloridaHealthFinder.gov, *Facility/Provider Search Results*, based on an advanced search of facilities providing emergency obstetrical services, available at <http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx> (last visited Nov. 2, 2017).

⁶ Section 395.0197(1)(e), F.S.

⁷ Section 395.0197(5), F.S. An annual report summarizing the adverse incidents must be submitted to the AHCA.

- Required surgical repair of damage to a patient from a planned surgical procedure, where the damage was not a recognized specific risk, as disclosed to the patient and documented through the informed-consent process; or
- A procedure to remove unplanned foreign objects left in a patient from a surgical procedure.⁸

Any of the following adverse incidents, whether occurring in the hospital or arising from health care prior to admission, must also be reported by the hospital to the AHCA within 15 calendar days after the occurrence:

- The death of a patient;
- Brain or spinal damage to a patient;
- The performance of a surgical procedure on the wrong patient;
- The performance of a wrong-site surgical procedure;
- The performance of a wrong surgical procedure;
- The performance of a surgical procedure that is medically unnecessary or otherwise unrelated to the patient's diagnosis or medical condition;
- The surgical repair of damage resulting to a patient from a planned surgical procedure, in which the damage is not a recognized specific risk, as disclosed to the patient and documented through the informed-consent process; or
- The performance of procedures to remove unplanned foreign objects remaining from a surgical procedure.⁹

Birth Centers

Birth centers are places, not a home, ambulatory surgery center, or hospital, where women with typical, uncomplicated, low risk pregnancies may choose to have their babies.¹⁰ Birth centers are licensed and regulated by the AHCA under ch. 383, F.S., and part II, ch. 408, F.S.; but the clinical staff in the birth centers may be physicians, PAs, ARNP-CNMs, or LMs;¹¹ who are licensed and regulated by the DOH.

Sections 383.330 through 383.335, F.S., establish minimum standards of care for birth centers. Standards require that, among other things:¹²

- Clinical staff is present during the entire labor and delivery at a licensed birthing center, at a ratio of 2 to 1;¹³
- A pregnant woman accepted for childbirth by a birth center is initially determined to be at low maternal risk and be regularly evaluated throughout the pregnancy;¹⁴
- The women receive specific prenatal,¹⁵ intrapartum,^{16,17} and postpartum care;¹⁸

⁸ Section 395.0197(5), F.S. An annual report summarizing the adverse incidents must be submitted to the AHCA.

⁹ Section 395.0197(7), F.S.

¹⁰ Section 383.302(2), F.S.

¹¹ Section 383.302(3), F.S.

¹² Section 383.309, F.S.

¹³ Rule 59A-11.005, F.A.C.

¹⁴ Rule 59A-11.009, F.A.C.

¹⁵ Rule 59A-11.012, F.A.C.

¹⁶ Rule 59A-11.013, F.A.C.

¹⁷ Merriam-Webster On-line Dictionary, *intrapartum* is defined as occurring during labor and delivery. Available at: <https://www.merriam-webster.com/medical/intrapartum>, (last visited Nov. 2, 2017). See also s. 467.003(5), F.S.

¹⁸ Rule 59A-11.016, F.A.C.

- The mother and infant are discharged within 24 hours after birth, except in an unusual circumstance;^{19,20}
- A postpartum examination of the mother is performed within 72 hours after delivery;
- The client is transferred to a hospital if unforeseen complications occur during labor;²¹ and
- Each maternal death, newborn death, and stillbirth is reported to the medical examiner.²²

There are no requirements for a birthing center to report adverse incidents to the AHCA or other regulatory entity. However, the birth center is required to audit clinical records at least every three months to evaluate the process and outcome of care;²³ and at least semiannually, to analyze statistics on the following:

- Maternal and perinatal morbidity and mortality;
- Maternal risk;
- Consultant referrals; and
- Transfers.²⁴

The birthing center's governing body must examine the results of the record audits and statistical analyses and make such reports available for inspection by the public and licensing authorities.²⁵

A written report of all transfers must be maintained and available for quality assurance review and agency inspection. The clinical staff, consultants, and governing body must review and evaluate the criteria, protocols, and emergency transfer reports annually. The findings of the evaluation shall be documented.²⁶ A report must also be submitted annually to the AHCA that includes:

- Number of deliveries, including birth weight;
- Number of clients accepted and length of stay;
- Number and type of surgical procedures performed;
- Maternal transfers, including reason and length of hospital stay;
- Infant transfers, including weight, days in hospital, and APGAR score at five and ten minutes;
- Newborn deaths; and
- Still/Fetal deaths.²⁷

A birthing center's clinical records are confidential under s. 456.057, F.S., and exempt from disclosure under s. 119.07(1), F.S., except:

- Upon a signed patient release; or

¹⁹ Section 383.318, F.S.

²⁰ See Rule 59A-11.016(6), F.A.C., The mother and infant are to be discharged from the birth center within 24 hours after the birth occurs except when the mother is in a deep sleep when the 24 hour period is completed; or the 24 hour period is completed during the middle of the night.

²¹ Section 383.316, F.S.

²² Section 383.327, F.S.

²³ Section 383.32, F.S.

²⁴ *Id.*

²⁵ Section 383.32(3) and (4), F.S., Rule 59A-11.005(8)(b), F.A.C. Clinical records that identify a patient are confidential in accord with s. 456.057, F.S.

²⁶ Section 383.316, F.S.

²⁷ Rule 59A-11.019, F.A.C., and the ACHA Form 3130-3004 (Feb. 2015).

- An AHCA review is made for a licensure survey or complaint investigation.²⁸

Home Delivery for Childbirth

The home delivery setting for childbirth is not regulated. Nonetheless, the practices of the physicians, PAs,²⁹ ARNP-CNMs,³⁰ and LMs,³¹ who may attend a women during an out-of-hospital or home delivery, are required to be licensed and are regulated by the DOH.³²

Health Care Practitioners Who May Provide Childbirth Services

Physicians and PAs

A licensed physician may attend any childbirth in any setting, including home delivery, if he or she can do so with reasonable skill and safety, and within the standard of care. It is the physician's responsibility to determine whether a home delivery is appropriate, explain the procedure to the patient, and obtain the patient's informed consent.³³ A physician may also delegate any home delivery to his or her PA under his or her written protocol.³⁴ There are no specific laws or administrative rules that address the required perinatal care required, or adverse incident reporting, for a patient choosing home delivery by a physician or PA.³⁵

Sections 458.351 and 459.026, F.S., require an allopathic and osteopathic physician, and his or her respective PAs, to report to the DOH, any adverse incident in an office practice setting within 15 days after the occurrence. The DOH reviews the incident and makes a determination of whether or not the conduct potentially involves conduct that may be subject to disciplinary action under s. 456.073, F.S.

Sections 458.351 and 459.026, F.S., define an "adverse incident" as an event over which a physician or licensee could exercise control and which is associated with a medical intervention which results in any of the following patient injuries:

- The death of a patient;
- Brain or spinal damage to a patient;
- The performance of a surgical procedure on the wrong patient;
- The performance of a:
 - Wrong-site surgical procedure;
 - Wrong surgical procedure; or
 - The surgical repair of damage to a patient from a planned surgical procedure where the damage is not a recognized specific risk as disclosed to the patient and documented in the informed-consent process; if it results in death; brain or spinal damage; permanent disfigurement not including the incision scar; fracture or dislocation of bones or joints; a

²⁸ Section 383.32(3), F.S.

²⁹ See ss. 458.347 and 459.022, F.S.

³⁰ Section 464.012, F.S.

³¹ See ch.467, F.S.

³² See chs. 383 and 467, F.S., and Rules 59A-11 and 64B24-7, F.A.C.

³³ *Supra* note 3.

³⁴ *Id.*; See also Rules 64B8-30.001 and 64B15-6.001, F.A.C.

³⁵ See chs. 458 and 459, F.S., and Rules 64B8-9 and 64B15-14, F.A.C.

- limitation of neurological, physical, or sensory function; or any condition that required the transfer of the patient.
- A procedure to remove foreign objects remaining from a surgical procedure; or
 - Any condition that required the transfer of a patient to a hospital from an ambulatory surgical center or any facility or any office maintained by a physician for the practice of medicine which is not licensed under ch. 395, F.S.

Physicians and PAs are also required to report adverse incidents that occur in a health care facility licensed under ch. 395, F.S.,³⁶ to the facility's risk manager.

ARNP-CNMs and LMs

An ARNP-CNM's scope of practice for pre-natal care, childbirth, and post-partum care is governed by his or her written protocol with the supervising physician.³⁷ Section 467.015, F.S., specifically defines a midwife's responsibilities as follows:

- Only accept and provide care for those mothers who are expected to have a normal pregnancy, labor, and delivery;
- Obtain a signed informed consent from the patient;
- Determine if the home is safe and hygienic for a home delivery, if applicable;
- Administer prophylactic ophthalmic medication, oxygen, postpartum oxytocin, vitamin K, rho immune globulin (human), and local anesthetic pursuant to a prescription issued by a doctor, and administer such other medicinal drugs as prescribed by a doctor;
- Prepare a written plan of action with the family to ensure continuity of medical care throughout labor and delivery, and provide for immediate medical care if an emergency arises;
- Instruct the patient and family regarding the preparation of the environment and ensure availability of equipment and supplies needed for delivery and infant care, if a home birth is planned;
- Instruct the patient in the hygiene of pregnancy and nutrition as it relates to prenatal care;
- Maintain appropriate equipment and supplies as defined by rule;
- Determine the progress of labor and, when birth is imminent, be immediately available until delivery is accomplished, including:
 - Maintaining a safe and hygienic environment;
 - Monitoring the progress of labor and the status of the fetus;
 - Recognizing early signs of distress or complications; and
 - Activating the written emergency plan when indicated; and
- Remain with the postpartal mother until the conditions of the mother and the neonate are stabilized.

A midwife may also provide collaborative prenatal and postpartal care to pregnant women not at low risk in their pregnancy, labor, and delivery, within a written protocol with a physician currently licensed under ch. 458 or ch. 459, F.S., if the physician maintains supervision for directing the specific course of medical treatment.³⁸

³⁶ Section 395.0197(1)(e), F.S.

³⁷ See ss. 458.347(4), 459.022(4), and 464.012(4), F.S., and ch. 467, F.S.

³⁸ *Id.*

An ARNP-CNM may also perform a home delivery under a written protocol with a supervising physician. Specific authorities in s. 464.012, F.S., relating to childbirth include:

- Managing a patient’s labor and delivery, including performing an amniotomy, episiotomy, and perineal repair;
- Ordering, initiating, and performing appropriate anesthetic procedures;
- Performing postpartum examinations;
- Ordering appropriate medications;
- Providing family-planning services and well-woman care; and
- Managing the medical care of the normal obstetrical patient and the initial care of a newborn patient.

Section 467.015, F.S., permits LMs to accept mothers for prenatal, intrapartal, and postpartal care, but only if the mothers are expected to have a normal pregnancy, labor, and delivery; and for home delivery, only if the home is safe, hygienic, and meets the DOH standards.³⁹

Section 467.019, F.S., requires a midwife to immediately report maternal and newborn deaths, and still births, to the medical examiner.

III. Effect of Proposed Changes:

CS/SB 510 creates s. 456.0495, F.S., and defines the term “adverse incident” for this section to mean:

- An event over which a physician, ARNP-CNM, or LM could exercise control; and
- Which is associated with an attempted or completed planned out-of-hospital birth, that results in:
 - A maternal death that occurs during delivery or within 42 days after delivery;
 - The transfer of a maternal patient to a hospital intensive care unit;
 - A maternal patient who experiences hemorrhagic shock or who requires a transfusion of more than 4 units of blood or blood products;
 - A fetal or newborn death, including a stillbirth, associated with an obstetrical delivery;
 - A transfer of a newborn to a neonatal intensive care unit due to a traumatic physical or neurological birth injury, including any degree of a brachial plexus injury;
 - A transfer of a newborn to a neonatal intensive care unit within the first 72 hours after birth if the newborn remains in such unit for more than 72 hours; or
 - Any other injury as determined by department rule.

The bill requires a physician, ARNP-CNM, or LM who performs an attempted or completed planned out-of-hospital birth to report an adverse incident to the DOH within 15 days after the adverse incident occurs. The report must include a medical summary.

The bill further requires the DOH to review each incident report to determine whether the incident involves conduct by a practitioner which subjects the practitioner to disciplinary action by the appropriate board or if there is no board, the DOH. The applicable board, or the DOH if

³⁹ Section 467.015, F.S., and Rule 64B24-7, F.A.C.

no such board exists, is required to take disciplinary action, if appropriate. The DOH must adopt rules to implement the section and develop a form for the reporting of adverse incidents.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill requires physicians, ARNP-CNMs, and LMs to report adverse incidents during consensual private home births to a government agency which may violate the State and Federal Constitutions' Right to Privacy contained in Article I, section 23 of the Florida Constitution and inferred in Amendments IV and XIV of the U.S. Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Health care practitioners may experience administrative and potentially other costs as a result of reporting adverse incidents to the department.

C. Government Sector Impact:

The DOH may incur costs related to rulemaking.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 456.0495 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 Health Policy on November 7, 2017:

The CS:

- Defines an adverse incident that is required to be reported to the DOH, rather than requiring the DOH to define adverse incidents by rule;
- Limits the professionals required to report adverse incidents associated with an attempted or completed, planned out-of-hospital birth to the DOH to physicians, ARNP-CNMs, and LMs;
- Substitutes the term newborn for infant as a technical correction; and
- Requires the DOH to review each incident report to determine if it involves conduct that might subject the practitioner to disciplinary action by the appropriate board or the DOH, and to take disciplinary action, if appropriate.

- B. **Amendments:**

None.

By the Committee on Health Policy; and Senator Young

588-01108-18

2018510c1

A bill to be entitled

An act relating to reporting of adverse incidents in planned out-of-hospital births; creating s. 456.0495, F.S.; defining the term "adverse incident"; requiring licensed physicians, certified nurse midwives, and licensed midwives to report an adverse incident and a medical summary of events to the Department of Health within a specified timeframe; requiring the department to review adverse incident reports and determine if conduct occurred that is subject to disciplinary action; requiring the appropriate regulatory board or the department to take disciplinary action under certain circumstances; requiring the department to adopt rules; requiring the department to develop a form to be used for the reporting of adverse incidents; providing an effective date.

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

Section 1. Section 456.0495, Florida Statutes, is created to read:

456.0495 Reporting adverse incidents occurring in planned out-of-hospital births.—

(1) For purposes of this section, the term "adverse incident" means an event over which a physician licensed under chapter 458 or chapter 459, a nurse midwife certified under part I of chapter 464, or a midwife licensed under chapter 467 could exercise control and which is associated with an attempted or completed planned out-of-hospital birth, and results in one or

Page 1 of 3

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more of the following injuries or conditions:

- (a) A maternal death that occurs during delivery or within 42 days after delivery;
- (b) The transfer of a maternal patient to a hospital intensive care unit;
- (c) A maternal patient who experiences hemorrhagic shock or who requires a transfusion of more than 4 units of blood or blood products;
- (d) A fetal or newborn death, including a stillbirth, associated with an obstetrical delivery;
- (e) A transfer of a newborn to a neonatal intensive care unit due to a traumatic physical or neurological birth injury, including any degree of a brachial plexus injury;
- (f) A transfer of a newborn to a neonatal intensive care unit within the first 72 hours after birth if the newborn remains in such unit for more than 72 hours; or
- (g) Any other injury as determined by department rule.
- (2) A physician licensed under chapter 458 or chapter 459, a nurse midwife certified under part I of chapter 464 or, a midwife licensed under chapter 467 who performs an attempted or completed planned out-of-hospital birth must report an adverse incident, along with a medical summary of events, to the department within 15 days after the adverse incident occurs.
- (3) The department shall review each incident report and determine whether the incident involves conduct by a health care practitioner which is subject to disciplinary action under s. 456.073. Disciplinary action, if any, must be taken by the appropriate regulatory board or by the department if no such board exists.

Page 2 of 3

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2018510c1

59 (4) The department shall adopt rules to implement this
60 section and shall develop a form to be used for the reporting of
61 adverse incidents.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy, *Chair*
Appropriations Subcommittee on Pre-K - 12
Education, *Vice Chair*
Commerce and Tourism
Communications, Energy, and Public Utilities
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DANA YOUNG

18th District

November 8, 2017

The Honorable Dennis Baxley, Chairman
Governmental Oversight and Accountability Committee
525 Knott Building
404 S. Monroe Street
Tallahassee, Florida 32399-1100

Dear Chairman Baxley,

My Senate Bill 510 relating to Health Care Practitioners has been referred to your committee for a hearing. I respectfully request that this bill be placed on your next available agenda.

Should you have any questions, please do not hesitate to reach out to me.

Sincerely,

A handwritten signature in blue ink that reads "Dana Young".

Dana Young
State Senator – 18th District

cc: Diana Caldwell, Staff Director – Governmental Oversight and Accountability Committee

REPLY TO:

- 1211 N. Westshore Blvd, Suite 409, Tampa, Florida 33607 (813) 281-5507
- 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018

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)

12/5/17

Meeting Date

510

Bill Number (if applicable)

Topic Adverse Incident / out of Hospital Births

Amendment Barcode (if applicable)

Name Ron Watson

Job Title Lobbyist

Address 3738 Munden Way

Phone 850 567-1202

Tallahassee FL 32309
City State Zip

Email watson.strategies@comcast.net

Speaking: For Against Information

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

Representing Midwife Association 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.

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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)

12/5/17
Meeting Date

510
SB ~~510~~
Bill Number (if applicable)

Topic Adverse Incident Registry

Amendment Barcode (if applicable)

Name AMY YOUNG

Job Title _____

Address 3609 Washington Rd.
Street
West Palm Beach, FL
City State Zip

Phone 561-655-1166

Email _____

Speaking: For Against Information

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

Representing American College of OB-GYN's

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)

12/5/2017

Meeting Date

510

Bill Number (if applicable)

Topic Adverse Incident Reporting

Amendment Barcode (if applicable)

Name Andrea King Friall MD

Job Title ACOG Section 1 chair District X11

Address 1304 Live Oak Plantation Road

Phone 850-906-0371

Street

Tallahassee FL 32312

City

State

Zip

Email a

Speaking: For Against Information

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

Representing ACOG (American Congress of Obstetricians and Gynecology)

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 648
 INTRODUCER: Senator Baxley
 SUBJECT: Employment Services for Persons with Disabilities
 DATE: December 4, 2017 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Caldwell	GO	Favorable
2.	_____	_____	AGG	_____
3.	_____	_____	AP	_____

I. Summary:

SB 648 provides that participants in adult or youth work experience programs operated by the Division of Blind Services and the Division of Vocational Rehabilitation are considered employees of the state for purposes of workers' compensation coverage.

The bill takes effect on July 1, 2018.

II. Present Situation:

Division of Blind Services

The Division of Blind Services (DBS) is housed within the Department of Education (DOE).¹ The purpose of the DBS is to ensure the greatest possible efficiency and effectiveness of services to individuals who are blind.² It is the intent of the Legislature to establish a coordinated program of services which are available throughout Florida to such individuals.³ The program must be designed to maximize employment opportunities for individuals who are blind and to increase their independence and self-sufficiency.⁴ The DBS's program of services include blind babies program, children's program, transition services, independent living program, vocational rehabilitative program, employer services, business enterprises program, rehabilitation center for the blind and visually impaired, and braille and talking books library.⁵

¹ Section 20.15(3)(e), F.S.

² Section 413.011(3), F.S.

³ Section 413.011(2), F.S.

⁴ *Id.*

⁵ See Florida Division of Blind Services, *About Blind Services*, <http://dbs.myflorida.com/Information/index.html> (last visited Nov. 27, 2017).

The Rehabilitative Council for the Blind⁶ (RCB) is an advisory council⁷ responsible for assisting the DBS in the planning and development of statewide vocational rehabilitation programs and services pursuant to the Rehabilitative Act of 1973,⁸ as amended, to recommend improvements to such programs and services, and to perform specified functions.

Division of Vocational Rehabilitation

The Division of Vocational Rehabilitation (division) located within the DOE⁹ is designated as the administrative unit¹⁰ for the purposes of complying with the Rehabilitation Act of 1973,¹¹ as amended. Under Florida law, an individual with a disability¹² is eligible for vocational rehabilitative (VR) services if the person requires VR services to prepare for, engage in, or retain gainful employment.¹³ The division is responsible for determining eligibility of an individual for VR services.¹⁴ The division is also responsible for maintaining an internal system of quality assurance and monitoring compliance with state and federal laws, rules, and regulations.¹⁵

The Florida Rehabilitation Council (council) is responsible for assisting the division in the planning and development of statewide rehabilitation programs and services, recommending improvements to such programs and services, and performing specified functions.¹⁶ The council is responsible for performing functions such as developing and reviewing state goals and priorities in accordance with federal law and evaluating VR program effectiveness.¹⁷

Worker's Compensation

Workers' compensation is a form of insurance designed to provide wage replacement and medical benefits for employees who are injured in the course of employment, in exchange for giving up the right to sue the employer for negligence. In Florida, workers' compensation is governed by ch. 440, F.S., the "Workers' Compensation Law." The law prescribes coverage requirements, medical and indemnity benefits, the rights and responsibilities of employers, injured employees, medical providers, and carriers, as well as procedures for dispute resolution.

⁶ Section 413.011(8), F.S. Members of the council are appointed by the Governor with the majority being blind or visually impaired. The council membership must include at least 13 members. Also, *see* Florida Division of Blind Services, *Rehabilitation Council*, <http://dbs.myflorida.com/Rehab-Council/index.html> (last visited Nov. 27, 2017).

⁷ Section 20.03(7), F.S., defines the term "advisory council" as an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of problems arising in a specified functional area of state government and to provide recommendations and policy alternatives.

⁸ 29 U.S.C. s. 701(b).

⁹ Section 20.15(3)(d), F.S.

¹⁰ Section 413.202, F.S.

¹¹ *See supra* note 8.

¹² Section 413.20(7), F.S., defines "disability" as a physical or mental impairment that constitutes or results in a substantial impediment to employment.

¹³ Section 413.30(1), F.S.

¹⁴ Section 413.30(4), F.S.

¹⁵ Section 413.207(1), F.S.

¹⁶ Section 413.405, F.S. Members of the council are appointed by the Governor. The council membership must include at least 15 members but no more than 25 at a time.

¹⁷ Section 413.405(9)(b), F.S.

Generally, employers are required to provide medical and indemnity benefits to a worker who is injured due to an accident arising out of and during the course of employment.¹⁸ For such injuries, an employer is responsible for providing medical treatment,¹⁹ and compensation in the event of employee disability²⁰ or death.²¹ Specific employer coverage requirements are based on the type of industry, number of employees, and entity organization.²²

State Risk Management Program

The Division of Risk Management (DRM)²³ located within the Department of Financial Services (DFS) is responsible for ensuring that state agencies and universities participating in the state's self-insurance program receive quality coverage for workers' compensation, general liability, federal civil rights, auto liability, and property insurance at reasonable rates. The DRM's operations and the state's insurance coverage are funded by annual agency assessments, which are deposited into the State Risk Management Trust Fund. Agency premiums are based on loss experience, exposure, and a prorated share of the DRM's operating budget. Projected costs are derived from actuarial studies of the DRM's cash flow needs for claims and program expenses.²⁴

The DRM is comprised of three Bureaus: Risk Financing and Loss Prevention, State Employee Workers' Compensation Claims, and State Liability and Property Claims. The Bureau of Risk Financing and Loss Prevention provides administrative support to the DRM, including the cash management for the DRM's annual budget, calculation of casualty and property premiums for the state's agencies and universities, monitoring the DRM's contracts, and providing data management and IT support. The Bureau of State Employee Workers' Compensation Claims is responsible for the administration of all workers' compensation claims filed by state and university employees and volunteers who are injured on the job. The Bureau of State Liability and Property Claims is responsible for the investigation and resolution of liability and property claims involving or against state agencies and universities.²⁵

III. Effect of Proposed Changes:

Section 1 of the bill creates s. 413.015, F.S., to require that participants in an adult or youth work experience activity administered under the Division of Blind Services be deemed an employee of the state for purposes of workers' compensation coverage.

Section 2 of the bill creates s. 413.209, F.S., to require that participants in an adult or youth work experience activity administered under the Division of Vocational Rehabilitation be deemed an employee of the state for purposes of workers' compensation coverage.

¹⁸ Section 440.09(1), F.S.

¹⁹ Section 440.13, F.S.

²⁰ Section 440.15, F.S.

²¹ Section 440.16, F.S.

²² Division of Workers' Compensation, *Coverage Requirements*, <https://www.myfloridacfo.com/division/wc/Employer/coverage.htm> (last visited on Nov. 28, 2017).

²³ Section 20.121(2)(h), F.S.

²⁴ See Division of Risk Management, Department of Financial Services, Fiscal Year 2016 Annual Report, <https://www.myfloridacfo.com/Division/Risk/documents/2015-2016Report.pdf> (last visited on Nov. 28, 2017).

²⁵ *Id.*

Section 3 of the bill provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and 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:

A private sector entity who employees training participants may experience cost savings as a result of not having to provide workers' compensation coverage for those participants.

C. Government Sector Impact:

According to DFS, the Division of Risk Management expects to incur additional claim costs for covering blind and vocational training participants.²⁶ The Division of Risk Management currently covers participants for medical benefits only who are in the Department of Economic Opportunity (DEO) training programs. Based on claim costs for that program, DFS expects that annual medical claim costs of approximately \$128,000 would be incurred for covering blind and vocational training participants. This dollar amount is based on five years of claim experience in the DEO program, does not include ultimate developed costs, and is based on DOE's estimate of 966 additional participants for these programs.

DFS states that such costs do not include indemnity payments. Unlike DEO participants, the participants in the blind and vocational programs are eligible for indemnity payments. Based on Division of Risk Management's aggregate claim data, approximately 8 percent of claims could result in indemnity payments.

²⁶ 2018 Agency Legislative Bill Analysis from the Department of Financial Services, November 7, 2017, on file in the office of the Senate Committee on Governmental Oversight and Accountability.

Although injury severity will influence the duration of indemnity payments, DFS anticipates that adding 966 training participants will result in 23 additional claims per year. Based on Division of Risk Management aggregate claim data, they anticipate that 8 percent of the anticipated claims (2) could result in indemnity payments. The National Council on Compensation Insurance estimates that the average Florida indemnity cost per indemnity claim is \$19,000. Division of Risk Management estimates \$38,000 (\$19,000 x 2) in indemnity payments will arise yearly for the life of claims. However, a training participant that is injured severely and results in the receipt of permanent total benefits could greatly exceed \$19,000 for the life of the claim.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates sections 413.015 and 413.209 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.

By Senator Baxley

12-00491A-18

2018648__

1 A bill to be entitled

2 An act relating to employment services for persons
3 with disabilities; creating ss. 413.015 and 413.209,
4 F.S.; specifying that participants in certain disabled
5 persons' work experience activities are considered
6 state employees for workers' compensation purposes;
7 providing an effective date.
8

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

10 Section 1. Section 413.015, Florida Statutes, is created to
11 read:

12 413.015 Workers' compensation coverage for program
13 participants.-A participant in an adult or youth work experience
14 activity administered under this part shall be deemed an
15 employee of the state for purposes of workers' compensation
16 coverage.
17

18 Section 2. Section 413.209, Florida Statutes, is created to
19 read:

20 413.209 Workers' compensation coverage for program
21 participants.-A participant in an adult or youth work experience
22 activity administered under this part shall be deemed an
23 employee of the state for purposes of workers' compensation
24 coverage.
25

Section 3. This act shall take effect July 1, 2018.

THE FLORIDA SENATE

APPEARANCE RECORD

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

12-5-17

Meeting Date

648

Bill Number (if applicable)

Topic Workers Compensation - Person's w/disabilities Amendment Barcode (if applicable)

Name Natalie King

Job Title VP

Address 235 W Brandon Blvd. 640

Phone 813 924 8218

Street Brandon City FL State 33511 Zip

Email natalie@rsaconsultingllc.com

Speaking: For Against Information

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

Representing The Diversity Initiative

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)

12/15/17

Meeting Date

SB 648

Bill Number (if applicable)

Topic Employment Services for Persons with Disabilities

Amendment Barcode (if applicable)

Name Suzanne Sewell

Job Title President & CEO

Address 2475 Apalachee Parkway

Phone 850-942-3500

Street

Tallahassee, FL 32301

City

State

Zip

Email ssewell@floridaart.org

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

Waive Speaking: [X] In Support [] Against

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

Representing Florida Association of Rehabilitation Facilities

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.

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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)

12/5/2017
Meeting Date

SB 648
Bill Number (if applicable)

Topic Employment Services for Persons with Disabilities Amendment Barcode (if applicable)

Name JAMES G. WEEKS

Job Title Vice President

Address 9040 SUNSET DRIVE
Street

Phone (305) 596-9040

Miami FL 33173
City State Zip

Email jweeks@sunrisegroup.org

Speaking: For Against Information

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

Representing SUNRISE COMMUNITY, INC.

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)

12/5/17

Meeting Date

SB 648

Bill Number (if applicable)

N/A

Amendment Barcode (if applicable)

Topic SB 648

Name Allison Flanagan

Job Title Director, Division of Blind Services

Address 325 W. Gaines Street

Street

Phone 850-245-0308

Tallahassee

FL

323699

Email Allision.Flanagan@vr.fldoe.org

City

State

Zip

Speaking: For Against Information

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

Representing Vocational Rehabilitation

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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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)

12/5/17

Meeting Date

SB 648

Bill Number (if applicable)

N/A

Amendment Barcode (if applicable)

Topic SB 648

Name Tanya Cooper

Job Title Director, Governmental Relations

Address 325 W. Gaines Street

Street

Tallahassee

City

FL

State

323699

Zip

Phone 850-245-9633

Email Tanya.Cooper@vr.fldoe.org

Speaking: For Against Information

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

Representing Vocational Rehabilitation

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)

12/5/17

Meeting Date

SB 648

Bill Number (if applicable)

N/A

Amendment Barcode (if applicable)

Topic SB 648

Name Robert Doyle

Job Title Director, Division of Blind Services

Address 325 W. Gaines Street

Street

Tallahassee

City

FL

State

323699

Zip

Phone 850-245-9633

Email Robert.Doyle@fldoe.org

Speaking: For Against Information

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

Representing Division of Blind 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: SB 7004

INTRODUCER: Judiciary Committee

SUBJECT: OGSR/Petitioner Information/Notification of Service of an Injunction for Protection

DATE: December 4, 2017 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Brown</u>	<u>Cibula</u>		JU Submitted as Committee Bill
1.	<u>Brown</u>	<u>Caldwell</u>	<u>GO</u>	Favorable
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 7004 is based on an Open Government Sunset Review of two public records exemptions. These exemptions prohibit the disclosure of contact information maintained on a database by the Florida Association of Court Clerks and Comptrollers for a petitioner who is granted an injunction for protection against domestic violence or repeat, sexual, or dating violence. The exemptions are scheduled for repeal on October 2, 2018.

The clerks are currently updating their database. Once completed, the database will include a process by which a petitioner is automatically notified that an injunction has been served. Although the automatic notification process is not yet in operation, the justification for the original exemption remains valid. Additionally, other public records exemptions protect this contact information. For these reasons, the bill repeals the automatic repeal of the public records exemptions provided in ss. 741.30(8)(c)5.b. and 784.046(8)(c)5.b., F.S.

Accordingly, the Open Government Sunset Review Act does not require another review of the exemptions unless they are broadened or expanded.

The bill takes effect October 1, 2018.

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 open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate.⁹ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.¹¹

² FLA. CONST., art. I, s. 24(a).

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 Legislature 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” 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 FLA. CONST., art. I, s. 24(c).

¹¹ *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.

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹² 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.¹³

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.¹⁴ 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.¹⁵ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

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.¹⁶ 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;¹⁷
- 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;¹⁸ or
- It protects trade or business secrets.¹⁹

The OGSR also requires specified questions to be considered during the review process.²⁰ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

¹² 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).

¹³ A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁴ 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.

¹⁵ Section 119.15(3), F.S.

¹⁶ Section 119.15(6)(b), F.S.

¹⁷ Section 119.15(6)(b)1., F.S.

¹⁸ Section 119.15(6)(b)2., F.S.

¹⁹ Section 119.15(6)(b)3., F.S.

²⁰ 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?

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²¹ 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.²²

Injunction for Protection

A person may file a petition for an injunction for protection against domestic violence,²³ or repeat, sexual, or dating violence.²⁴

Filing a petition for a protective injunction is a civil cause of action.²⁵

Process for Injunction for Petition

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.²⁶ Clerks' offices must provide a simplified petition form for the injunction for protection, including instructions for the petitioner to follow.²⁷ A sample form for a petition for injunction for protection against domestic violence is provided in statute and requires:

- 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;

-
- 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?

²¹ FLA. CONST. art. I, s. 24(c).

²² Section 119.15(7), F.S.

²³ 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.

²⁴ 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.

²⁵ *H.K. by & Through Colton v. Vocelle*, 667 So. 2d 892 (Fla. 4th DCA 1996).

²⁶ Sections 741.30(1) and 784.046(2), F.S.

²⁷ Sections 741.30(2)(c)2, and 784.046(3)(a), F.S.

- 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.²⁸

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.²⁹

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.³⁰ 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.³¹

A similar form, though more streamlined, is authorized for a petition for injunction for protection against repeat violence, sexual violence, or dating violence.³² A petitioner may file a separate confidential filing of his or her address, just as for petitions based on domestic violence.³³

Service of the Petition

The clerk of the court must furnish a copy of the petition, 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.³⁴ The sheriff or other law enforcement agency must then personally serve the respondent the petition and other documents as soon as possible.³⁵

The Court Process

Upon the filing of the petition, the court must hold a hearing as soon as possible.³⁶ 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.³⁷ 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.³⁸

²⁸ Section 741.30(3)(b), F.S.

²⁹ *Id.*

³⁰ *Id.*

³¹ Section 741.30(2)(c)4., F.S.

³² 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.

³³ *Id.*

³⁴ Sections 741.30(8)(a)1., and 784.046(8)(a)1., F.S.

³⁵ Section 741.30(4), F.S.

³⁶ Sections 741.30(4) and 784.046(5), F.S.

³⁷ 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.

³⁸ Sections 741.30(5)(c) and 784.046(5)(c), F.S.

Service of the Injunction for Petition

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.³⁹ Within 24 hours after the 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.⁴⁰

Public Records Exemptions and Protections from Disclosure of Contact Information

A general public records exemption protects 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.⁴¹ In addition to this general 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 Protective

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.

³⁹ 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.

⁴⁰ Sections 741.30(8)(c)2., and 784.046(8)(c)2., F.S.

⁴¹ Section 119.071(2)(j)1., 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.

- 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, and the date of signature.⁴⁵

A public records exemption for the 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 certification has been cancelled.⁴⁷

The public records exemption under the Program also protects contact information for participants maintained by the supervisor of elections and the Department of State 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 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 the protective injunction has been served on the respondent. The notice will be sent within 12 hours after service and include the date, time, and location where the officer served the injunction.

⁴⁵ Section 741.403(1)(a) through (e), F.S.

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 1,176 victims of domestic violence, stalking, or aggravated stalking are currently participating 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. Email and phone conference with Andrew Fay, Office of the Attorney General (Aug. 16, 2017).

⁵⁰ Chapter 2011-187 (CS/CS HB 563); Sections 741.30(8)(c)5.a., and 784.046(8)(c)5.a., F.S.

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 The specific information protected from disclosure includes the petitioner's:

- Home, cellular, or employment telephone number;
- Home or employment address;
- Electronic mail address; or
- Other electronic means of identification.⁵²

The exemption protects the contact information from disclosure for 5 years.

In its statement of public necessity justifying the exemption, the Legislature explained that the contact information,

if publicly available, 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 2017, the Legislature reviewed the exemptions in this bill pursuant to the Open Government Sunset Review Act.⁵⁴ As a result of the review, the Legislature delayed the automatic repeal of the exemption by 1 year to October 2, 2018.⁵⁵

III. Effect of Proposed Changes:

This bill is based on a review by the staff of the Senate Judiciary Committee of two public records exemptions that are scheduled for repeal on October 2, 2018. The exemptions protect from public disclosure the contact information of a petitioner who requests an automated notice of the service of an injunction for protection against domestic violence, or repeat, sexual, or dating violence.

The Florida Association of Court Clerks and Comptrollers has not yet implemented the automated notification system.⁵⁶ Regardless, the justification for the exemption as is stated in the public necessity statement of the original public records bill remains valid. Additionally, other public records exemptions protect the contact information of a petitioner of an injunction for domestic violence, or repeat, sexual, or dating violence. For these reasons, the bill repeals the automatic repeal of the public records exemptions provided in ss. 741.30(8)(c)5.b. and 784.046(8)(c)5.b., F.S.

⁵¹ Chapter 2012-154, L.O.F. (HB 1193).

⁵² Sections 741.30(8)(c)5.b., and 784.046(8)(c)5.b., F.S.

⁵³ Chapter 2012-154, L.O.F.

⁵⁴ See SPB 7028 (2017).

⁵⁵ Chapter 2017-65 L.O.F.

⁵⁶ The Florida Association of Court Clerks and Comptroller say that although planning for the development of the new system continues, the system has not yet been developed. E-mail from Melvin Cox, forwarded by Fred Baggett, Sept. 26, 2017.

By repealing the automatic repeal of the exemptions, the exemptions are no longer subject to a review under the Open Government Sunset Review Act, unless the exemptions are broadened or expanded.

The bill takes effect October 1, 2018.

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.⁵⁷ Representatives from the clerks of the court and the Florida 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 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.

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

⁵⁷ 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."

By the Committee on Judiciary

590-00931-18

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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., relating to the 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 for other court actions related to the injunction which are held by clerks of the court and law enforcement agencies; removing the scheduled repeal of the exemptions; 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

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injunction must be served in accordance with this subsection.

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

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59 that the information specified in sub-subparagraph b. be held
 60 exempt from public records requirements for 5 years. The Florida
 61 Association of Court Clerks and Comptrollers may apply for any
 62 available grants to fund the development of the automated
 63 process.

64 b. Upon implementation of the automated process,
 65 information held by clerks and law enforcement agencies in
 66 conjunction with the automated process developed under sub-
 67 subparagraph a. which reveals the home or employment telephone
 68 number, cellular telephone number, home or employment address,
 69 electronic mail address, or other electronic means of
 70 identification of a petitioner requesting notification of
 71 service of an injunction for protection against domestic
 72 violence and other court actions related to the injunction for
 73 protection is exempt from s. 119.07(1) and s. 24(a), Art. I of
 74 the State Constitution, upon written request by the petitioner.
 75 Such information shall cease to be exempt 5 years after the
 76 receipt of the written request. Any state or federal agency that
 77 is authorized to have access to such documents by any provision
 78 of law shall be granted such access in the furtherance of such
 79 agency's statutory duties, notwithstanding this sub-
 80 subparagraph. ~~This sub-subparagraph is subject to the Open
 81 Government Sunset Review Act in accordance with s. 119.15 and
 82 shall stand repealed on October 2, 2018, unless reviewed and
 83 saved from repeal through reenactment by the Legislature.~~

84 6. Within 24 hours after an injunction for protection
 85 against domestic violence is vacated, terminated, or otherwise
 86 rendered no longer effective by ruling of the court, the clerk
 87 of the court must notify the sheriff receiving original

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88 notification of the injunction as provided in subparagraph 2.
 89 That agency shall, within 24 hours after receiving such
 90 notification from the clerk of the court, notify the department
 91 of such action of the court.

92 Section 2. Paragraph (c) of subsection (8) of section
 93 784.046, Florida Statutes, is amended to read:

94 784.046 Action by victim of repeat violence, sexual
 95 violence, or dating violence for protective injunction; dating
 96 violence investigations, notice to victims, and reporting;
 97 pretrial release violations; public records exemption.-
 98 (8)

99 (c)1. Within 24 hours after the court issues an injunction
 100 for protection against repeat violence, sexual violence, or
 101 dating violence or changes or vacates an injunction for
 102 protection against repeat violence, sexual violence, or dating
 103 violence, the clerk of the court must forward a copy of the
 104 injunction to the sheriff with jurisdiction over the residence
 105 of the petitioner.

106 2. Within 24 hours after service of process of an
 107 injunction for protection against repeat violence, sexual
 108 violence, or dating violence upon a respondent, the law
 109 enforcement officer must forward the written proof of service of
 110 process to the sheriff with jurisdiction over the residence of
 111 the petitioner.

112 3. Within 24 hours after the sheriff receives a certified
 113 copy of the injunction for protection against repeat violence,
 114 sexual violence, or dating violence, the sheriff must make
 115 information relating to the injunction available to other law
 116 enforcement agencies by electronically transmitting such

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117 information to the department.

118 4. Within 24 hours after the sheriff or other law
119 enforcement officer has made service upon the respondent and the
120 sheriff has been so notified, the sheriff must make information
121 relating to the service available to other law enforcement
122 agencies by electronically transmitting such information to the
123 department.

124 5.a. Subject to available funding, the Florida Association
125 of Court Clerks and Comptrollers shall develop an automated
126 process by which a petitioner may request notification of
127 service of the injunction for protection against repeat
128 violence, sexual violence, or dating violence and other court
129 actions related to the injunction for protection. The automated
130 notice shall be made within 12 hours after the sheriff or other
131 law enforcement officer serves the injunction upon the
132 respondent. The notification must include, at a minimum, the
133 date, time, and location where the injunction for protection
134 against repeat violence, sexual violence, or dating violence was
135 served. When a petitioner makes a request for notification, the
136 clerk must apprise the petitioner of her or his right to request
137 in writing that the information specified in sub-subparagraph b.
138 be held exempt from public records requirements for 5 years. The
139 Florida Association of Court Clerks and Comptrollers may apply
140 for any available grants to fund the development of the
141 automated process.

142 b. Upon implementation of the automated process,
143 information held by clerks and law enforcement agencies in
144 conjunction with the automated process developed under sub-
145 subparagraph a. which reveals the home or employment telephone

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146 number, cellular telephone number, home or employment address,
147 electronic mail address, or other electronic means of
148 identification of a petitioner requesting notification of
149 service of an injunction for protection against repeat violence,
150 sexual violence, or dating violence and other court actions
151 related to the injunction for protection is exempt from s.
152 119.07(1) and s. 24(a), Art. I of the State Constitution, upon
153 written request by the petitioner. Such information shall cease
154 to be exempt 5 years after the receipt of the written request.
155 Any state or federal agency that is authorized to have access to
156 such documents by any provision of law shall be granted such
157 access in the furtherance of such agency's statutory duties,
158 notwithstanding this sub-subparagraph. This sub-subparagraph is
159 subject to the Open Government Sunset Review Act in accordance
160 with s. 119.15 and shall stand repealed on October 2, 2018,
161 unless reviewed and saved from repeal through reenactment by the
162 Legislature.

163 6. Within 24 hours after an injunction for protection
164 against repeat violence, sexual violence, or dating violence is
165 lifted, terminated, or otherwise rendered no longer effective by
166 ruling of the court, the clerk of the court must notify the
167 sheriff or local law enforcement agency receiving original
168 notification of the injunction as provided in subparagraph 2.
169 That agency shall, within 24 hours after receiving such
170 notification from the clerk of the court, notify the department
171 of such action of the court.

172 Section 3. This act shall take effect October 1, 2018.

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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 7006

INTRODUCER: Judiciary Committee

SUBJECT: OGSR/Investigation of a Violation of the Florida False Claims Act/Department of Legal Affairs

DATE: December 4, 2017 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Davis	Cibula		JU Submitted as Committee Bill
1.	Brown	Caldwell	GO	Favorable
2.			RC	

I. Summary:

SB 7006 is based on an Open Government Sunset Review of a public records exemption that is contained in the Florida False Claims Act. The exemption is scheduled for repeal on October 2, 2018.

The exemption places under seal and protects from public disclosure the legal complaint filed in circuit court by a private citizen who initiates a false claim proceeding. The exemption also protects from disclosure the detailed information and documents that the private citizen provides to the Department of Legal Affairs which support the claim that a violation of the act has occurred.

In addition to helping the state recover monies and property, the broader reasons for maintaining the exemption are to:

- Protect the identity of a person who initiates a false claim action, often an employee of a defendant, while the claim is being investigated;
- Allow the department to privately investigate the merits of the claim to determine if the government will intervene, decline, or dismiss the case before any evidence is destroyed or any information becomes public that could unnecessarily harm the business reputation of the defendant; and
- Maintain the confidentiality of state information that is similarly shielded under a federal public records exemption, which, if disclosed in Florida, would compromise the confidentiality of the federal investigation.

Additionally, maintaining the exemption encourages a private citizen to report fraud and facilitates the recovery of state funds and property that are taken by false claims or fraud.

For these reasons, the bill repeals the automatic repeal of the public records exemption.

The bill takes effect October 1, 2018.

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 open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate.⁹ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(a).

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 Legislature 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” 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).

the stated purpose of the exemption.¹⁰ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.¹¹

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹² 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.¹³

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.¹⁴ 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.¹⁵ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

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.¹⁶ 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;¹⁷
- 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;¹⁸ or
- It protects trade or business secrets.¹⁹

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *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.

¹² 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).

¹³ A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁴ 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.

¹⁵ Section 119.15(3), F.S.

¹⁶ Section 119.15(6)(b), F.S.

¹⁷ Section 119.15(6)(b)1., F.S.

¹⁸ Section 119.15(6)(b)2., F.S.

¹⁹ Section 119.15(6)(b)3., F.S.

The OGSR also requires specified questions to be considered during the review process.²⁰ 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.²¹ 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.²²

The Florida False Claims Act

Qui Tam Actions and the Relator

The Florida False Claims Act²³ authorizes two entities, either a private individual or the state,²⁴ to sue someone who allegedly files a false claim seeking payment or approval for payment from the state. The person who brings a false claims suit is referred to as the “relator.” The action filed by the relator on behalf of the state is referred to as a “qui tam” proceeding.²⁵ Relators are entitled to a significant share of the settlement or proceeds when a recovery is made against a defendant.

The relator does not need to demonstrate that he or she has been harmed by the violator’s actions to adequately state a cause of action. Quite often, the relator is aware of the false claim because he or she was employed by the defendant or has knowledge of industry standards that were violated.

Once the department receives the complaint and accompanying information as discussed below, the department may intervene, decline to intervene, dismiss the action, or settle the case while the information is under seal without making a decision to intervene.

²⁰ 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?

²¹ FLA. CONST. art. I, s. 24(c).

²² Section 119.15(7), F.S.

²³ Sections 68.081-68.092, F.S.

²⁴ For purposes of this act, the Department of Legal Affairs is authorized to bring an action, and in some limited circumstances, the Division of Financial Services may bring an action. See s. 68.083(1), (2), and (4), F.S.

²⁵ “Qui tam” is an abbreviated phrase from the larger Latin phrase “*qui tam pro domino rege quam pro se ipso in hac parte sequitur*.” According to Black’s Law Dictionary, it means “who as well for the king as for himself sues in this matter.” A qui tam action is a statutory action that permits a private individual to sue for a penalty, which will be divided between the government or some other public institution and the person who initiates the suit. BLACK’S LAW DICTIONARY (10th ed. 2014).

Filings

All qui tam actions for the state are filed in the Circuit Court of the Second Judicial Circuit, Leon County.²⁶ According to the clerk of court, 37 qui tam cases have been filed in Leon County since June 2013. There were 21 qui tam cases pending as of September 2017.²⁷

Since the Legislature enacted the public records exemption for qui tam actions in 2013, the Department of Legal Affairs estimates that it intervened in 10-20 cases, dismissed a small number of cases, and settled a number of cases before announcing a decision to intervene. The department's most common response is to decline to intervene in a case, which occurs in approximately 90 percent of the cases. The department estimates that more than 400 active qui tam cases have been filed on behalf of the state and are pending in either the Second Judicial Circuit of Leon County or any of the federal district courts across the nation. Medicaid fraud cases represent approximately 95 percent of the Florida False Claims Act cases.²⁸ In non-Medicaid cases, Florida received \$38,087,788 under both the Florida and Federal False Claims Act between 2010 and 2016. This amount represents the total recovery before deductions were paid for the relator's share.²⁹

History

The Legislature enacted the Florida False Claims Act in 1994 and modeled it after the Federal Civil False Claims Act.³⁰ The Florida act has been amended several times, most recently in 2013, to closely follow the Federal False Claims Act. The federal law was first enacted in 1863, partially because of bad mules and putrid provisions. While the Civil War was being fought, nascent defense contractors "sold the Union Army decrepit horses and mules in ill health, faulty rifles and ammunition, and rancid rations and provisions among other unscrupulous actions."³¹ President Lincoln urged Congress to pass the earliest version of the federal false claim law, which became known as an "Informer's Law" or "Lincoln's Law" in an effort to prevent the Union Army from being defrauded.

Recoverable Awards, Costs, and Fees

At the core of the Florida Act is the relator's right to earn a substantial portion of the recovery against a defendant. This provides a relator tremendous financial incentive to report misconduct. It also provides the state an opportunity to be made whole when damaged by fraudulent actions it did not know were occurring.

²⁶ Section 68.083(3), F.S.

²⁷ Email from John Mickler, Office of Gwen Marshall, Clerk of the Circuit Court and Comptroller for Leon County, Florida, (Sept. 6, 2017) (on file with the Senate Committee on Judiciary).

²⁸ Email from the Department of Legal Affairs (Sept. 7, 2017) (on file with the Senate Committee on Judiciary).

²⁹ Department of Legal Affairs, *Non-Medicaid FFCA Recoveries, Before Relator's Share* (Aug. 2017) (on file with the Senate Committee on Judiciary).

³⁰ 31 U.S.C. ss. 3729-3733. According to the Department of Justice, the statute has been amended by Congress several times and has been interpreted by federal courts on hundreds of occasions. U.S. Department of Justice, *The False Claims Act: A Primer*, https://www.justice.gov/sites/default/files/civil/legacy/2011/04/22/C-FRAUDS_FCA_Primer.pdf (last visited Nov. 15, 2017).

³¹ Larry D. Lahman, "Bad Mules: A Primer on the Federal False Claims Act", 76 Okla. B. J. 901, 901 (2005), available at <http://www.okbar.org/members/BarJournal/archive2005/Aprarchive05/obj7612fal.aspx> (last visited Nov. 15, 2017).

An individual who successfully brings an action is entitled to receive a portion of the proceeds or settlement of the claim. The relator will receive at least 15 percent, but no more than 25 percent, of the proceeds of the action or a settlement of the claim if the department proceeds with the action.³² A court may not award more than 10 percent of the proceeds if the action is based primarily upon publicly disclosed information.³³ If the department does not intervene and the relator proceeds alone, the relator may receive between 25 and 30 percent of the proceeds, as well as reasonable expenses incurred, plus reasonable attorney fees and costs. These amounts will be awarded against the defendant.³⁴ The awards might be substantial, but that is viewed as compensation to the relator who risks a job or possibly a career to bring a qui tam action.

In contrast, a violator is liable for a civil penalty of not less than \$5,500 and not more than \$11,000 and treble the amount of damages the state sustains because of the violator's actions.³⁵ Under limited circumstances, a court may reduce the damages to twice the amount of damages sustained by the state.³⁶ If the department does not intervene, the state files a notice of declination. At that point, the relator can then serve the complaint and proceed with an action and conduct discovery. If the defendant prevails, a court may award reasonable attorney fees and expenses if the court finds that the claim was "clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment."³⁷ The state is not liable for those costs if it does not prevail.

It is not essential that a relator be involved in a case in order for the state to proceed with an investigation and a lawsuit under the Florida act.³⁸ However, an action is characterized as a qui tam proceeding only when a private individual, and not the state, files the complaint. The department is not required to investigate a violation but "may" diligently investigate a violation.³⁹

Pertinent Provisions

A person violates the Florida False Claims Act if he or she:

- Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval;
- Knowingly makes, uses, or causes to be made a false record or statement that is material to a false or fraudulent claim;
- Conspires to make a false claim;
- Possesses property or money to be used by the state and knowingly delivers or causes to be delivered less than the total property or money;
- Is authorized to make or deliver a document that certifies receipt of property for the state and with the intent to defraud the state, makes or delivers the receipt without knowledge that the information on the receipt is true;

³² Section 68.085(1)(a), F.S.

³³ Section 68.085(1)(b), F.S.

³⁴ Section 68.085(2), F.S.

³⁵ Section 68.082(2), F.S.

³⁶ Section 68.082(3), F.S.

³⁷ Section 68.086(2), F.S.

³⁸ Section 68.083(1), F.S.

³⁹ *Id.*

- Knowingly buys or receives, as a pledge or obligation of a debt, public property from an officer or employee of the state who may not sell or pledge the property; or
- Knowingly makes a false record or statement that is material to an obligation to pay the state or knowingly conceals or improperly avoids or decreases an obligation to pay or transmit money or property to the state.⁴⁰

Relevant Portions for Sunset Review Purposes

In 2013, the Legislature enacted a public records exemption relating to a qui tam action.⁴¹ Specifically:

Except as otherwise provided in this subsection, the complaint and information held by the department pursuant to an investigation of a violation of s. 68.082 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.⁴²

Accordingly, and for purposes of this sunset review, it is necessary to focus on the two areas that involve the confidential and exempt provision: first, the complaint that is filed by a private individual who initiates the lawsuit; and second, the information, or supporting evidence, held by the department during an investigation.

Complaint

When the relator files a complaint, the statute requires that it be identified as a qui tam action and be filed in the Circuit Court of the Second Judicial Circuit, in and for Leon County.⁴³ The seal provision applies only to complaints filed by private citizens in qui tam actions. The seal does not apply to a complaint filed by the Department of Legal Affairs or the Department of Financial Services. Once the complaint is filed, a copy of the complaint and any written disclosure of substantially all material evidence and information the relator possesses must be immediately served on the Attorney General and on the Chief Financial Officer. The Department of Legal Affairs, or in limited circumstances, the Department of Financial Services,⁴⁴ may elect to intervene and proceed with the action on behalf of the state within 60 days after it receives both the complaint and the material evidence and information.⁴⁵ The department also has the authority to voluntarily dismiss an action over the objections of the relator.⁴⁶

⁴⁰ Section 68.082(2), F.S.

⁴¹ Chapter 2013-105, L.O.F.

⁴² Section 68.083(8)(a), F.S.

⁴³ Section 68.083(3), F.S.

⁴⁴ The Department of Financial Services is authorized to take over a case when a person brings an action based upon the facts of a pending investigation conducted by the Department of Financial Services. When that happens, the Department of Financial Services must notify the Department of Legal Affairs in writing that it is conducting the investigation and will take over the action. This does not happen often. The Department of Legal Affairs is generally the “department” mentioned in this statute.

⁴⁵ Section 68.083(3), F.S.

⁴⁶ Section 68.084(2)(a), F.S.

While the Florida False Claims Act assumes that a complaint is filed under seal, there is no directive in the statute to do so. A later reference in the statute mentions a 60-day seal and assumes that a 60-day seal period has been authorized. In contrast, the federal act states that the complaint is filed in camera and will remain under seal for 60 days.⁴⁷ To remedy this situation, Judge Jonathan Sjostrum, Chief Judge of the Second Judicial Circuit, issued an administrative order in 2016 addressing and clarifying the initial state sealing. The administrative order provides that the clerk will seal the entire case file for 90 days. There is no need for an initial motion to seal the case file. If the Attorney General's Office does not request an extension of the seal within that 90-day period after the case is filed, the clerk will make public the entire case file unless the court has previously entered an order sealing all or part of the case file. If the Attorney General's Office files a timely motion to extend the seal period, the clerk will keep the entire file sealed pending the ruling on the motion. This complaint is placed under seal when it is filed.⁴⁸ If a false claim action is filed by the Attorney General or the Chief Financial Officer and no relator is involved, the complaint is not filed under seal.

Information

The "information held by the department pursuant to an investigation" refers to information held by the Department of Legal Affairs but not the Department of Financial Services.⁴⁹ The information is derived from two sources. The first source is the information or supporting documents that the relator's attorney serves on the department as proof of fraud. This is often referred to as a disclosure statement. The disclosure statement is a narrative detailing what the relator knows. In practical terms, it is a specific and particular road map full of information that the state may follow in establishing the government's case for fraud. Some examples include fraudulent billing records or inflated medical billing codes that are overstated in an effort to obtain a higher diagnosis code in order to receive greater reimbursement from Medicaid. The disclosure statement is not provided to the clerk when the complaint is filed.

The second source of material is the information discovered by the department during the course of its investigation. Only the Department of Legal Affairs may conduct discovery proceedings and the relator is not authorized to take discovery during the investigation by the department. Similarly, the authority to request an extension of the 90-day seal while pursuing an investigation is given to department, not the relator, although the relator may object.

Time Periods for Seal and Exemption

Qui tam actions are protected from public access as long as false claim violations are being investigated by the department to determine whether the state should intervene in the relator's case. During this period, the complaint is under seal and the information is confidential and exempt. At this point, the defendant should have no knowledge that it is being investigated for fraudulent behavior. As mentioned above, the Second Judicial Circuit administrative order provides that the complaint is initially under seal for 90 days. For good cause shown, the

⁴⁷ 31 U.S.C. 3730(b)(2).

⁴⁸ *In Re: Qui Tam Cases Under the Florida False Claims Act*, Admin. Order No. 2016-01 (Fla. 2nd Cir. Ct., Jan. 26, 2016) (on file with the Senate Committee on Judiciary).

⁴⁹ The Department of Financial Services relies on s. 17.0401, F.S., to maintain the confidentiality and exemptions for its work. When Medicaid fraud is being investigated, the Department of Legal Affairs relies on the confidential and exempt provisions found in s. 409.913(12), F.S.

department may request the court to extend the seal period. Extensions of the seal period are often requested by the department and granted by the court. The extensions are generally requested to grant the department additional time to investigate possible fraud charges.

Either the Department of Legal Affairs or the Department of Financial Services, whichever is appropriate, may elect to intervene and proceed with a suit on behalf of the state within 60 days after it receives the complaint and the material evidence and information.⁵⁰ Before the 60-day period or any extensions expire, the department must proceed with an action, which is conducted by the department on behalf of the state or notify the court that it declines to take over the action which allows the relator to conduct the action on behalf of the state.⁵¹ When the state chooses not to intervene, it is often because the evidence in the case is not strong enough, the existing workload and limited resources prevent it, or the amount of the recovery does not justify pursuing the case. As a practical matter, very few relators proceed of their own accord because the costs of conducting an investigation and underwriting an extensive lawsuit are prohibitive.

Information made confidential and exempt is no longer confidential and exempt after the investigation is complete unless the information is protected in some other way by a different statute. An investigation is considered complete and the information becomes public when the department files an action or closes its investigation without filing an action or the qui tam action is unsealed or voluntarily dismissed before it is unsealed.⁵²

Jurisdiction and Subject Matter Areas

While a few cases arise solely under the Florida False Claims Act and are filed in Leon County, the majority of cases are filed in federal district court and the Florida claim is a state pendent claim.⁵³ By adding the Florida count in the federal complaint, the relator is allowed to access money awarded to the state if a recovery is made.

Many false claim cases arise in the healthcare industry and involve Medicare and Medicaid fraud⁵⁴ as well as in the pharmaceutical industry. Other fraudulent schemes involve fraudulent billing, issues involving durable medical equipment, illegally marketing prescription drugs and kickbacks, defective testing, misrepresenting the value of imported goods for tariff purposes, inflated billing for work performed, failing to report known product defects, winning a contract by using kickbacks or bribes, and forging signatures.⁵⁵

⁵⁰ Section 68.083(3), F.S.

⁵¹ Section 68.083(6), F.S.

⁵² Section 68.083(8)(c) and (d), F.S.

⁵³ Black's Law Dictionary explains that "pendent jurisdiction" arises when a plaintiff brings a lawsuit in federal court and claims that the defendant, in a single transaction, violated both federal and state law. The federal court has jurisdiction over the federal claim but also has jurisdiction to hear the state claim that is pendent to the federal claim. But for the federal claim, the court would not have jurisdiction over the state claim. BLACK'S LAW DICTIONARY (10th ed. 2014).

⁵⁴ The Department of Legal Affairs has a Medicaid Fraud Control Unit that exclusively investigates violations of the Medicaid statutes. The public records exemption for those investigations are controlled by a separate statute, s. 409.913(12), F.S. Similarly, when the Chief Financial Officer conducts an investigation of fraud allegations, the office also relies on a separate public records exemption to maintain the confidentiality of its work, s. 17.0401, F.S.

⁵⁵ Taxpayers Against Fraud, *What is the False Claims Act?* Available at https://taf.org/Resources_by_Topic/FAC_False_Claims_Act/Overview/Public/Resources_by_Topic/FCA_False_Claims_Act/Overview.aspx?hkey=661e1890-336d-42e9-bbb6-f4933a685435.

Staff Research of Practitioners and Interested Parties

In an effort to survey people for this report who have experience with these confidential and exempt qui tam provisions, staff contacted 22 individuals and organizations. Contacts included members of the Attorney General's office, the Chief Financial Officer's staff, Second Judicial Circuit judges, attorneys who litigate in this area and represent the relator or the defendant, a former U.S. Attorney, and several former assistant U.S. Attorneys who once litigated for the federal government but currently work in private practice representing relators and defendants.⁵⁶ Of that total, 14 supported continuing the exemption, 1 supported repeal, 1 judge was neutral due to a lack of experience, 1 organization was neutral, and 5 either expressed no opinion or did not respond.

Reasons Given for Continuing the Exemptions

The most common reasons given for continuing the exemption are that the exemption:

- Protects the identity of a person who reports a false claim, often an employee of a defendant, while the claim is being investigated.
- Encourages more relators to come forward with allegations of fraudulent conduct because they know that their identity is protected and their risk of retaliation from the defendant is reduced.
- Provides a financial incentive for people with unique inside knowledge of an industry to expose fraud and assist the state in recovering damages caused by a defendant.
- Delays service of process on a potential defendant during the seal period so that the defendant is not alerted to the allegations before a thorough investigation is conducted by the department.
- Avoids alerting the defendant that the department is conducting an investigation, thereby reducing the likelihood that the defendant will misplace or destroy incriminating evidence or flee the jurisdiction.
- Encourages witnesses to give full and accurate statements of their knowledge when given confidentiality.
- Allows the government to privately investigate the merits of a claim, without public pressure, before deciding whether to intervene or dismiss a case.
- Protects the reputation of a defendant while a claim is being investigated because there is no public accusation of wrongdoing and no public stigma that could negatively impact the defendant's business. Some have suggested that publicly disclosing that a defendant is being investigated often amounts to using the law as an economic weapon.
- Deters future misconduct by demonstrating that fraudulent behavior can be reported and cost the defendant thousands and even millions in fines and penalties.
- Maintains the reciprocal shield of federal and state public records exemptions which protects sensitive information from disclosure during an investigation.

According to several respondents, this last point is extremely important. If Florida's act did not have the two public records exemptions that the federal act contains, the federal government would not be inclined to permit the state to join in cases that involve violations of both federal

⁵⁶ It appears that the majority of Florida attorneys who represent relators in these actions reside in South Florida while a smaller number reside in central or north Florida.

and Florida law. While the federal exemptions would protect certain confidential information, the state would be compelled to turn over the state information if there were no seal or exemption. The information under federal seal would be breached and the investigation damaged. This would be harmful to a federal or multi-state investigation. Additionally, if Florida were not permitted to join in federal suits, Florida would not be allowed to share in the financial recovery, thereby potentially losing millions of dollars in revenue.

From a procedural standpoint, it is difficult to understand how the state statute would work in federal-state cases if only the federal information was protected but the state information was open for inspection. The disclosure of state information would negatively affect the federal claims. Repealing the Florida public records exemption would likely render state-federal cooperation impossible. The situation would be equally complicated if other states were joined in a lawsuit and those states had confidentiality provisions. To repeal the Florida public records exemption would make information that is confidential in other states available to the public in this state.

Reason Given for Repealing the Exemptions

The survey respondent who supports repealing the public records exemption stated that the exemption places the defendant at a distinct disadvantage. While the state may spend months secretly investigating a claim and gathering evidence, the defendant is unaware that a legal action is being prepared against it. This secrecy is disconcerting to a defense lawyer. It is then an uphill battle for the defendant to gather information and gain equal footing with the state.

The respondent said that it would seem a fair balance to allow the defendant to be made aware of the proceedings when the complaint is filed under seal and the claim is being investigated. This would put the parties on equal terms and allow an exchange of information while an investigation is occurring. The playing field would then be level.

Conclusion and Recommendation

Based upon a review of this public records exemption under the Open Government Sunset Review Act and discussions with interested parties and offices, the professional staff of the Judiciary Committee recommends that the Legislature retain the public records exemption established in s. 68.083(8)(a), F.S. It is in the state's best interests to continue the exemption to encourage private citizens to report fraud and facilitate the recovery of state funds or property. The exemption protects the identity of the relator and preserves the integrity of the false claims investigation while the facts are being reviewed by the department. Maintaining the exemption also keeps Florida law consistent with the confidentiality provisions of the Federal False Claims Act.

If this exemption is not reenacted, information would be disclosed which would jeopardize the state's ability to investigate false claims against the state. The identities of both the relator who brings the suit and the defendant who is being investigated would be revealed.

Finally, this public records exemption is narrowly tailored and sufficiently limited in its duration to meet the state's interest. The seal period is not indefinite. Under the judicial administrative order mentioned earlier, the initial seal period is 90 days and can be extended only by an order of

the court. When the Department of Legal Affairs notifies the court of its decision to intervene or decline, the clerk of the court will make the entire file public.

III. Effect of Proposed Changes:

This bill is based on an Open Government Sunset Review of a public records exemption that is contained in the Florida False Claims Act. The exemption is scheduled for repeal on October 2, 2018.

The exemption places under seal and protects from public disclosure the legal complaint filed in circuit court by a private citizen who initiates a false claim proceeding. The exemption also protects from disclosure the detailed information and documents that the private citizen provides to the Department of Legal Affairs which support the claim that a violation of the act has occurred.

The reasons provided as justification for the public records exemption remain valid. Therefore, the bill removes the scheduled repeal of the public records exemption. By repealing the automatic repeal of the exemption, the exemption is no longer subject to a review under the Open Government Sunset Review Act, unless the exemption is broadened or expanded.

The bill takes effect October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill, by preserving the public records exemption, will continue to protect the identity of relators who seek to recover state funds or property under the Florida False Claims Act. This protection appears to be a key financial feature that encourages relators to file suits.

C. **Government Sector Impact:**

By preserving the public records exemption and protecting the identity of relators, the state will continue to recover funds or property under the Florida False Claims Act. If the exemption were not continued, the state might recover less money.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 68.083, 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.

By the Committee on Judiciary

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A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 68.083, F.S., relating to an exemption from public record requirements for the complaint and information held by the Department of Legal Affairs pursuant to an investigation of a violation of the Florida False Claims Act; abrogating the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Paragraph (a) of subsection (8) of section 68.083, Florida Statutes, is amended to read:

68.083 Civil actions for false claims.—

(8) (a) Except as otherwise provided in this subsection, the complaint and information held by the department pursuant to an investigation of a violation of s. 68.082 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2018.

CourtSmart Tag Report

Room: SB 401

Case No.:

Type:

Caption: Senate Committee on Governmental Oversight and Accountability

Judge:

Started: 12/5/2017 10:02:37 AM

Ends: 12/5/2017 10:28:17 AM

Length: 00:25:41

10:02:41 AM Meeting called to order by Chair Baxley
10:02:52 AM Roll Call
10:03:00 AM Quorum is present
10:03:05 AM Comments by Chair
10:04:00 AM Tab 1 - SB 278 Public Records/Dept. of State, by Sen. Hutson, explains actual bill and then the strike all amendment.
10:04:45 AM Chair
10:05:10 AM Barcode 535642, strike all amendment by Sen. Hutson
10:05:12 AM Sen. Hutson explains strike all amendment.
10:05:53 AM Chairman: Are there any questions on the amendments or appearance cards on the amendment or debate?
10:06:03 AM Chair seeing no objection, show the amendment adopted.
10:06:13 AM Chairman: Are there any Appearance cards for bill as amended?
10:06:26 AM Evan Power, Fla. State Association of Supervisors of Election, waives in support
10:06:41 AM Chairman: Is there any debate? No debate.
10:06:49 AM Sen. Hutson waives to close.
10:07:06 AM Roll Call on - CS/SB 278 is reported favorably.
10:08:35 AM Tab 2 - SB 286 Florida Slavery Memorial by Sen. Rouson.
10:08:43 AM Comments to committee and public by the Chairman.
10:08:50 AM Sen. Rouson to explain the bill
10:10:04 AM Chairman: Any questions on the bill? None. Any appearance cards? One appearance card. There are no amendments.
10:10:18 AM Barbara DeVane, FLNOW, waives in support
10:10:32 AM Chairman: Is there any debate? No debate.
10:10:44 AM Sen. Rouson to close on the bill.
10:11:35 AM Roll Call on SB 286, reported favorably.
10:12:17 AM Chairman: Personal comments on SB 286
10:14:32 AM Chair is turned over to Sen. Mayfield
10:14:39 AM Chairman Mayfield announces next bill to take up.
10:15:09 AM Tab 4- SB 648 - Employment Services for Persons with Disabilities, by Sen. Baxley
10:15:31 AM Chairman: Are there any questions?
10:15:40 AM Question by Sen. Galvano
10:15:44 AM Sen. Baxley responds to question.
10:15:50 AM Chairman: There are no amendments but several appearance cards.
10:16:39 AM Waiving in support, Suzanne Sewell, Fla. Assoc. of Rehab. Facilities, James G. Weeks, Sunrise Community, Inc., Allison Flanagan, Voc. Rehab., Tanya Cooper, Dir. Gov. Relations, Voc. Rehab, Robert Doyle, Dir. Div. of Blind Services, Natalie King, The Diversity Initiative.
10:17:00 AM Chairman: Any questions or debate on the bill? No questions or debate we are back on the bill.
10:17:14 AM Sen. Baxley waives to close on bill
10:17:27 AM Roll call - SB 648 reported favorably
10:17:35 AM Sen. Baxley is back in chair
10:17:53 AM Chairman: Explains to committee members and the public that some sponsors for bills are not here yet. We will take a small recess.
10:17:59 AM Recording Paused
10:19:27 AM Recording Resumed
10:19:56 AM Chairman Baxley announces next bill.
10:20:33 AM Tab 3 - CS/SB 510 - Reporting of Adverse Incidents in Planned out-of hospital Births, by Sen. Young
10:20:40 AM Chair, Questions?
10:20:48 AM Sen. Rouson, question of Sen. Young.
10:21:22 AM Sen. Young in response
10:21:58 AM Chairman: Sen. Mayfield recognized for question of sponsor.
10:22:03 AM Sen. Young in response.

10:22:32 AM Chairman: Are there any questions of sponsor?
10:22:42 AM Sen. Stargel is recognized for a question
10:22:47 AM Sen. Young in response
10:23:03 AM Chairman: No more questions. Any amendments? No amendments. Appearance cards? Yes.
10:23:53 AM Waiving in support of CS/SB510, Ron Watson, lobbyist, Midwife Association of Florida, Amy Young, American College of OB-GYN, Andrea King Friall, MD, American Congress of Obstetrics and gynecology (ACOG)
10:24:01 AM Chairman: Is there any debate? No debate.
10:24:09 AM Sen. Young waives her close.
10:24:26 AM Roll Call on CS/SB 510 reported favorably.
10:24:45 AM Chairman.
10:24:57 AM Tab 5 - SB 7004 - OGSR/Petitioner Information/Notification of Service of an Injunction for Protection by Judiciary, Sen. Steube to present.
10:25:44 AM Chairman? Are there any questions? None. There are no amendments. Appearance cards? None. Any debate on the bill? None.
10:25:50 AM Sen. Steube waives his close
10:26:02 AM Roll Call on SB 7004 reported favorably.
10:26:34 AM Tab 6 - SB 7006 - OGSR/Investigation of a Violation of the Florida False Claims Act/Dept. of Legal Affairs by Judiciary, Sen. Steube to present
10:26:35 AM Sen. Steube explains the SB 7006.
10:27:28 AM Chairman: Questions by members? No questions. No amendments, No appearance cards. Any debate? No debate.
10:27:35 AM Sen. Steube waives his close.
10:27:49 AM Roll Call on SB 7006- reported favorable.
10:28:17 AM Sen. Stargel moves to adjourn.