

CS/SB 526 by **CM, Grimsley**; (Identical to CS/H 0523) Notaries Public

CS/SB 552 by **GO, Hays**; (Similar to H 0535) Public Records/Homelessness Surveys and Databases

CS/CS/SB 182 by **GO, HE, Hays**; (Similar to CS/CS/H 0223) Public Records and Meetings/Postsecondary Education
Executive Search

786806	A	S	FAV	RC, Latvala	Delete L.32 - 104:	03/19 03:13 PM
576962	A	S	WD	RC, Richter	Delete L.66:	03/19 03:13 PM

SB 672 by **Dean**; (Identical to H 0667) Service of Process

SB 7032 by **HP**; (Similar to H 7129) Public Records/Reports of a Deceased Child

CS/SB 7034 by **GO, EE**; (Identical to H 7101) OGSR/Stalking Victims Identifying Information

CS/SB 630 by **BI, Joyner**; (Similar to H 0283) Transfers to Minors

SB 7016 by **JU**; (Identical to H 7049) OGSR/Minor Identifying Information

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Simmons, Chair
Senator Soto, Vice Chair

MEETING DATE: Thursday, March 26, 2015
TIME: 9:00 —11:00 a.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Simmons, Chair; Senator Soto, Vice Chair; Senators Benacquisto, Diaz de la Portilla, Gaetz, Galvano, Gibson, Joyner, Latvala, Lee, Montford, Negron, and Richter

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 526 Commerce and Tourism / Grimsley (Identical CS/H 523, Compare H 513)	Notaries Public; Revising the methods available for verifying documents; defining the term "reliable electronic means"; authorizing specified officers to administer oaths by reliable electronic means when engaged in the performance of official duties, etc. CM 02/16/2015 Temporarily Postponed CM 03/02/2015 Fav/CS CJ 03/16/2015 Favorable RC 03/26/2015 Favorable	Favorable Yeas 11 Nays 0
2	CS/SB 552 Governmental Oversight and Accountability / Hays (Similar H 535)	Public Records/Homelessness Surveys and Databases; Creating a public records exemption for individual identifying information of a person contained in a Point-In-Time Count and Survey or data in a Homeless Management Information System; providing for future review and repeal under the Open Government Sunset Review Act; providing a statement of public necessity, etc. CF 03/05/2015 Favorable GO 03/17/2015 Fav/CS RC 03/26/2015 Favorable	Favorable Yeas 11 Nays 0
3	CS/CS/SB 182 Governmental Oversight and Accountability / Higher Education / Hays (Similar CS/CS/H 223)	Public Records and Meetings/Postsecondary Education Executive Search; Providing an exemption from public records requirements for identifying information of an applicant for president, provost, or dean of a state university or Florida College System institution; providing an exemption from public meeting requirements for any portion of a meeting which is held for the purpose of identifying or vetting, or which would otherwise disclose identifying information of, potential applicants for president, provost, or dean; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. HE 02/16/2015 Fav/CS GO 03/04/2015 Fav/CS RC 03/19/2015 RC 03/26/2015 Temporarily Postponed	Temporarily Postponed

COMMITTEE MEETING EXPANDED AGENDA

Rules

Thursday, March 26, 2015, 9:00 —11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 672 Dean (Identical H 667)	Service of Process; Authorizing a criminal witness subpoena commanding a witness to appear for a deposition to be posted at the witness's residence by an authorized person if one attempt to serve the subpoena has failed, etc. JU 03/03/2015 Favorable CJ 03/16/2015 Favorable RC 03/26/2015 Favorable	Favorable Yeas 12 Nays 0
5	SB 7032 Health Policy	Public Records/Reports of a Deceased Child; Exempting information held by the State Child Abuse Death Review Committee or a local committee that identifies a deceased child whose death is reported to the central abuse hotline but whose death is not the result of abuse or neglect and the identity of the surviving siblings, family members, or others living in the home of such a deceased child; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. GO 03/17/2015 Favorable RC 03/26/2015 Favorable	Favorable Yeas 12 Nays 0
6	CS/SB 7034 Governmental Oversight and Accountability / Ethics and Elections (Identical H 7101)	OGSR/Stalking Victims Identifying Information; Transferring, renumbering, and amending provisions relating to an exemption from public records requirements for certain information of persons who are victims of stalking or aggravated stalking; removing the scheduled repeal of the exemption, etc. GO 03/17/2015 Fav/CS RC 03/26/2015 Favorable	Favorable Yeas 12 Nays 0
7	CS/SB 630 Banking and Insurance / Joyner (Similar H 283)	Transfers to Minors; Specifying that certain transfers from a trust are considered as having been made directly by the grantor of the trust; authorizing custodianships established by irrevocable gift and by irrevocable exercise of power of appointment to terminate when a minor attains the age of 25, subject to the minor's right in such custodianships to compel distribution of the property upon attaining the age of 21, etc. JU 03/03/2015 Favorable BI 03/17/2015 Fav/CS RC 03/26/2015 Favorable	Favorable Yeas 12 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Thursday, March 26, 2015, 9:00 —11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 7016 Judiciary (Identical H 7049)	OGSR/Minor Identifying Information; Amending provisions relating to an exemption from public record requirements for certain information that could identify a minor petitioning a court to waive parental notice requirements before terminating a pregnancy; saving the exemption from repeal under the Open Government Sunset Review Act, etc. GO 03/17/2015 Favorable RC 03/26/2015 Favorable	Favorable Yeas 12 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 Rules

BILL: CS/SB 526

INTRODUCER: Commerce and Tourism Committee and Senator Grimsley

SUBJECT: Notaries Public

DATE: March 25, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	Fav/CS
2.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
3.	<u>Harmsen</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 526 allows a law enforcement officer engaged in the performance of official duties to remotely administer an oath either through reliable electronic means, or in the physical presence of a person who swears to an affidavit. Currently, a law enforcement officer may only administer an oath in the physical presence of an affiant.

Additionally, the bill allows law enforcement officers to verify documents pursuant to ss. 92.50 and 92.525, F.S.

II. Present Situation:

Notaries public, governed by ch. 117, F.S., have two distinct roles: to administer oaths, and to acknowledge or verify documents.¹ Law enforcement officers, correctional officers, correctional probation officers, traffic accident investigation officers, and traffic infraction enforcement officers engaged in the performance of their official duties may administer oaths in the same manner as a notary public, but do not have authority to verify documents under current law.²

¹ Sections 117.03-.04, F.S.

² Section 117.10, F.S.

Administration of Oaths

In 1983, the Legislature allowed that “all law enforcement and correctional officers as defined in s. 943.10, F.S., may administer oaths, to witnesses, in connection with the taking of a sworn statement during a criminal investigation...”³ Application of this law was limited by a 1983 Florida Attorney General Opinion, which opined that a law enforcement officer’s power to administer oaths was exclusive to sworn statements given by witnesses during informal investigations, and that specifically, an officer was “not empowered to take sworn statements of another officer or witness for the sole purpose of using that document to establish probable cause or serve as a complaint for direct submission to a court.”⁴

The following year, the Legislature created s. 117.10, F.S., which clearly granted law enforcement officers the power to serve as a notary for the purpose of certifying or attesting to documents in connection with the performance of their official duties.⁵

Section 117.10, F.S., was subsequently amended to include correctional probation officers, traffic accident investigation officers, and traffic infraction enforcement officers. The direct reference to notaries was removed, so the statute now states that law enforcement officers are “authorized to administer oaths when engaged in the performance of official duties.”⁶

Law enforcement officers administer oaths to verify signatures on official documents, such as probable cause affidavits, reports, or sworn complaints.⁷

Sections 668.50 and 117.021, F.S., allow electronic signatures on notarized documents. However, an oath administered by a notary or law enforcement officer must still be administered in person. Therefore, a law enforcement officer affiant may electronically sign his affidavit, but only after he physically meets with a fellow law enforcement officer to swear or affirm the oath required.

Verification of Documents

A verified document has been signed or executed by a person who must state under oath (or affirmation) that the facts or matters made therein are true, or other words to that effect.⁸

A document can be verified in two ways:

- Administration of an oath or affirmation by an officer of the state authorized under s. 92.50, F.S., to administer oaths. Officers currently authorized are judges, clerks or deputy clerks of court, or any notary public; or

³ Ch. 83-147, Laws of Florida; Section 925.095, F.S. (1983).

⁴ Fla. AGO 83-85, in response to a request for clarification of s. 925.095, F.S. (1983) from the Havana, Florida, Chief of Police.

⁵ Chapter 84-87, L.O.F., which also repealed s. 925.095, F.S. (1983).

⁶ Section 117.10, F.S.

⁷ Section 117.10, F.S.

⁸ Section 92.525(4)(c), F.S.

- Signing a written declaration, which states “Under penalty of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true.”⁹ Where a verification of a belief is permitted, the phrase “to the best of my knowledge and belief” may be added to the declaration.

Perjury

A person who knowingly makes a false statement under oath regarding any material matter commits perjury, a first degree misdemeanor.¹⁰

A person who knowingly makes a false declaration for the purpose of verifying a document under s. 92.525(2), F.S., is subject to prosecution for perjury by false written declaration, a third degree felony.¹¹

III. Effect of Proposed Changes:

Under this bill, law enforcement officers, correctional officers, correctional probation officers, traffic accident investigation officers, and traffic infraction enforcement officers acting in the scope of their authority will be able to remotely administer oaths pursuant to s. 117.10, F.S. This allows law enforcement officers to administer an oath for work purposes either in the presence of the affiant, or by electronic transmittal of the document from the affiant through means compliant with criminal justice information systems security measures,¹² defined in s. 117.10(1), F.S. For example, the criminal justice information systems security measures requires that all users must uniquely identify themselves before they can perform any actions on the system.¹³

The bill allows law enforcement officers, correctional officers, correctional probation officers, traffic accident investigation officers, and traffic infraction enforcement officers, while engaged in the performance of official duties, to verify documents pursuant to s. 92.525, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁹ Section 92.525(2), F.S.

¹⁰ Section 837.012, F.S.

¹¹ Section 92.525(3), F.S.

¹² The criminal justice information systems (CJIS) security policy is published by the FBI, administered in Florida by the FDLE, and applied to local law enforcement agencies. Phone interview with Charles Schaeffer, February 10, 2015. See also, U.S. Department of Justice, Criminal Justice Information Services Security Policy (August 4, 2014). Retrieved February 10, 2015 from <http://www.fbi.gov/about-us/cjis/cjis-security-policy-resource-center>.

¹³ U.S. Department of Justice, Criminal Justice Information Services Security Policy at 34 (August 4, 2014). Retrieved March 3, 2015 from <http://www.fbi.gov/about-us/cjis/cjis-security-policy-resource-center>.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Law enforcement agencies may, but are not required to, incur some costs associated with either implementing new technological systems or updating current systems to become compliant with the criminal justice information system security measures. Some of these costs may be mitigated by a reduced need for excess hours and other costs associated with the current method of officer administration of oaths and document verification.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Because a certain class of individuals may administer and swear oaths without the physical presence of another party, enforcement of perjury laws may become more burdensome. The prosecution in perjury cases may have extra hurdles to overcome to prove that the defendant was the person who submitted the false statement under oath. The electronic data evincing the unique identifier and password that an officer must enter each time he or she electronically administers or swears an oath may be useful to the prosecution in such cases, but is not without evidentiary hurdles.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 92.525 and 117.10.

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 Commerce and Tourism on March 2, 2015:

Clarifies that enumerated officers may administer oaths electronically and deletes redundant language in section two of the committee substitute.

B. Amendments:

None.

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

By the Committee on Commerce and Tourism; and Senator Grimsley

577-01817-15

2015526c1

1 A bill to be entitled
 2 An act relating to notaries public; amending s.
 3 92.525, F.S.; revising the methods available for
 4 verifying documents; amending s. 117.10, F.S.;
 5 defining the term "reliable electronic means";
 6 authorizing specified officers to administer oaths by
 7 reliable electronic means when engaged in the
 8 performance of official duties; providing an effective
 9 date.

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

11 Section 1. Subsection (1) of section 92.525, Florida
 12 Statutes, is amended to read:

13 92.525 Verification of documents; perjury by false written
 14 declaration, penalty.—

15 (1) ~~If when it is~~ authorized or required by law, by rule of
 16 an administrative agency, or by rule or order of court that a
 17 document be verified by a person, the verification may be
 18 accomplished in the following manner:

19 (a) Under oath or affirmation taken or administered before
 20 an officer authorized under s. 92.50 to administer oaths; ~~or~~
 21 (b) Under oath or affirmation taken or administered by an
 22 officer authorized under s. 117.10 to administer oaths; or
 23 (c) By the signing of the written declaration prescribed in
 24 subsection (2).

25 Section 2. Section 117.10, Florida Statutes, is amended to
 26 read:
 27 117.10 Law enforcement and correctional officers;
 28
 29

Page 1 of 2

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

577-01817-15

2015526c1

30 ~~administration of oaths.—~~
 31 (1) For purposes of this section, the term "reliable
 32 electronic means" means the signing and transmission of a
 33 document through means compliant with criminal justice
 34 information system security measures. Such signing and
 35 transmission must be made by an affiant to an officer authorized
 36 to administer oaths under subsection (2) under circumstances
 37 that indicate that the document was submitted by the affiant.
 38 (2) Law enforcement officers, correctional officers, and
 39 correctional probation officers, as defined in s. 943.10, and
 40 traffic accident investigation officers and traffic infraction
 41 enforcement officers, as described in s. 316.640, are authorized
 42 to administer oaths by reliable electronic means or in the
 43 physical presence of an affiant when engaged in the performance
 44 of official duties. Sections 117.01, 117.04, 117.045, 117.05,
 45 and 117.103 do not apply to ~~the provisions of~~ this section. An
 46 officer may not notarize his or her own signature.
 47 (3) An oath administered pursuant to this section is an
 48 acceptable method of verification as provided under s. 92.525.
 49 Section 3. This act shall take effect July 1, 2015.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Communications, Energy, and Public Utilities, *Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Health
and Human Services
Health Policy
Transportation

JOINT COMMITTEES:
Joint Administrative Procedures Committee
Joint Legislative Budget Commission

SENATOR DENISE GRIMSLEY

Deputy Majority Leader
21st District

March 23, 2015

The Honorable David Simmons, Chair
Senate Committee on Rules
402 Senate Office Building
402 S. Monroe Street
Tallahassee, FL 32399-1300

3/26/15
O.K.
[Signature]

Dear Chair Simmons,

Senate Bill 526, relating to Notaries Public, is on your committee's agenda this week. I will be in a Transportation Committee meeting and respectfully request that my legislative assistant, Marty Mielke be able to present the bill.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Denise Grimsley".

Denise Grimsley
Senator, District 21

DG/mm

REPLY TO:

- 205 South Commerce Avenue, Suite A, Sebring, Florida 33870 (863) 386-6016
- 212 East Stuart Avenue, Lake Wales, Florida 33853 (863) 679-4847
- 306 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



The Florida Senate

Committee Agenda Request

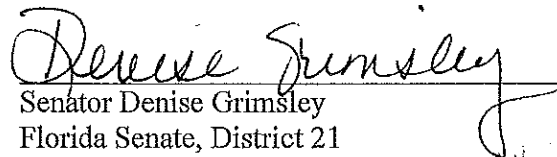
To: Senator David Simmons, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 17, 2015

I respectfully request that **Senate Bill #526**, relating to Notaries Public, be placed on the:

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


Senator Denise Grimsley
Florida Senate, District 21

Cc: Cissy DuBose, Administrative Assistant

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-26-2015
Meeting Date

SB 526
Bill Number (if applicable)

Topic Notaries Public

Amendment Barcode (if applicable)

Name Sgt. Jay Toth

Job Title Sergeant - Volusia County Sheriff's Office

Address 123 W. Indiana Ave
Street

Phone 386-736-3961

DeLand FL 32720
City State Zip

Email Jtoth@VCSO.US

Speaking: For Against Information

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

Representing Florida Sheriff's Assn.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
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 Rules

BILL: CS/SB 552

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Hays

SUBJECT: Public Records/Homelessness Surveys and Databases

DATE: March 25, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	Favorable
2.	Kim	McVane	GO	Fav/CS
3.	Preston	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 552 provides that individual identifying information of a person contained in a Point-In-Time Count and Survey or data in a Homeless Management Information System collected pursuant to federal law and regulations is exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The bill defines the term “individual identifying information” and provides for retroactive application of the exemption.

The bill does not prevent the release of aggregate information from a Point-In-Time Count and Survey or data in a Homeless Management Information System that does not disclose individual identifying information of a person. The bill provides for an Open Government Sunset review and contains a statement of public necessity as required by the State Constitution.

The bill is anticipated to have limited fiscal impact on state government.

II. Present Situation:

Point-In-Time Count and Survey

A point-in-time count is an unduplicated count on a single night of the people in a community who are experiencing homelessness that includes both sheltered and unsheltered populations. Counts are provided by household type (individuals, families, and child-only households), and

are further broken down by subpopulation categories, such as homeless veterans and people who are chronically homeless.¹

The Department of Housing and Urban Development (HUD) requires that state homeless continuums of care² conduct an annual count of persons who are homeless and who are sheltered in emergency shelters, transitional housing and safe havens on a single night during the last ten days of January. Further, HUD requires that the continuums of care also must conduct a count of the unsheltered homeless population every other year, required on odd numbered years. The goal is to produce an unduplicated count, or statistically reliable estimate of the homeless in the community.³ Although HUD requires continuums of care gather survey data, federal law privacy laws do not necessarily extend to non-federal agencies that receive federal funds.⁴

Point-in-time counts are important because they establish the severity of the problem of homelessness and help policymakers and program administrators track progress toward the goal of ending homelessness. Collecting data on homelessness and tracking progress can inform public opinion, increase public awareness, and attract resources that will lead to a reduction or the eradication of the problem.⁵ On the local level, point-in-time counts help communities plan services and programs to appropriately address local needs, measure progress in decreasing homelessness, and identify strengths and gaps in a community's current homelessness assistance system.⁶

For 2014, Florida's homeless continuums of care carried out both the sheltered and unsheltered counts as required. The 2014 Point-In-Time Survey reports from the local continuums of care indicate that 41,335 persons met the HUD definition of homeless in Florida on a given day in January 2014. The Florida Department of Education reports that 70,215 public school students were homeless in Florida during the 2012-2013 school year. Sixteen rural county areas did not conduct a point-in-time count in 2014 due to a lack of resources.⁷

The intent is to identify those men, women and children who meet HUD's definition of a homeless person. This is limited to:

- Those living in a publicly or privately operated shelter providing temporary living arrangements;

¹ National Alliance to End Homelessness. Point-In-Time Count: Fact Sheet. November 4, 2010, available at: <http://www.endhomelessness.org/library/entry/fact-sheet-point-in-time-counts>. (last visited February 23, 2015).

² The federal Department of Housing and Urban Development (HUD) designed the Homeless Continuums of Care to promote communitywide commitment and planning toward the goal of ending homelessness. In Florida there are 28 Continuum of Care lead agencies serving 64 of 67 counties, according to Florida Department of Children and Families. Council on Homelessness, 2014 Annual Report. June 2014, available at: www.myflfamilies.com/service-programs/homelessness. (last visited February 23, 2015).

³ National Alliance to End Homelessness. Point-In-Time Count: Fact Sheet. November 4, 2010, available at: <http://www.endhomelessness.org/library/entry/fact-sheet-point-in-time-counts>. (last visited February 23, 2015).

⁴ *Housing Authority of City of Daytona Beach v. Gommillion*, 639 So.2d 117 (Fla. 5th DCA 1994).

⁵ *Id.*

⁶ *Id.*

⁷ Florida Department of Children and Families. Council on Homelessness, 2014 Annual Report. June 2014, available at: www.myflfamilies.com/service-programs/homelessness. (last visited February 23, 2015).

- Those persons whose primary nighttime residence is a public or private place not intended to be used as an accommodation for human beings, such as: a car, park, abandoned building or campground;
- A person who is exiting from an institution, where he or she lived for 90 days or less, and who was otherwise homeless immediately prior to entering that institution;
- A person who is fleeing from a domestic violence situation;
- A person who will lose their primary nighttime residence within 14 days, where no subsequent dwelling has been found and the individual lacks the resources to obtain permanent housing.⁸

Point-In-Time Surveys and Homeless Management Information Systems

Point-In-Time Surveys request personal information such as a person's name, date of birth, social security number, race, marital status, disability (including personal health information) and veteran status. The Surveys also inquire about a homeless person's children. Data collected through Point-In-Time Surveys⁹ and during other counts is managed through the Homeless Management Information System (HMIS), a software application designed to record and store client-level information on the characteristics and service needs of homeless persons. An HMIS is typically a web-based software application that homeless assistance providers use to coordinate care, manage their operations, and better serve their clients.¹⁰

Public Records Requirements

The Florida Constitution specifies requirements for public access to government records. It provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹¹ The Florida Constitution states that this right applies to the records of the legislative, executive, and judicial branches of government.¹²

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records. Chapter 119, F.S., guarantees every person's

⁸ *Id.*

⁹ Sample surveys can be found on the HUD website at <https://www.onecpd.info/resource/1699/homeless-pit-count-survey-sample/> and <https://www.onecpd.info/resource/1698/homeless-pit-count-survey-domestic-violence-form-sample>. (last viewed March 11, 2015).

¹⁰ HUD Exchange Homeless Management Information System. <https://www.hudexchange.info/hmis> (last viewed on March 11, 2015).

¹¹ FLA. CONST. art. I, s. 24(a).

¹² *Id.*

right to inspect and copy any state or local government public record¹³ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.¹⁴

Only the Legislature may create an exemption to public records requirements.¹⁵ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁶ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹⁷ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹⁸

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.¹⁹ 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.²⁰

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than necessary.²¹ An exemption serves an identifiable purpose if it meets one of the following purposes and cannot be accomplished without the exemption:

¹³ Section 119.011(12), F.S., defines “public records” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean 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.” Chapter 119, F.S., does not apply to legislative or judicial records. See *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992).

¹⁴ Section 119.07(1)(a), F.S.

¹⁵ FLA. CONST. art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (see *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (see Attorney General Opinion 85-62, August 1, 1985).

¹⁶ FLA. CONST. art. I, s. 24(c).

¹⁷ The bill, however, may contain multiple exemptions that relate to one subject.

¹⁸ FLA. CONST. art. I, s. 24(c).

¹⁹ 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.

²⁰ Section 119.15(3), F.S.

²¹ Section 119.15(6)(b), F.S.

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²²
- 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;²³ or
- It protects trade or business secrets.²⁴

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

The OGSR also requires specified questions to be considered during the review process.²⁵ 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.²⁶ 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.²⁷

III. Effect of Proposed Changes:

Section 1 creates s. 420.6231, F.S., to provide that identifying information of a person contained in a Point-In-Time Count and Survey or data in a Homeless Management Information System collected pursuant to federal law and regulations, is exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The exemption also applies retroactively to information that is already being held.

The section also provides a definition of the term "individual identifying information" as meaning information that directly or indirectly identifies a specific person or can be used to identify a specific person. The bill provides that aggregate information may be released so long as an individual cannot be identified.

Pursuant to the OGSR, the bill provides that this exemption will stand repealed on October 2, 2010, unless it is continued by the Legislature.

²² Section 119.15(6)(b)1., F.S.

²³ Section 119.15(6)(b)2., F.S.

²⁴ Section 119.15(6)(b)3., F.S.

²⁵ 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?

²⁶ FLA. CONST., art. I, s. 24(c).

²⁷ Section 119.15(7), F.S.

Section 2 provides a statement of public necessity as required by the Florida Constitution. The bill states that it is a public necessity to keep exempt from public disclosure identifying information of a person contained in a Point-In-Time Count and Survey or data in a Homeless Management Information System collected pursuant to federal law and regulations.

The public release of such sensitive information could lead to discrimination against or ridicule of such individuals and could make them reluctant to seek assistance for themselves or their family members. The public release of such information may put affected individuals at greater risk of injury as a significant proportion of such individuals are survivors of domestic violence or suffer from mental illness or substance abuse. Additionally, public access to such information may put affected individuals at a heightened risk for fraud and identity theft.

Section 3 provides that the bill will be effective of upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption related to individual identifying information obtained during annual counts of persons who are homeless and therefore it requires a two-thirds vote for final passage.

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill provides that this exemption is necessary in order to protect homeless people and their families and that this exemption makes it more likely that the homeless will be willing to participate in the Point-In-Time Count and Survey.

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

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Children and Families' (DCF) Office on Homelessness is the central point of contact within state government on homelessness.²⁸ DCF reports that this bill has no impact on it and did not provide fiscal impact information.²⁹ However, it seems plausible that government agencies and local service providers which collect Point-in-Time Surveys and HMIS information will have to expend resources to train their staff and perform redactions when a public records request is made. These costs will probably be negligible.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 420.6231 of the Florida Statutes.

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

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

CS by Governmental Oversight and Accountability on March 17, 2015:

The CS removes specific references to part 91 of the Code of Federal Regulations and 42 USC s. 11363. These references were removed because federal statutes and rules governing the program and federal level privacy protections are located in several other sections of the Code of Federal Regulations and the United States Code.

B. Amendments:

None.

²⁸ Florida Department of Children and Families. <http://www.myflfamilies.com/service-programs/homelessness>

²⁹ 2015 Agency Legislative Bill Analysis from the Department of Children and Families prepared February 10, 2015.

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

By the Committee on Governmental Oversight and Accountability;
and Senator Hays

585-02411-15

2015552c1

1 A bill to be entitled
2 An act relating to public records; creating s.
3 420.6231, F.S.; defining the term "individual
4 identifying information"; creating a public records
5 exemption for individual identifying information of a
6 person contained in a Point-in-Time Count and Survey
7 or data in a Homeless Management Information System;
8 providing for retroactive application of the
9 exemption; specifying that the exemption does not
10 preclude the release of aggregate information;
11 providing for future review and repeal under the Open
12 Government Sunset Review Act; providing a statement of
13 public necessity; providing an effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. Section 420.6231, Florida Statutes, is created
18 to read:

19 420.6231 Individual identifying information in specified
20 homelessness surveys and databases; public records exemption.-

21 (1) As used in this section, the term "individual
22 identifying information" means information that directly or
23 indirectly identifies a specific person, can be manipulated to
24 identify a specific person, or can be linked with other
25 available information to identify a specific person.

26 (2) Individual identifying information of a person
27 contained in a Point-in-Time Count and Survey or data in a
28 Homeless Management Information System collected pursuant to 42
29 U.S.C. chapter 119, subchapter IV, and related regulations is

Page 1 of 3

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

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30 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
31 Constitution. This exemption applies to such information held
32 before, on, or after the effective date of this section.

33 (3) This section does not preclude the release, in the
34 aggregate, of information from a Point-in-Time Count and Survey
35 or data in a Homeless Management Information System which does
36 not disclose individual identifying information of a person.

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

41 Section 2. The Legislature finds that it is a public
42 necessity that individual identifying information of a person
43 contained in a Point-in-Time Count and Survey or data in a
44 Homeless Management Information System collected pursuant to 42
45 U.S.C. chapter 119, subchapter IV, and related regulations be
46 made exempt from public records requirements. The public release
47 of such sensitive information could lead to discrimination
48 against or ridicule of such individuals and could make them
49 reluctant to seek assistance for themselves or their family
50 members. The public release of such information may put affected
51 individuals at greater risk of injury as a significant
52 proportion of such individuals are survivors of domestic
53 violence or suffer from mental illness or substance abuse.
54 Additionally, public access to such information may put affected
55 individuals at a heightened risk for fraud and identity theft.
56 The harm from disclosing such information outweighs any public
57 benefit that can be derived from widespread and unfettered
58 access to such information. This exemption is narrowly drawn so

Page 2 of 3

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

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59 that aggregate information may be disclosed, but does not
60 disclose the individual identifying information of a person from
61 the Point-in-Time Count and Survey and data in a Homeless
62 Management Information System collected pursuant to 42 U.S.C.
63 chapter 119, subchapter IV, and related regulations.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

✓

COMMITTEES:
Appropriations Subcommittee on General Government, *Chair*
Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Environmental Preservation and Conservation
Ethics and Elections
Fiscal Policy

SENATOR ALAN HAYS
11th District

JOINT COMMITTEE:
Joint Select Committee on Collective Bargaining, *Alternating Chair*

MEMORANDUM

To: Senator David Simmons, Chair
Rules Committee
CC: John B. Phelps, Staff Director
Cissy DuBose, Committee Administrative Assistant

From: Senator D. Alan Hays

Subject: Request to agenda SB 552 – Public Records/Homelessness Surveys and Databases

Date: March 17, 2015

I respectfully request that you agenda the above referenced bill at your earliest convenience. If you have any questions regarding this legislation, I welcome the opportunity to meet with you one-on-one to discuss it in further detail. Thank you so much for your consideration of this request.

Sincerely,

Handwritten signature of D. Alan Hays in cursive.

D. Alan Hays, DMD
State Senator, District 11

REPLY TO:

- 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
- 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
- 685 West Montrose Street, Suite 210, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/26/15

Meeting/Date

552

Bill Number (if applicable)

Topic SB 552 - Guardianship Proceedings

Amendment Barcode (if applicable)

Name Bryan Cherry

Job Title Lobbyist

Address 205 S. Adams St.

Street

Phone (850) 205-0885

Tallahassee

FL.

32301

City

State

Zip

Email

Speaking: For Against Information

Waive Speaking: In Support Against

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

Representing

FL. Coalition for the homeless
~~Aging Solutions & Office of the Public Guardian 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.

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 Rules

BILL: CS/CS/SB 182

INTRODUCER: Governmental Oversight and Accountability Committee; Higher Education Committee and Senator Hays

SUBJECT: Public Records and Meetings/Postsecondary Education Executive Search

DATE: March 25, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Scott</u>	<u>Klebacha</u>	<u>HE</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>Scott</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 182 creates exemptions from Florida's public records and open meetings laws for any identifying information of an applicant for state university or Florida College System (FCS) institution president, provost, or dean. The bill provides that identifying information of an applicant is exempt from public records requirements. The bill also closes meetings where applicants and potential applicants are discussed. Meetings held for the purpose of establishing the qualifications of potential applicants or formulating the compensation framework to be offered to applicants will continue to be public. No later than 30 days before a final action or vote is taken on hiring finalists, information and meetings related to the finalists will be subject to public records and open meetings laws.

As required by the Open Government Sunset Review Act, the bill provides for repeal of the exemptions on October 2, 2020, unless reviewed and saved from repeal by the Legislature. The bill also includes a statement of public necessity as required by the State Constitution.

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

II. Present Situation:

Public Records and Open Meetings Requirements

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

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

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

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(b).

³ FLA. CONST., art. I, s. 24(b).

⁴ Chapter 119, F.S.

⁵ Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, F.S.

⁶ Section 286.011, F.S.

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

⁸ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹¹ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹²

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

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁴
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁵ or
- It protects trade or business secrets.¹⁶

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

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

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

¹¹ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

¹² Section 119.15(3), F.S.

¹³ Section 119.15(6)(b), F.S.

¹⁴ Section 119.15(6)(b)1., F.S.

¹⁵ Section 119.15(6)(b)2., F.S.

¹⁶ Section 119.15(6)(b)3., F.S.

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

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

¹⁸ FLA. CONST., art. I, s. 24(c).

¹⁹ Section 119.15(7), F.S.

State University and Florida College Systems

Board of Governors and State University Boards of Trustees

The Board of Governors (BOG) has the authority to regulate the State University System pursuant to s. 7(d), Article IX of the State Constitution and the Florida Statutes.²⁰ The BOG may develop procedures for adopting regulations to implement its constitutional duties.²¹

Each state university is administered by a board of trustees, which is subject to public record and open meetings laws.²² The BOG establishes the powers and duties of the boards of trustees and may delegate its constitutional or statutory powers and duties to the boards of trustees as its designee.²³ The BOG establishes the personnel system for all state university employees and confirms the selection and reappointment of presidents by state university boards of trustees.²⁴

State Board of Education and Florida College System Institution Boards of Trustees

The Legislature created the Florida College System consisting of institutions²⁵ governed by boards of trustees.²⁶ The State Board of Education establishes the standards and guidelines for Florida College System (FCS) institutions.²⁷

Each board of trustees is authorized to establish the personnel program for all employees of an FCS institution, including the president.²⁸ The established guidelines for the personnel program may include the recruitment, selection, or reappointment of personnel.²⁹ An FCS institution's board of trustees is authorized to appoint, suspend, or remove the president and may also appoint a search committee for the purpose of filling positions.³⁰

FSC institutions normally establish search committees for filling vacant president, provost and dean positions.³¹ The search committees may also utilize consultants to aid them in their search. Documentation held by a search committee or its consultants are public records, and all meetings of the search committee are open and noticed to the public.

²⁰ Sections 20.155 and 1001.70-1001.706, F.S. See s. 1001.705(a) and (d), F.S., defining the terms "Board of Governors" and "state universities" as used in the Florida K-20 Education Code.

²¹ Section 1001.706(2), F.S.

²² FLA. CONST. art. IX, s. 7(b) and (c); s. 1001.72(2), F.S.

²³ FLA. CONST. art. IX, s. 7(c); s. 1001.706(2)(b), F.S.

²⁴ Sections 1001.705(2)(k) and 1001.706(6)(a), F.S.

²⁵ See s. 1000.21(3), F.S., for a definition and list of each "Florida College System institution." Such institutions constitute political subdivisions of the state operated by boards of trustees. See s. 1004.67 and ss. 1001.61-1001.64, F.S.

²⁶ Sections 1001.60, 1001.61(1) and (2), and 1001.64(2), F.S.; See Ch. 2008-52, s. 2, Laws of Fla.; See also, s. 20.15(7), F.S.

²⁷ FLA. CONST. art. IX, s. 2; ss. 20.15(1), (2), and (5); and ss. 1001.02(1) and (6), F.S.

²⁸ Section 1001.64(18), F.S.; See s. 1001.02(6)(a), F.S.

²⁹ Section 1001.64(18), F.S.

³⁰ Section 1001.64(19), F.S.

³¹ 2015 Legislative Bill Analysis from the State University System of Florida, Board of Governors for Bill Number SB 182, on file with the Committee on Education Pre-K-12.

III. Effect of Proposed Changes:

CS/CS/SB 182 creates exemptions from Florida's public records and open meetings laws for the identifying information of any individual who applies for president, provost, or dean at a state university or Florida College System (FCS) institution.

The bill makes the identities of applicants for president, provost, or dean at a state university or FCS exempt from public records and open meetings laws. Identifying information of an applicant contained in records are exempt from public disclosure. Any portion of a meeting at which potential applicants are identified or vetted are closed to the public. Any portion of a meeting which would disclose the identity of an applicant are also closed to the public. All closed meetings must be noticed to the public and recorded. No portion of the closed meeting may be off the record and the recording of a closed meeting is exempt from public disclosure. The bill provides that all records and recordings are exempt (and not confidential and exempt)³², the records custodian will have the discretion to release protected information if necessary.

The bill provides that if the purpose of a meeting is to discuss the qualifications or compensation framework for potential applicants, the meeting will be noticed and open to the public.

Once a group of finalists is established, the identifying information of the finalists will be subject to public disclosure 30 days before the final action or vote is taken. Likewise, 30 days before a final action or vote is taken, all meetings must be noticed and open to the public. The identities of anyone who was not a finalist will remain exempt from public disclosure.

As required by the State Constitution, the bill provides a statement of public necessity stating that protecting the names and other personal information of applicants for state university and FCS institution president, provost, or dean will encourage qualified candidates to apply without the fear of reprisal from their current employers. The public necessity statement provides that the Legislature finds that the failure to have these exemptions in place could have a chilling effect on the number and quality of the pool of candidates for president, provost or dean.

Also, as required by the Open Government Sunset Review Act, the bill provides for the repeal of the exemptions on October 2, 2020, unless reviewed and saved from repeal by the Legislature.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members of each house of the Legislature for final passage of a bill that creates an exemption for

³² See footnote 8.

public records or open meetings. The bill creates exemptions; thus, a two-thirds vote of the members of each house of the Legislature is required for final passage of the bill.

Article I, s. 24(c) of the State Constitution requires that a bill creating an exemption for public records or open meetings contain a public necessity statement justifying the exemption. The bill contains a public necessity statement.

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill creates section 1004.097 of the Florida Statutes.

IX. **Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Governmental Oversight and Accountability on March 4, 2015:

The CS/CS makes the following changes:

- Reorganizes the bill for clarity.
- Replaces “personal identifying information” with identifying information.
- Provides that records are exempt and not confidential and exempt.
- Provides that closed meetings must be recorded and makes the recording exempt from public records.

- Clarifies that the records of finalists and meetings regarding finalists must be open to the public 30 days before a final vote or action is taken.
- Conforms the public necessity statement to the rest of the bill.

CS by Higher Education on February 16, 2015:

The committee substitute maintains the original substance of SB 182 with the following modifications:

- Clarifies that personal identifying information includes the name of any applicant for president, provost, or dean of a state university or Florida College System institution.
- Clarifies that any portion of a meeting held for the purpose of identifying and vetting applicants is exempt from Article I, s. 24(b) of the State Constitution and s. 286.011(1), F.S.
- Adds a provision requiring that reasonable notice be provided for any portion of a meeting that is otherwise exempt from Article I, s. 24(b) of the State Constitution and s. 286.011(1), F.S.

B. Amendments:

None.



786806

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/19/2015	.	
	.	
	.	
	.	

The Committee on Rules (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete lines 32 - 104

and insert:

1004.097 Information identifying applicants for president or provost at state universities or Florida College System institutions; public records exemption; public meetings exemption.-

(1) Any identifying information of an applicant for president or provost of a state university or Florida College System institution is exempt from s. 119.07(1) and s. 24(a),



786806

12 Art. I of the State Constitution.

13 (2) (a) Any portion of a meeting held for the purpose of
14 identifying or vetting a potential applicant for president or
15 provost of a state university or Florida College System
16 institution is exempt from s. 286.011 and s. 24(b), Art. I of
17 the State Constitution.

18 (b) Any portion of a meeting that would disclose
19 identifying information of an applicant for president or provost
20 of a state university or Florida College System institution is
21 exempt from s. 286.011 and s. 24(b), Art. I of the State
22 Constitution.

23 (c) Any portion of a meeting that is closed pursuant to
24 paragraph (a) or paragraph (b) must be reasonably noticed. A
25 complete recording must be made of any closed portion of a
26 meeting, and a closed portion of a meeting may not be held off
27 the record. The recording of the closed portion of a meeting is
28 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
29 Constitution.

30 (d) Any portion of a meeting held for the purposes of
31 establishing the qualifications of potential applicants or
32 establishing the compensation framework to be offered to
33 potential applicants must be open to the public and is subject
34 to s. 286.011 and s. 24(b), Art. I of the State Constitution.

35 (3) No later than 30 days before the date of the meeting at
36 which a final action or vote is to be taken regarding the
37 employment of an applicant, identifying information of the
38 applicants on whom a final action or vote is to be taken is no
39 longer exempt as provided under subsections (1) and (2).

40 (4) This section is subject to the Open Government Sunset



786806

41 Review Act in accordance with s. 119.15 and shall stand repealed
42 on October 2, 2020, unless reviewed and saved from repeal
43 through reenactment by the Legislature.

44 Section 2. The Legislature finds that it is a public
45 necessity that any identifying information of an applicant for
46 president or provost of a state university or Florida College
47 System institution be exempt from s. 119.07(1), Florida
48 Statutes, and s. 24(a), Article I of the State Constitution. The
49 Legislature also finds that any portion of any meeting which is
50 held for the purpose of identifying or vetting applicants for
51 president or provost of a state university or Florida College
52 System institution or which would disclose identifying
53 information of an applicant be exempt from s. 286.011, Florida
54 Statutes, and s. 24(b), Article I of the State Constitution.
55 Identifying information of finalists is no longer exempt from
56 public records and public meetings requirements 30 days before
57 the date of the meeting at which a final action or vote occurs
58 regarding the hiring of a president or provost. The task of
59 filling the position of president or provost of a state
60 university or Florida College System institution is often
61 conducted by an executive search committee. Many, if not most,
62 applicants for such a position are currently employed at another
63 job at the time they apply and disclosure of their applications
64 could jeopardize their current positions. These exemptions from
65 public records and public meeting requirements are needed to
66 ensure that the executive search committee can avail itself of
67 the most experienced and desirable pool of qualified applicants
68 from which to fill the position of president or provost of a
69 state university or Florida College System institution. If



786806

70 potential applicants fear the possibility of losing their
71 current employment as a consequence of attempting to progress
72 along their chosen career path or seeking different and more
73 rewarding employment, failure to have these exemptions in place
74 could have a chilling effect on the number and quality of
75 applicants available to fill the position of president or
76 provost of a state university or Florida College System
77 institution.

78
79 ===== T I T L E A M E N D M E N T =====

80 And the title is amended as follows:

81 Delete lines 4 - 12

82 and insert:

83 from public records requirements for identifying
84 information of an applicant for president or provost
85 of a state university or Florida College System
86 institution; providing an exemption from public
87 meeting requirements for any portion of a meeting
88 which is held for the purpose of identifying or
89 vetting, or which would otherwise disclose identifying
90 information of, potential applicants for president or
91 provost; requiring that closed meetings be



576962

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/19/2015	.	
	.	
	.	
	.	

The Committee on Rules (Richter) recommended the following:

Senate Amendment

1
2
3 Delete line 66
4 and insert:
5 longer exempt as provided under subsections (1) and (2).

By the Committees on Governmental Oversight and Accountability;
and Higher Education; and Senator Hays

585-01921-15

2015182c2

1 A bill to be entitled
2 An act relating to public records and meetings;
3 creating s. 1004.097, F.S.; providing an exemption
4 from public records requirements for identifying
5 information of an applicant for president, provost, or
6 dean of a state university or Florida College System
7 institution; providing an exemption from public
8 meeting requirements for any portion of a meeting
9 which is held for the purpose of identifying or
10 vetting, or which would otherwise disclose identifying
11 information of, potential applicants for president,
12 provost, or dean; requiring that closed meetings be
13 reasonably noticed and be recorded; providing that the
14 recordings of closed portions of a meeting are exempt
15 from public records requirements; specifying that any
16 portion of a meeting held for the purpose of
17 establishing the qualifications of, or any
18 compensation framework to be offered to, potential
19 applicants are subject to public meetings
20 requirements; specifying that the identifying
21 information of final applicants is no longer exempt
22 from public records and public meetings requirements
23 for a minimum period before a final decision or vote;
24 providing for future legislative review and repeal of
25 the exemptions; providing a statement of public
26 necessity; providing an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:
29

Page 1 of 4

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

585-01921-15

2015182c2

30 Section 1. Section 1004.097, Florida Statutes, is created
31 to read:
32 1004.097 Information identifying applicants for president,
33 provost, or dean at state universities or Florida College System
34 institutions; public records exemption; public meetings
35 exemption.-
36 (1) Any identifying information of an applicant for
37 president, provost, or dean of a state university or Florida
38 College System institution is exempt from s. 119.07(1) and s.
39 24(a), Art. I of the State Constitution.
40 (2) (a) Any portion of a meeting held for the purpose of
41 identifying or vetting a potential applicant for president,
42 provost, or dean of a state university or Florida College System
43 institution is exempt from s. 286.011 and s. 24(b), Art. I of
44 the State Constitution.
45 (b) Any portion of a meeting that would disclose
46 identifying information of an applicant for president, provost,
47 or dean of a state university or Florida College System
48 institution is exempt from s. 286.011 and s. 24(b), Art. I of
49 the State Constitution.
50 (c) Any portion of a meeting that is closed pursuant to
51 paragraph (a) or paragraph (b) must be reasonably noticed. A
52 complete recording must be made of any closed portion of a
53 meeting, and a closed portion of a meeting may not be held off
54 the record. The recording of the closed portion of a meeting is
55 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
56 Constitution.
57 (d) Any portion of a meeting held for the purposes of
58 establishing the qualifications of potential applicants or

Page 2 of 4

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

585-01921-15

2015182c2

59 establishing the compensation framework to be offered to
 60 potential applicants must be open to the public and is subject
 61 to s. 286.011 and s. 24(b), Art. I of the State Constitution.

62 (3) No later than 30 days before the date of the meeting at
 63 which a final action or vote is to be taken regarding the
 64 employment of an applicant, identifying information of the
 65 applicants on whom a final action or vote is to be taken is no
 66 longer exempt as provided under subsection (2).

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

71 Section 2. The Legislature finds that it is a public
 72 necessity that any identifying information of an applicant for
 73 president, provost, or dean of a state university or Florida
 74 College System institution be exempt from s. 119.07(1), Florida
 75 Statutes, and s. 24(a), Article I of the State Constitution. The
 76 Legislature also finds that any portion of any meeting which is
 77 held for the purpose of identifying or vetting applicants for
 78 president, provost, or dean of a state university or Florida
 79 College System institution or which would disclose identifying
 80 information of an applicant be exempt from s. 286.011, Florida
 81 Statutes, and s. 24(b), Article I of the State Constitution.
 82 Identifying information of finalists is no longer exempt from
 83 public records and public meetings requirements 30 days before
 84 the date of the meeting at which a final action or vote occurs
 85 regarding the hiring of a president, provost, or dean. The task
 86 of filling the position of president, provost, or dean of a
 87 state university or Florida College System institution is often

Page 3 of 4

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

585-01921-15

2015182c2

88 conducted by an executive search committee. Many, if not most,
 89 applicants for such a position are currently employed at another
 90 job at the time they apply and disclosure of their applications
 91 could jeopardize their current positions. These exemptions from
 92 public records and public meeting requirements are needed to
 93 ensure that the executive search committee can avail itself of
 94 the most experienced and desirable pool of qualified applicants
 95 from which to fill the position of president, provost, or dean
 96 of a state university or Florida College System institution. If
 97 potential applicants fear the possibility of losing their
 98 current employment as a consequence of attempting to progress
 99 along their chosen career path or seeking different and more
 100 rewarding employment, failure to have these exemptions in place
 101 could have a chilling effect on the number and quality of
 102 applicants available to fill the position of president, provost,
 103 or dean of a state university or Florida College System
 104 institution.

105 Section 3. This act shall take effect October 1, 2015.

Page 4 of 4

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

03/26/2015
Meeting Date

SB 0182
Bill Number (if applicable)

Topic PUBLIC REC/MTR - HUMAN ED. "SECRECY BILL"

Amendment Barcode (if applicable)

Name ROBERT CHAPMAN

Job Title STATE EMPLOYEE

Address 41219 LYNBROOK DRIVE

Phone

Street ZEPHYRUS FLORIDA 33540
City State Zip

Email

Speaking: For Against Information

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

Representing SELF, I

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/26/15
Meeting Date

SB 182
Bill Number (if applicable)

Topic Public Records + Mtgs / Postsecondary Edu Exec Search

Amendment Barcode (if applicable)

Name TED PARSONS

Job Title Retired Postal Worker

Address 221 Maplecrest Cir
Street

Phone 561-324-6636

Jupiter FL 33458
City State Zip

Email ted@cybercoast.com

Speaking: For Against Information

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

Representing Self

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)

3-26-15

182

Meeting Date

Bill Number (if applicable)

Topic Public Records exemption

Amendment Barcode (if applicable)

Name Jeremiah Tattersall

Job Title Community Organizer

Address 206 NE 2nd Ave

Phone 352-222-1991

Street

Gainesville FL 32601

Email Jeremiah.Tattersall@gmail.com

City

State

Zip

Speaking: For Against Information

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

Representing Myself

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)

3/26/15

Meeting Date

0182

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Jason Smith

Job Title Cable Splicer

Address 6603 E. Chelsea Street

Phone

Tampa FL 33610

Email

Speaking: For Against Information

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

Representing

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

3/26/15

Meeting Date

0182

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Val Smith

Job Title teacher

Address 12375 Eagle Chase

Phone

Street

City NPR State FL Zip 34615

Email

Speaking: For Against Information

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

Representing self

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)

3/26/2015

Meeting Date

SB 0182

Bill Number (if applicable)

Topic Public Records & Meetings / Postsecondary

Amendment Barcode (if applicable)

Name Cheryl Vinson Ed. Exec.

Job Title

Address 24422 Crosscut Rd

Phone

Street

Lot 2

FL

33559

City

State

Zip

Email VinsonCheryl@gmail.com

Speaking: For Against Information

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

Representing self

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)

3-26-15 Meeting Date

5182 Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Mark A Boston

Job Title CHAW-FLARA- Retired

Address 579 Matties Blvd

Phone 772-224-8237

Jensen Beach, FL 34957

Email

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

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

Representing AIC-CLB

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

Lobbyist registered with Legislature: Yes [] No [X]

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)

3-26-15

Meeting Date

182

Bill Number (if applicable)

Topic Executive Searches - Sunshine Exemption

Amendment Barcode (if applicable)

Name Marshall Ogletree

Job Title Interim EXECUTIVE DIRECTOR

Address 306 E. Park Avenue

Phone (850) 224-8220

Tallahassee FL 32301

Email marshall.ogletree@floridaea.org

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

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

Representing United Faculty of Florida

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

Lobbyist registered with Legislature: Yes [X] No []

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/26/15
Meeting Date

SB 182
Bill Number (if applicable)

Topic PUBLIC RECORDS / POST SECONDARY EXEMPT

Amendment Barcode (if applicable)

Name DAVID KENNEY

Job Title PUBLIC EMPLOYEE

Address 832 SW 11 COURT
Street

Phone 239 292 3396

CAPE CORAL FL 33991
City State Zip

Email fsaltbass@gmail.com

Speaking: For Against Information

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

Representing SELF

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)

3/26/15

Meeting Date

0182

Bill Number (if applicable)

Topic Public Records and Meetings / Postsecondary Ed.

Amendment Barcode (if applicable)

Name Steve Myers

Job Title _____

Address 1180 43RD COURT SW

Street

Phone _____

Vero Beach

City

FL

State

32968

Zip

Email _____

Speaking: For Against Information

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

Representing SELF

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)

March 28, 2015
Meeting Date

303 0182
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Derek Moore

Job Title _____

Address 362 NW Granddeer ST
Street

Phone _____

Port Saint Lucie FL 34983
City State Zip

Email _____

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/26/15

Meeting Date

SB 182

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Vinny DelGuercio

Job Title

Address 1174 Walden Rd.

Phone

Street

Tallahassee, FL 32317

Email

City

State

Zip

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/26

Meeting Date

SB 0182

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Donovan Casey

Job Title Student

Address 2153 W. Oak Ridge Rd

Phone 2054 407-852-3977

Street

Orlando

FL

32809

City

State

Zip

Email

Speaking: For Against Information

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

Representing IUPAT Painters Union

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-26-2015
Meeting Date

SBO 182
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Andrew Bott

Job Title Market Analyst

Address 2153 W. Oak Ridge Rd
Street
Orlando FL 32809
City State Zip

Phone 407-852-3977

Email _____

Speaking: For Against Information

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

Representing IUPAT Painters Union

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)

0182

Bill Number (if applicable)

Meeting Date

Topic PUBLIC RECORDS

Amendment Barcode (if applicable)

Name JOHN COSKEY

Job Title _____

Address 12621 BAY BREEZE CT.

Phone _____

Street CLERMONT FL 34711

Email _____

City _____ State _____ Zip _____

Speaking: For Against Information

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

Representing SELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-26-2015
Meeting Date

SB 182
Bill Number (if applicable)

Topic PUBLIC RECORDS

Amendment Barcode (if applicable)

Name LES CANTRELL

Job Title _____

Address 200 RIVERBEND RD.
Street

Phone _____

ORMOND BEACH FL 32174
City State Zip

Email LCANTRELL2011@AOL.COM

Speaking: For Against Information

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

Representing SELF

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)

26 March 15
Meeting Date

SB 182
Bill Number (if applicable)

Topic SECURITY Bill

Amendment Barcode (if applicable)

Name BRYANT WARDLAW

Job Title _____

Address 2815 NW 8th CT
Street

Phone 954 479 0532

FORT Lauderdale, FL 33311
City State Zip

Email BWR122@yahoo.com

Speaking: For Against Information

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

Representing SELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-26-15

Meeting Date

SB 182

Bill Number (if applicable)

Topic Public Records and meetings/Postsecondary

Amendment Barcode (if applicable)

Name Willie Bailey

Job Title _____

Address 8681 N.W. 3rd Street

Street

Phone 305-903-7811

Pembroke Pines

City

FL

State

33024

Zip

Email _____

Speaking: For Against Information

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

Representing Self

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)

March 26, 2015
Meeting Date

SB 182
Bill Number (if applicable)

Topic Public Records and Meetings

Amendment Barcode (if applicable)

Name Josian Scurlock

Job Title J

Address 5940 NW 16th PLACE, APT # 3
Street

Phone 954-829-0248

SUNRISE, FL 33313
City State Zip

Email mylove4himalways@gmail.com

Speaking: For Against Information

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

Representing SELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/26/2015
Meeting Date

SB182
Bill Number (if applicable)

Topic Public Records and Meetings/Postsecondary

Amendment Barcode (if applicable)

Name Ernestine Hampton

Job Title Transit Operator

Address 5205 Botany Ct.
Street

Phone 407-567-8958

Orlando, FL 32811
City State Zip

Email delancy2008@yahoo.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

03/26/2015
Meeting Date

SB 182
Bill Number (if applicable)

Topic Public Records and Meetings / Past secondary Amendment Barcode (if applicable)

Name Tammi King

Job Title BUS Operator

Address 2158 West Oakridge Road Apt. #C
Street
Orlando, Florida 32809
City State Zip

Phone (407) 283-5548

Email Tammi King 41@yahoo.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

3/26/2015
Meeting Date

186
Bill Number (if applicable)

Topic KEEPING THE SUNSHINE

Amendment Barcode (if applicable)

Name GAIL MARIE PERRY

Job Title CHAIR

Address PO BOX 1766
Street

Phone 954 830 4053

POMPANO BEACH FLORIDA 33061
City State Zip

Email workingfolk@hotmail.com

Speaking: For Against Information

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

Representing COMMUNICATIONS WORKERS OF AMERICA COUNCIL OF FLORIDA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/26/15
Meeting Date

SB 182
Bill Number (if applicable)

Topic Public records / universities

Amendment Barcode (if applicable)

Name Rich Templin

Job Title _____

Address 135 S. Monroe

Phone 224-6926

Street

Tallahassee

FL

32304

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Florida AFL-CIO

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)

3-26-15

Meeting Date

182

Bill Number (if applicable)

Topic PUBLIC RECORDS

Amendment Barcode (if applicable)

Name ANTHONY MARCIANO

Job Title SERGEANT (B50)

Address 10221 DORCHESTER DR.

Phone 954-632-6878

BOCA RATON FL 33428
City State Zip

Email _____

Speaking: For Against Information

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

Representing MYSELF

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)

03 26 15
Meeting Date

182
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Jo Anne Alvarez

Job Title 911 Operator

Address 16659 SW 6 Street

Phone 954 629 9970

Pembroke Pines FL 33027
City State Zip

Email K9jake@bellsouth.net

Speaking: For Against Information

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

Representing myself

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)

MARCH 26, 2015
Meeting Date

0182
Bill Number (if applicable)

Topic ^{meetings/post} Public Records and Secondary EDUCATION EXECUTIVES

Amendment Barcode (if applicable)

Name FRANK BULGER

Job Title Sergeant

Address 16112 Prestwich Drive E.

Phone 561-373-3064

Street

LOXAHATCHEE FL 33470

Email FRANK_Bulger@Sheriff.orc

City

State

Zip

Speaking: For Against Information

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

Representing SELF

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)

3-26-15

Meeting Date

SB 182

Bill Number (if applicable)

Topic Secrecy

Amendment Barcode (if applicable)

Name Enrique Aboy

Job Title truck Driver

Address 154 Pinewood Circle

Phone 407-591-9755

Street

Kissimmee FL 34743

City

State

Zip

Email Tennessee26live@gmail.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

3/26/15

Meeting Date

SB 182

Bill Number (if applicable)

Public Records

Topic Secrecy Bill Post-Secondary

Amendment Barcode (if applicable)

Name Teresa Skales

Job Title Self

Address 4790 SW Paul Ave #8

Phone (904) 478-4004

Street

Dania, FL 33328

Email teresa.skales@gmail.com

City

State

Zip

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

3-26-15
Meeting Date

182
Bill Number (if applicable)

Topic Executive Searches - Sunshine Exemption

Amendment Barcode (if applicable)

Name Jennifer Proffitt

Job Title President, United Faculty of Florida - FSU Chapter

Address 307 Chestnut Dr

Phone 5979615

Street

Tall

City

FL

State

32301

Zip

Email jennifer.proffitt@gmail.com

Speaking: For Against Information

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

Representing FSU Chapter - United Faculty of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-26-15

Meeting Date

SB 0182

Bill Number (if applicable)

Topic Public Records and Meetings

Amendment Barcode (if applicable)

Name Warren Blake

Job Title Sign Tech II

Address 3817 Blechnum Fern Ln
Street

Phone (941) 355-6342

Sarasota
City

FL
State

34235
Zip

Email

Speaking: For Against Information

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

Representing Teamsters Local 173

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)

3/26/15

Meeting Date

SB0182

Bill Number (if applicable)

Topic Public Records and Meetings

Amendment Barcode (if applicable)

Name Susan Blake

Job Title Infrastructure Information Coordinator

Address 3517 Blechnum Fern Lane

Phone (941) 355-6342

Street

Sarasota

City

FL

State

34235

Zip

Email blakesonboard@aol.com

Speaking: For Against Information

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

Representing Teamsters Local 173

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)

3/26/15

Meeting Date

SB 0182

Bill Number (if applicable)

Topic Public Records & Meetings

Amendment Barcode (if applicable)

Name John Hayes

Job Title Control Systems Tech II

Address 5528 Cedarwood Dr. Street

Phone 941-356-3803

Sarasota FL 34232 City State Zip

Email jhayes426@verizon.net

Speaking: For Against Information

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

Representing Teamsters Local 173

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/26

Meeting Date

SB182

Bill Number (if applicable)

Topic Sunship

Amendment Barcode (if applicable)

Name Matthew Luter

Job Title Professor

Address FSU

Phone _____

Street

City

State

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against

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

Representing United Faculty of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 672

INTRODUCER: Senator Dean

SUBJECT: Service of Process

DATE: March 25, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
3.	<u>Brown</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 672 authorizes a process server to post a criminal witness subpoena commanding a witness to appear for a deposition at a witness's residence if one attempt to serve the subpoena has failed. Under existing law, a process server must make three attempts, at different times of the day or night on different dates, to serve a criminal witness subpoena before the subpoena may be posted at the witness's residence. These requirements for three attempts at service continue to apply to a criminal witness subpoena that commands a witness to appear.

II. Present Situation:

Service of Process

The role of a process server is to serve summons, subpoenas, and other forms of process in civil and criminal actions.¹ The term "to serve" means to make legal delivery of a notice or a pleading.² A summons is a writ or a process beginning a plaintiff's legal action and requiring a defendant to appear in court to answer the summons.³ A subpoena is a legal writ or order commanding a person to appear before a court or other tribunal.⁴ A subpoena can command a person to be present for a deposition or for a court appearance.

The sheriff of the county where the person is to be served is generally responsible for serving as process server. However, notice of the initial nonenforceable civil process, criminal witness subpoenas, and criminal summons may be delivered by a process server other than the sheriff—a special process server or a certified process server. Special process servers and certified process

¹ Sections 48.011 and 48.021, F.S.

² BLACK'S LAW DICTIONARY (10th ed. 2014).

³ BLACK'S LAW DICTIONARY (10th ed. 2014).

⁴ BLACK'S LAW DICTIONARY (10th ed. 2014).

servers must meet certain statutory conditions and appear on a list approved and maintained by the sheriff or the chief judge of a judicial circuit.⁵

A process server generally must effect service of process by personal service or substitute service. Typically these types of service occur by:

- Serving the person directly or by leaving a copy of a complaint, petition, or initial pleading or paper at the person's usual place of abode with a person who is 15 years old or older;
- Serving a person at his or her place of employment in a private area designated by the employer;
- Providing substitute service on a spouse if the cause of action is not an adversarial proceeding between the spouse and the person to be served, if the spouse requests service, and if the spouse and person to be served live together;
- Providing substitute service during regular hours at a business by leaving delivery with an employee or other person in charge if the person to be served is a sole proprietor and two attempts have been made to serve the owner.⁶

Service of process of witness subpoenas in criminal or civil cases is the same as provided above. However, service of process of witness subpoenas may be accomplished through United States mail for the following cases:

- Criminal traffic case;
- Misdemeanor case;
- Second degree felony; or
- Third degree felony.⁷

To serve a subpoena on a witness by mail, the subpoena must be sent to the last known address of the witness at least 7 days before the court appearance required in the subpoena. If a witness fails to appear in response to a subpoena served by mail, the court may not find the person in contempt of court.

A criminal witness subpoena may also be posted at the person's residence if the server has unsuccessfully attempted to serve the subpoena at least three times, at different times of the day or night on different dates.⁸ The process server must post the subpoena at least 5 days before the witness' required appearance.⁹

III. Effect of Proposed Changes:

This bill authorizes a process server to post a criminal witness subpoena commanding a witness to appear for a deposition at a witness's residence if one attempt to serve the subpoena has failed. Under existing law, a process server must make three attempts, at different times of the day or night on different dates, to serve a criminal witness subpoena before the subpoena may be posted

⁵ Sections 48.021(1) and 48.29, F.S.

⁶ Section 48.031(1) and (2), F.S.

⁷ Section 48.031(3)(a), F.S.

⁸ Section 48.031(3)(b), F.S.

⁹ Section 48.031(3)(b), F.S.

at the witness's residence. These requirements for three attempts at service continue to apply to a criminal witness subpoena that commands a witness to appear.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18, Fla. Const., provides that a mandate potentially exists if a law:

- Requires cities or counties to spend funds or take action requiring the expenditure of funds;
- Reduces the authority of cities or counties to raise revenues in the aggregate; or
- Reduces the percentage of a state tax shared with cities and counties in the aggregate.

This bill reduces from 3 to 1 the number of times a process server must fail to deliver subpoenas for depositions to witnesses before authorizing the posting of subpoenas. As such, the bill reduces costs for cities and counties. The bill does not impact the ability of a city or county to raise revenue. The bill also does not negatively impact the tax base of a city or county. Therefore, the bill does not appear to be a mandate.

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:

Defendants represented by private counsel in criminal cases bear the costs for service of process. As a result, this bill may reduce costs for those defendants.

Although an indigent defendant represented by the Office of the Public Defender does not pay up front for service of process on a witness for deposition, the cost may be included in a lien. This bill may reduce the amount of money placed on a lien for service of process costs.

C. Government Sector Impact:

The Florida Sheriff's Association will realize a cost savings as its process servers will need to attempt service only once before posting. This cost savings will occur because the fee charged by the sheriffs is a fixed fee that includes all attempts in a particular case.

The Office of the State Courts Administrator (OSCA) anticipates more show cause hearings for non-appearance, due to the bill making service of process for depositions easier. However, the OSCA cannot accurately determine a fiscal impact.¹⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 48.031 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 48.196 and 409.257.

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.

¹⁰ Office of the State Courts Administrator, *2015 Judicial Impact Statement for SB 672* (Feb. 20, 2015).

By Senator Dean

5-00578-15

2015672__

1 A bill to be entitled
 2 An act relating to service of process; amending s.
 3 48.031, F.S.; authorizing a criminal witness subpoena
 4 commanding a witness to appear for a deposition to be
 5 posted at the witness's residence by an authorized
 6 person if one attempt to serve the subpoena has
 7 failed; reenacting ss. 48.196(2) and 409.257(5), F.S.,
 8 to incorporate the amendment made to s. 48.031, F.S.,
 9 in references thereto; providing an effective date.
 10
 11 Be It Enacted by the Legislature of the State of Florida:
 12
 13 Section 1. Paragraph (b) of subsection (3) of section
 14 48.031, Florida Statutes, is amended to read:
 15 48.031 Service of process generally; service of witness
 16 subpoenas.-
 17 (3)
 18 (b) A criminal witness subpoena commanding the witness to
 19 appear for a court appearance may be posted by a person
 20 authorized to serve process at the witness's residence if three
 21 attempts to serve the subpoena, made at different times of the
 22 day or night on different dates, have failed. A criminal witness
 23 subpoena commanding the witness to appear for a deposition may
 24 be posted by a person authorized to serve process at the
 25 witness's residence if one attempt to serve the subpoena has
 26 failed. The subpoena must be posted at least 5 days before ~~prior~~
 27 ~~to~~ the date of the witness's required appearance.
 28 Section 2. Subsection (2) of s. 48.196 and subsection (5)
 29 of s. 409.257, Florida Statutes, are reenacted for the purpose

Page 1 of 2

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

5-00578-15

2015672__

30 of incorporating the amendment made by this act to s. 48.031,
 31 Florida Statutes, in references thereto.
 32 Section 3. This act shall take effect July 1, 2015.

Page 2 of 2

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

✓



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Environmental Preservation and
Conservation, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on General
Government
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Community Affairs

SENATOR CHARLES S. DEAN, SR.
5th District

March 16, 2015

The Honorable David Simmons
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Simmons,

I respectfully request you place Senate Bill 672, relating to Service of Process, on your Rules Committee agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

A handwritten signature in black ink that reads "Charles S. Dean".

Charles S. Dean
State Senator District 5

cc: John B. Phelps, Staff Director

REPLY TO:

- 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
- 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
- 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Environmental Preservation and
Conservation, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on General
Government
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Community Affairs

SENATOR CHARLES S. DEAN, SR.
5th District

March 23, 2015

The Honorable David Simmons
400 Senate Office Building
404 South Monroe St.
Tallahassee, FL 32399-1100

3/26/15
O/C
JMS

Dear Chairman Simmons:

Thank you for allowing Senate Bill 672, relating to Service of Process, to be placed on your agenda. Unfortunately, I will be unable to attend the Committee meeting and would like to request your permission to allow my aide, Chase Daniels, to present this bill in my place.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Charles S. Dean
State Senator, District 5

Cc: John B. Phelps, Staff Director

REPLY TO:

- 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
- 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
- 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

Senate's Website: www.flisenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-21-2015
Meeting Date

SB 672
Bill Number (if applicable)

Topic Service of Process

Amendment Barcode (if applicable)

Name JAY TOTH

Job Title Sgt. Volusia County Sheriff's Office

Address 123 W. Indiana Ave
Street

Phone 386-736-5961

Deland FL 32720
City State Zip

Email Jtoth@VCSO.US

Speaking: For Against Information

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

Representing FLORIDA SHERIFF'S ASSN.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

March 26, 2015

Meeting Date

672

Bill Number (if applicable)

Topic Service of Process

Amendment Barcode (if applicable)

Name Sheldon Gusky

Job Title Executive Director, Florida Public Defender Association, Inc.

Address 103 North Gadsden Street

Phone 850.545.9691

Street

Tallahassee

Florida

32301

Email sgusky@fpda.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Public Defender Association, 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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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 Rules

BILL: SB 7032

INTRODUCER: Health Policy Committee

SUBJECT: Public Records/Reports of a Deceased Child

DATE: March 25, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Looke</u>	<u>Stovall</u>		HP Submitted as Committee Bill
1.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2.	<u>Looke</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 7032 continues and amends the current public records and public meetings exemptions for certain identifying information held by the State Child Abuse Death Review Committee or a local child abuse death review committee to reflect changes to the child welfare laws enacted during the 2014 Session. Specifically, the bill extends the exemption to cases reviewed by a committee where the death was determined not to be the result of abuse or neglect and limits the exemption for cases involving verified abuse or neglect. Identifying information related to deaths from verified abuse or neglect, with the exception of surviving siblings, is now posted on the Child Fatality Prevention Website of the Department of Children and Families. As such, confidentiality under s. 383.412, F.S., is no longer warranted for other family members or others living in the home. The bill also authorizes release of confidential information to a governmental agency in furtherance of its duties or a person or entity for research or statistical purposes.

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

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

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

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on

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

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

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

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹¹ The OGSR provides that an exemption automatically repeals on

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(b).

³ FLA. CONST., art. I, s. 24(b).

⁴ Chapter 119, F.S.

⁵ Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, F.S.

⁶ Section 286.011, F.S.

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

⁸ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ Section 119.15, F.S. Section 119.15(4)(b), F.S. provides that an exemption is considered to be substantially amended if it 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.

October 2 of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹²

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹³ An exemption serves an identifiable purpose if it meets one of the following criteria:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁴
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁵ or
- It protects trade or business secrets.¹⁶

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.¹⁷

The OGSR also requires specific questions to be considered during the review process.¹⁸ 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.¹⁹ 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.²⁰

Child Abuse Death Review

Current law establishes the State Child Abuse Death Review Committee and local child abuse death review committees within the Department of Health.²¹ The committees must review the facts and circumstances of all deaths of children from birth through age 18 that occurred in Florida and are reported to the central abuse hotline of the Department of Children and

¹² Section 119.15(3), F.S.

¹³ Section 119.15(6)(b), F.S.

¹⁴ Section 119.15(6)(b)1., F.S.

¹⁵ Section 119.15(6)(b)2., F.S.

¹⁶ Section 119.15(6)(b)3., F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ 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?

¹⁹ FLA. CONST., art. I, s. 24(c).

²⁰ Section 119.15(7), F.S.

²¹ Section 383.402, F.S.

Families.²² The state committee must prepare an annual statistical report on the incidence and causes of death resulting from reported child abuse in the state. The report must include recommendations for:

- State and local action, including specific policy, procedural, regulatory, or statutory changes; and
- Any other recommended preventive action.²³

The law provides the committees with broad access to any information related to the deceased child, or his or her family, that is necessary to carry out its duties, including:

- Medical, dental, or mental health treatment records;
- Records in the possession of a state agency or political subdivision; and
- Records of law enforcement which are not part of an active investigation.²⁴

Records typically obtained by the committees include, among others: death and birth certificates; medical examiner report; law enforcement report; criminal history reports; first responder reports; physician, hospital, and/or substance abuse and mental health records; and the Department of Children and Families case file.²⁵

Exemptions Under Review

Current law provides a public records and a public meetings exemption for the State Child Abuse Death Review Committee and local child abuse death review committees.²⁶

Information that reveals the identity of the surviving siblings, family members, or others living in the home of a deceased child who is the subject of review by the state committee or a local committee is confidential and exempt from public records requirements.²⁷ In addition, confidential or exempt information obtained by the state committee or a local committee retains its confidential or exempt status.²⁸ The state and local committees may share with each other any relevant confidential or exempt information regarding case reviews.²⁹ Any person who knowingly or willfully violates the public records exemption commits a misdemeanor of the first degree.^{30,31}

Portions of meetings of the State Child Abuse Death Review Committee or a local committee at which confidential and exempt information is discussed are exempt from public meetings

²² Section 383.402(1), F.S.

²³ Section 383.402(3)(c), F.S.

²⁴ Section 383.412(8) & (9), F.S.

²⁵ Email from Bryan Wendel, Office of Legislative Planning, Florida Dept. of Health, (August 25, 2014) (on file with the Senate Committee on Health Policy).

²⁶ Section 383.412, F.S.

²⁷ Section 383.412(2)(a), F.S.

²⁸ Section 383.412(2)(b), F.S.

²⁹ Section 383.412(4), F.S.

³⁰ Section 383.412(5), F.S.

³¹ A misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year and a fine not to exceed \$1,000. *See* 775.082(4)(a) and 775.083(1)(d), F.S.

requirements.³² Any portion of a closed meeting must be recorded and the recordings maintained by the state committee or local committee. No portion of the closed meeting may be off the record. The recording of a closed meeting is exempt from public records requirements.³³

Pursuant to the Open Government Sunset Review Act, these exemptions will repeal on October 2, 2015, unless reenacted by the Legislature.³⁴

The public records exemption was initially enacted by the Legislature in 1999 and amended and reenacted, thereafter in 2005 and 2010.^{35,36} The stated purpose for the exemption was “to increase the potential for reduced morbidity or mortality of children and reduce the potential for poor outcomes for children, thereby improving the overall quality of life for children.”³⁷ The Legislature found that the release of sensitive, personal information could hamper open communication and coordination among parties during the death review and that the harm resulting from the release of such information substantially outweighed any public benefit.³⁸

Senate Review of s. 383.412, F.S.

In the course of conducting the Open Government Sunset Review of s. 383.412, F.S., Senate Health Policy Committee Staff met with representatives from the Department of Health and the Department of Children and Families and requested written input from the Florida Sheriffs Association.

Staff also reviewed ch. 2014-224, Laws of Florida (SB 1666), which contains substantial reforms to Florida’s child welfare laws, to determine its effect on the exemption. Since 2004, the statewide and local child abuse death review committees have reviewed only cases reported to the central abuse hotline that were determined to be the result of abuse or neglect.³⁹ Thus, the public records exemption related only to identifying information of the surviving siblings, family members, or others living in the home of a child who died as a result of verified abuse or neglect. SB 1666 expanded the scope of cases reviewed by the committees to include all deaths reported to the child abuse hotline, whether or not the result of verified abuse or neglect.⁴⁰

SB 1666 also directed the Department of Children and Families to post certain information on its website when a child death is reported to the central abuse hotline. Data required to be posted includes the following de-identified demographic data: the date and alleged or verified cause of death; county of residence; existence of prior reports of abuse; whether the child was under 5

³² Section 383.412(3), F.S.

³³ Section 383.412(3)(b), F.S.

³⁴ Section 383.412(6), F.S.

³⁵ See Chs. 99-210, 2005-190, and 2010-40, Laws of Florida

³⁶ The initial act sunset in 2004 when legislation to reenact the exemption failed to pass both chambers of the Legislature. See Florida Senate, *Website Archive*, Senate 0462: Relating to Child Fatalities/Pub. Rec./OGSR http://archive.flsenate.gov/session/index.cfm?BI_Mode=ViewBillInfo&Mode=Bills&ElementID=JumpToBox&SubMenu=1&Year=2004&billnum=462 (last visited Feb. 13, 2015).

³⁷ Ch. 99-210, s. 2, Laws of Fla.

³⁸ *Id.*

³⁹ Ch. 2004-350, s. 14, Laws of Fla.

⁴⁰ Ch. 2014-224, s. 21, Laws of Fla.

years of age; and the involved community-based care lead agency, if applicable.⁴¹ SB 1666 provides that posted data are supplemental to records that may be available to the public pursuant to a public records request.⁴²

Section 39.202(1), F.S., makes all records held by the Department of Children and Families concerning reports of child abandonment, abuse, or neglect confidential and exempt from disclosure under the public records law. However, those files become publicly-available once the cause of death is determined to be the result of abuse, abandonment, or neglect, subject to the following exceptions:

- Information that identifies the person who reported the abuse, abandonment, or neglect;
- Information that is otherwise confidential and exempt;⁴³
- Information that would identify siblings of a deceased child.⁴⁴

Before SB 1666 was passed, the Department of Children and Families released the records of reported deaths resulting from verified abuse on a case-by-case basis, in response to individual public records requests. After SB 1666 was passed, the Department of Children and Families implemented its transparency requirements by launching the Child Fatality Prevention Website. Data and features on the website exceed the requirements of SB 1666.⁴⁵

Among the expanded data elements are child fatality case summaries that reflect summary information contained in a deceased child's case file, including:

- Circumstances surrounding the death;
- Other children in the family; and
- Summary of prior agency involvement with the family.

Posted summary reports about child deaths resulting from verified abandonment, abuse, or neglect have been redacted to remove only sibling names. The names of others living in the household are published. Posted summary reports about deaths that are determined not to be the result of abandonment, abuse, or neglect report case files have been redacted to remove all identifiers.⁴⁶ Currently, identifying information that has been publicly-available from the case file, but was infrequently accessed, is now broadly accessible on demand from a public website.

⁴¹ *Id.* at s. 7.

⁴² *Id.*

⁴³ Section 39.202(2)(o), F.S.

⁴⁴ The Department of Children and Families interprets ss. 39.202(1) and 39.202(2)(o), F.S., as prohibiting release of information that would identify siblings of a deceased child. When a sibling is named in a report about a deceased child, the Department views information related to the sibling as a new report of abuse, abandonment, or neglect that is protected under s. 39.202(1), F.S.. See Email from Tim Parson, Office of Legislative Affairs, Florida Dept. of Children and Families (June 25, 2014) (on file with the Senate Health Policy Committee).

⁴⁵ Department of Children and Families, *DCF Launches Child Fatality Prevention Website Solidifying Commitment to Transparency* (June 25, 2014) <http://www.myflfamilies.com/press-release/dcf-launches-child-fatality-prevention-website-solidifying-commitment-transparency> (last visited Feb. 13, 2015).

⁴⁶ See e.g., Total Miami-Dade County Child Fatalities 2014: 31, Accidental Death Occurring 1/20/2014 as compared with Death From Verified Abuse Occurring 4/24/2014, available at <http://www.dcf.state.fl.us/childfatality/localresults.shtml?county=Miami-Dade&minage=0&maxage=18&year=2014&cause=&prior12=&verified=> (last visited Jan. 24, 2015).

III. Effect of Proposed Changes:

The bill substantially amends the current the public records and public meetings exemptions provided by s. 383.412, F.S., and aligns them with the transparency of data involving child deaths reported to the central abuse hotline that are posted on the Child Fatality Prevention Website. Specifically, the bill narrows the exemption for identifying information related to cases of verified abuse and neglect to information that identifies the deceased child's siblings. The bill also expressly expands the exemption to include information held by the committees which reveals the identity of a deceased child whose death is not the result of verified abuse or neglect as well as the identity of the surviving siblings, family members, or others living in the home.

The bill also authorizes release of confidential information to a governmental agency in furtherance of its duties or a person or entity for research or statistical purposes. The person or entity must enter into a privacy agreement with the Department of Health and comply with all laws and rules governing the use of the information and may not disclose identifying information.

The bill provides a public necessity statement as required by the State Constitution. The public necessity statement explains that the scope of cases which the committees will review was enlarged pursuant to the change in law in 2014. This expansion in the types of cases that committees reviewed necessitated an expansion of the public records exemption. The exemption serves to protect the families of a deceased child from emotional or reputational harm and limits the invasion of the privacy of the deceased child and his or her family. This public necessity statement provides that committees must be able to review confidential and exempt information in order to perform thorough child death reviews.

The bill extends the repeal date for the exemptions from October 2, 2015, to October 2, 2020.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

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

Public Necessity Statement

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

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 383.412 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 the Committee on Health Policy

588-01670-15

20157032__

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 383.412, F.S.; removing the public records exemption
 4 for information held by the State Child Abuse Death
 5 Review Committee or a local committee that reveals the
 6 identity of family members or others living in the
 7 home of a child whose death occurred as a result of a
 8 verified report of abuse or neglect; exempting
 9 information held by the State Child Abuse Death Review
 10 Committee or a local committee that identifies a
 11 deceased child whose death is reported to the central
 12 abuse hotline but whose death is not the result of
 13 abuse or neglect and the identity of the surviving
 14 siblings, family members, or others living in the home
 15 of such a deceased child; authorizing release of such
 16 information to specified persons under certain
 17 circumstances; providing for future legislative review
 18 and repeal of the exemption under the Open Government
 19 Sunset Review Act; providing a statement of public
 20 necessity; providing an effective date.

21 Be It Enacted by the Legislature of the State of Florida:
 22
 23

24 Section 1. Section 383.412, Florida Statutes, is amended to
 25 read:

26 383.412 Public records and public meetings exemptions.—

27 (1) For purposes of this section, the term "local
 28 committee" means a local child abuse death review committee or a
 29 panel or committee assembled by the State Child Abuse Death

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30 Review Committee or a local child abuse death review committee
 31 pursuant to s. 383.402.

32 (2) (a) Any information held by the State Child Abuse Death
 33 Review Committee or a local committee which reveals the identity
 34 of the surviving siblings of a deceased child whose death
 35 occurred as the result of a verified report of abuse or neglect
 36 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.
 37 I of the State Constitution.

38 (b) Any information held by the State Child Abuse Death
 39 Review Committee or a local committee which ~~that~~ reveals the
 40 identity of a deceased child whose death has been reported to
 41 the central abuse hotline but determined not to be the result of
 42 abuse or neglect, or the identity of the surviving siblings,
 43 family members, or others living in the home of such a deceased
 44 child, who is the subject of review by and which information is
 45 held by the State Child Abuse Death Review Committee or a local
 46 committee is confidential and exempt from s. 119.07(1) and s.
 47 24(a), Art. I of the State Constitution.

48 (c) ~~(b)~~ Information made confidential or exempt from s.
 49 119.07(1) and s. 24(a), Art. I of the State Constitution which
 50 ~~that~~ is obtained by the State Child Abuse Death Review Committee
 51 or a local committee shall retain its confidential or exempt
 52 status.

53 (3) (a) Portions of meetings of the State Child Abuse Death
 54 Review Committee or a local committee at which information made
 55 confidential and exempt pursuant to subsection (2) is discussed
 56 are exempt from s. 286.011 and s. 24(b), Art. I of the State
 57 Constitution. The closed portion of a meeting must be recorded,
 58 and no portion of the closed meeting may be off the record. The

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59 recording shall be maintained by the State Child Abuse Death
60 Review Committee or a local committee.

61 (b) The recording of a closed portion of a meeting is
62 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
63 Constitution.

64 (4) The State Child Abuse Death Review Committee and local
65 committees may share any relevant information regarding case
66 reviews involving child death which is made confidential and
67 exempt by this section:

68 (a) With each other;

69 (b) With a governmental agency in furtherance of its
70 duties; or

71 (c) With any person or entity authorized by the Department
72 of Health to use such relevant information for bona fide
73 research or statistical purposes. A person or entity who is
74 authorized to obtain such relevant information for research or
75 statistical purposes must enter into a privacy and security
76 agreement with the Department of Health and comply with all laws
77 and rules governing the use of such records and information for
78 research or statistical purposes. Anything identifying the
79 subjects of such relevant information must be treated as
80 confidential by the person or entity and may not be released in
81 any form any relevant information regarding case reviews
82 involving child death, which information is made confidential
83 and exempt by this section.

84 (5) Any person who knowingly or willfully makes public or
85 discloses to any unauthorized person any information made
86 confidential and exempt under this section commits a misdemeanor
87 of the first degree, punishable as provided in s. 775.082 or s.

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88 775.083.

89 (6) This section is subject to the Open Government Sunset
90 Review Act in accordance with s. 119.15, and shall stand
91 repealed on October 2, 2020 ~~2015~~, unless reviewed and saved from
92 repeal through reenactment by the Legislature.

93 Section 2. The Legislature finds that it is a public
94 necessity that any information held by the State Child Abuse
95 Death Review Committee or a local committee as defined in s.
96 383.412, Florida Statutes, which reveals the identity of a
97 deceased child whose death has been reported to the central
98 abuse hotline but determined not to be the result of abuse or
99 neglect, or the identity of the surviving siblings, family
100 members, or others living in the home of such deceased child, be
101 held confidential and exempt from public records requirements.
102 The Legislature further finds that it is a public necessity that
103 these committees have the authority to maintain the confidential
104 or exempt status of records otherwise confidential or exempt
105 which are provided to them regarding such children. In 1999, the
106 Legislature authorized the creation of the committees to review
107 the facts and circumstances surrounding the deaths of children
108 in this state which occur as the result of reported child abuse
109 or neglect and to prepare an annual statistical report on the
110 incidence and causes of death resulting from child abuse. Since
111 2004, cases analyzed by the committees have been limited to
112 reports of verified abuse or neglect. The Legislature made
113 identifying information of the surviving siblings, family
114 members, or others living in the home of the child who died as a
115 result of verified abuse or neglect confidential and exempt from
116 public records requirements to ensure that cases could be vetted

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117 thoroughly through open communication without risk of disclosure
118 of the identifying information. In 2014, the Legislature
119 expanded the scope of cases reviewed by the committees to
120 include all deaths reported to the child abuse hotline,
121 regardless of whether the deaths were the result of verified
122 abuse or neglect, and this bill expands the public records
123 exemption accordingly. If the identifying information related to
124 these reports were to be disclosed, it could result in emotional
125 or reputational harm to the family and caregivers and an
126 unnecessary invasion of their privacy and the privacy of the
127 deceased child. In addition, the committees must be able to
128 maintain the otherwise confidential and exempt status of records
129 that are provided to them to ensure continued access to such
130 records and the opportunity for a thorough and open review of
131 cases. Therefore, the Legislature finds that the harm that may
132 result from the release of such information substantially
133 outweighs any minimal public benefit that may be derived from
134 its disclosure.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 7034

INTRODUCER: Governmental Oversight and Accountability Committee and Ethics and Elections Committee

SUBJECT: OGSR/Stalking Victims Identifying Information

DATE: March 25, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Fox</u>	<u>Roberts</u>		EE Submitted as Committee Bill
1.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	Fav/CS
2.	<u>Fox</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7034 is the result of an Open Government Sunset Review conducted by the Ethics and Elections Committee. It continues the “voter stalking exemption” that the Legislature adopted in 2010, exempting from public records disclosure the names, addresses, and telephone numbers of voters and voter registrants who participate in the Attorney General’s Address Confidentiality Program for Victims of Domestic Violence.

If not reenacted by the Legislature, the exemption will expire on October 2, 2015, pursuant to the Open Government Sunset Review Act.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.²

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(b).

The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.³

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

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

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹¹ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹²

³ FLA. CONST., art. I, s. 24(b).

⁴ Chapter 119, F.S.

⁵ Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, F.S.

⁶ Section 286.011, F.S.

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

⁸ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ Sections 119.15 and 119.15(4)(b), F.S., provide that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

¹² Section 119.15(3), F.S.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹³ An exemption serves an identifiable public purpose if it meets one of the following criteria:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁴
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁵ or
- It protects trade or business secrets.¹⁶

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.¹⁷

The OGSR also requires specific questions to be considered during the review process.¹⁸ 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.¹⁹ 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.²⁰

Public Records Exemption Under Review: Voter Stalking Exemption

The 2010 Legislature created a public-records exemption for specific personal information of voters and voter registrants who identify themselves as victims of stalking or aggravated stalking (hereinafter, the "voter stalking exemption").²¹ The purpose of the exemption is to allow these individuals to fully participate in the electoral process without fear of their home addresses being made public or their location being narrowed down to a particular voting precinct.²² Specifically,

¹³ Section 119.15(6)(b), F.S.

¹⁴ Section 119.15(6)(b)1., F.S.

¹⁵ Section 119.15(6)(b)2., F.S.

¹⁶ Section 119.15(6)(b)3., F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ 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?

¹⁹ FLA. CONST., art. I, s. 24(c).

²⁰ Section 119.15(7), F.S.

²¹ Ch. 2010-115, s. 1, LAWS OF FLA.

²² *Id.* at s. 3.

the Legislature exempted the names, addresses, and phone numbers of victims of stalking or aggravated stalking in the same manner as participants in the Attorney General's Address Confidentiality Program for Victims of Domestic Violence ("the Program").

In order for the exemption to take effect, an individual must file a sworn statement that he or she was victim of stalking with the Office of the Attorney General (OAG).²³ The OAG provides the voter with documentation which permits the voter to register with the Supervisor of Elections without his or her actual name, address and phone number being subject to public disclosure. Voters who are already registered with the Supervisor of Election may request that their information be made exempt from public disclosure.²⁴

According to the OAG, there are only about 50 stalking victims participating in the Program, almost half of which are household members of victims who are eligible to participate.²⁵ But despite its relatively minor scope, the OAG stressed the *critical* importance of the exemption to those individuals and their families who are benefitting from its protection.²⁶ Consequently, the OAG, the Florida Division of Elections, and the Florida State Association of Supervisors of Elections (FSASE) all support maintaining the current exemption.

The voter stalking exemption is due to expire under the Open Government Sunset Review Act on October 2, 2015, if not reenacted by the Legislature.

III. Effect of Proposed Changes:

The bill continues the voter stalking exemption by removing the scheduled repeal of the exemption, and transferring those exemption to s. 741.4651, F.S., to be closer in proximity in the statutes to the public records exemption for the Address Confidentiality Program for Victims of Domestic Violence – a similar program administered by the Department of Legal Affairs.

The bill takes effect October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

²³ *Id.* at s. 1 (codified at Section 98.0585(3), F.S. (2010)).

²⁴ Florida Department of State Processing Voters Who are Participants in the Address Confidentiality Program Training for Supervisors of Elections PowerPoint slides dated May 2014, on file with the Senate Committee on Governmental Oversight and Accountability.

²⁵ Telephone conversation between Tim Frizzell, Assistant Attorney General, Victim Services, Office of the Attorney General, and Jonathan Fox, Chief Attorney, Senate Ethics and Elections Committee (July 16, 2014).

²⁶ *Id.* The position of the AG's office is that if the exemption protects *just one person* it is worth keeping, because of the gravity of the potential consequences involved. *Id.*

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 97.0585 of the Florida Statutes and renumbers and transfers those provisions to section 741.4651 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Governmental Oversight and Accountability on March 17, 2015:

The CS places the amendment next to s. 741.465, the public records exemption for the Address Confidentiality Program for Victims of Domestic Violence – a similar program administered by the Department of Legal Affairs.

B. Amendments:

None.

By the Committees on Governmental Oversight and Accountability;
and Ethics and Elections

585-02414-15

20157034c1

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act; transferring, renumbering, and
4 amending s. 97.0585(3) and (5), F.S., relating to an
5 exemption from public records requirements for certain
6 information of persons who are victims of stalking or
7 aggravated stalking; removing the scheduled repeal of
8 the exemption; providing an effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Present subsection (4) of section 97.0585,
13 Florida Statutes, is redesignated as subsection (3) of that
14 section, and present subsections (3) and (5) of that section are
15 transferred and renumbered as section 741.4651, Florida
16 Statutes, and amended, to read:
17 741.4651 Public records exemption; victims of stalking or
18 aggravated stalking.—
19 ~~(3)~~ The names, addresses, and telephone numbers of persons
20 who are victims of stalking or aggravated stalking are exempt
21 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution
22 in the same manner that the names, addresses, and telephone
23 numbers of participants in the Address Confidentiality Program
24 for Victims of Domestic Violence which are held by the Attorney
25 General under s. 741.465 are exempt from disclosure, provided
26 that the victim files a sworn statement of stalking with the
27 Office of the Attorney General and otherwise complies with the
28 procedures in ss. 741.401-741.409.
29 ~~(5) Subsection (3) is subject to the Open Government Sunset~~

Page 1 of 2

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

585-02414-15

20157034c1

30 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
31 ~~on October 2, 2015, unless reviewed and saved from repeal~~
32 ~~through reenactment by the Legislature.~~
33 Section 2. This act shall take effect October 1, 2015.

Page 2 of 2

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 630

INTRODUCER: Banking and Insurance Committee and Senator Joyner

SUBJECT: Transfers to Minors

DATE: March 25, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	Fav/CS
3.	<u>Davis</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 630 amends the Uniform Transfers to Minors Act to enable a person to make a gift to a minor which may be held by a custodian until the minor reaches the age of 25, and not 21, as provided under current law. However, the bill requires that the minor have at least 30 days to compel the distribution of the custodial property on or about the minor's 21st birthday. The extended time periods apply to gifts or property held by a custodian which were directly transferred or given to the custodian by the donor, a holder of a power of appointment,¹ or a personal representative or trustee pursuant to the terms of a trust or will. This bill does not apply to custodianships funded by fiduciaries or obligors which must be distributed to a minor at the age of 18.

II. Present Situation:

The Florida Uniform Transfers to Minors Act was enacted in 1985. It is a state adaptation of the Uniform Transfers to Minors Act developed by the Uniform Law Commission in 1983.²

¹ "A power of appointment is the legal authority to make another person the outright owner of the property left by a decedent. A donor gives the power to a donee so that person may choose the beneficiaries of his trust or will." Legal Information Institute, Cornell Law School (last visited February 25, 2015) https://www.law.cornell.edu/wex/power_of_appointment.

² The National Conference of Commissioners on Uniform State Laws, *Transfers to Minors Act Summary*, <http://uniformlaws.org/ActSummary.aspx?title=Transfers%20to%20Minors%20Act> (last visited February 20, 2015). According to the National Conference's website, the uniform act has been enacted in 48 states, the District of Columbia, the U.S. Virgin Islands, and is currently pending before one other state legislature. The National Conference of Commissioners

The Florida Uniform Transfers to Minors Act provides a simple, inexpensive mechanism for an adult to give gifts to a minor without the minor assuming control of the gifts until he or she reaches majority. The act provides for a custodianship in which an adult maintains control of property irrevocably granted which will eventually transfer directly to the minor. The custodian holds record title to the asset for the benefit of the minor.

A custodianship is less expensive to operate than a trust because it does not create significant administrative fees and costs that diminish the value of the gift. Additionally, a custodianship is beneficial because the property is retained by a more mature and competent individual as opposed to an inexperienced minor. Any type of property, whether it is real or personal, tangible or intangible, may be transferred to a custodian for the minor's benefit. The act covers outright gifts and other transfers, including the payment of debts owed to a minor, and transfers of property from estates or trusts.³

Under current law, the duration of a custodianship is based upon who made the gift or the express directions of the donor. The duration of a custodianship extends until the minor reaches age 21 if a gift or transfer was given to a custodian directly by the donor, a person authorized by a will to give gifts to third persons, or a personal representative or trustee acting in accordance with the terms of a trust providing for the custodianship.⁴ The duration of a custodianship extends until a minor reaches 18 years of age if the custodianship property is from a will or trust that does not expressly provide for a custodianship or the custodianship holds property from a debt owed to the minor or a benefit plan.⁵

III. Effect of Proposed Changes:

Under Florida's Uniform Transfers to Minors Act (UTMA), all gifts to minors must be fully distributed to the minor when he or she reaches 18 or 21 years of age. This bill allows certain custodianships to extend to the minor's 25th birthday if the minor has at least 30 days when he or she turns 21 years of age to claim all of the assets in the custodianship. This extension applies to a custodianship created by donor, a holder of a power of appointment, or a fiduciary acting pursuant to an authorization in a will or a trust.⁶ This bill does not apply to custodianships funded by fiduciaries or obligors which must be distributed to a minor at the age of 18.⁷

The bill amends s. 710.123, F.S., to establish provisions under which a custodianship may be extended to the age of 25. The document creating the custodianship must specify in its terms that it is creating a custodianship that terminates when the minor reaches the age of 25. If the transferor creates the custodianship to terminate when the minor reaches the age of 25, the minor

on Uniform State Laws, *Legislative Fact Sheet – Transfers to Minors Act*,

<http://uniformlaws.org/LegislativeFactSheet.aspx?title=Transfers%20to%20Minors%20Act> (last visited February 20, 2015).

³ The National Conference of Commissioners on Uniform State Laws, *Why States Should Adopt UTMA*

<http://www.uniformlaws.org/Narrative.aspx?title=Why%20States%20Should%20Adopt%20UTMA> (last visited February 20, 2015).

⁴ Sections 710.105 and 710.106, F.S.

⁵ Sections 710.107 and 710.108, F.S.

⁶ See section 1 of the bill and existing ss. 710.105 and 710.106, F.S.

⁷ See section 1 of the bill and existing ss. 710.107 and 710.108, F.S. Under existing s. 710.107, F.S., a custodianship terminates when the minor reaches 18 years of age if it is funded from a will or trust that does not expressly provide for the creation of a custodianship.

has an absolute right to compel an immediate distribution of the property upon reaching the age of 21. The transferor, however, may limit the minor's withdrawal rights to a designated time period after the minor reaches 21 years of age. To effectively make this limitation, the custodian must provide the minor with written notice of his or her withdrawal rights. The written notice must be delivered at least 30 days before, and no later than 30 days after, the minor's 21st birthday. The termination rights may not expire before the later of 30 days after the 21st birthday or 30 days after the custodian delivers the notice.

The bill amends s. 710.105, F.S., to provide that a transfer by irrevocable gift from a revocable trust is treated, for all purposes, as a transfer made directly by the grantor of the trust. The purpose of this change is to provide that a revocable trust will be permitted to make a gift to a minor that can be placed in a custodianship until the minor is 25 years old under s. 710.123(1), F.S. A plausible argument can be made that, if the revocable trust documents are silent about the intent to create a custodianship, then the gift would need to be distributed to the minor on his or her 18th birthday. The bill, by treating the gift as if it were directly from the grantor, ensures that such gifts can be held by a custodian until the minor's 25th birthday.

Gifts to create UTMA accounts are treated by the IRS as gifts to trusts. Gifts to trusts do not normally qualify for the gift tax annual exclusion, which is currently \$14,000 per donee, per year.⁸ However, the IRS allows gifts to an UTMA account that terminates at 21 to qualify for the gift tax annual exclusion, but will not allow a gift to an UTMA account that terminates at age 25 to qualify.⁹ Therefore, to conform with other IRS requirements that allow gifts to trusts to qualify for the annual exclusion if the trust beneficiary has a right, for a limited time, to withdraw the gift made to the trust, the minor must also have a right for a limited time to withdraw a contribution to an age of 25.¹⁰

Because financial institutions might not be aware that a custodianship does not terminate until a minor reaches the age of 25, they are shielded from liability under the provisions of this bill, if funds are distributed when the minor reaches the age of 21.¹¹

The extension proposed by this bill does not authorize the extension of a custodianship for someone who has already reached the age of 21 years at the time for creation of the custodianship.

According to the Real Property, Probate and Trust Law Section of The Florida Bar, seven other states have amended their state version of the Uniform Transfer to Minors Act to allow a custodian, under certain circumstances, to hold assets for a minor until he or she reaches the age of 25.¹²

⁸ Department of the Treasury, Internal Revenue Service, *IRS Publication 559: Survivors, Executors, and Administrators*, 25 (January 31, 2014).

⁹ 26 U.S.C. s. 2503(c)(1) and (2).

¹⁰ To qualify for the gift tax exclusion, the gift must be of a present interest. Treas. Reg. s. 25.2503-4(b)(2) stands for the proposition that the gift will be of a present interest if the minor has the right to extend the trust. IRS Revenue Ruling 74-43 states that if the minor has a limited period within which to compel distribution, the gift will be a present interest. *See also* 26 U.S.C. s. 2503(c).

¹¹ The Real Property, Probate, & Trust Law Section of The Florida Bar, *White Paper: Proposed Amendments to Florida Uniform Transfers to Minors Act, Ch. 710, Florida Statutes* (2015) (on file with the Senate committee on Judiciary).

¹² *Id.* Those states are Alaska, California, Nevada, Oregon, Pennsylvania, Tennessee, and Washington.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to affect the spending, revenues, or tax authority of cities or counties. As such, the bill does not appear to be a mandate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill might have a positive, yet indeterminate, fiscal impact in the private sector by allowing people who establish custodianships to legally reduce or avoid some federal taxes.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 710.102, 710.105, and 710.123.

This bill reenacts the following sections of the Florida Statutes: 710.117 and 710.121.

IX. Additional Information:

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

CS by Banking and Insurance on March 17, 2015:

The committee adopted a technical amendment to correct a cross-reference.

- B. **Amendments:**

None.

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

By the Committee on Banking and Insurance; and Senator Joyner

597-02400-15

2015630c1

A bill to be entitled

An act relating to transfers to minors; amending s. 710.102, F.S.; defining the term "general power of appointment"; amending s. 710.105, F.S.; specifying that certain transfers from a trust are considered as having been made directly by the grantor of the trust; amending s. 710.123, F.S.; authorizing custodianships established by irrevocable gift and by irrevocable exercise of power of appointment to terminate when a minor attains the age of 25, subject to the minor's right in such custodianships to compel distribution of the property upon attaining the age of 21; limiting liability of financial institutions for certain distributions of custodial property; reenacting ss. 710.117(2) and 710.121(2) and (6), F.S., to incorporate the amendment made to s. 710.105, F.S., in references thereto; providing an effective date.

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

Section 1. Subsections (9) through (18) of section 710.102, Florida Statutes, are redesignated as subsections (10) through (19), respectively, and a new subsection (9) is added to that section, to read:

710.102 Definitions.—As used in this act, the term:

(9) "General power of appointment" means a power of appointment as defined in s. 732.2025(3).

Section 2. Section 710.105, Florida Statutes, is amended to read:

Page 1 of 4

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597-02400-15

2015630c1

710.105 Transfer by gift or exercise of power of appointment.—A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to s. 710.111. Notwithstanding s. 710.106, a transfer by irrevocable gift from a trust over which the grantor has at the time of transfer a right of revocation, as defined in s. 733.707(3)(e), shall be treated for all purposes under this act as a transfer made directly by the grantor of the trust.

Section 3. Section 710.123, Florida Statutes, is amended to read:

710.123 Termination of custodianship.—

(1) The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

(a) ~~(1)~~ The minor's attainment of 21 years of age with respect to custodial property transferred under s. 710.105 or s. 710.106. However, a transferor may, with respect to such custodial property, create the custodianship so that it terminates when the minor attains 25 years of age;

(b) ~~(2)~~ The minor's attainment of ~~age~~ 18 ~~years of age~~ with respect to custodial property transferred under s. 710.107 or s. 710.108; or

(c) ~~(3)~~ The minor's death.

(2) If the transferor of a custodianship under paragraph (1) (a) creates the custodianship to terminate when the minor attains 25 years of age, in the case of a custodianship created by irrevocable gift or by irrevocable inter vivos exercise of a general power of appointment, the minor nevertheless has the

Page 2 of 4

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597-02400-15

2015630c1

59 absolute right to compel immediate distribution of the entire
 60 custodial property when the minor attains 21 years of age.

61 (3) As to a custodianship described in subsection (2), a
 62 transferor may provide, by delivery of a written instrument to
 63 the custodian upon the creation of such custodianship, that the
 64 minor's right to compel immediate distribution of the entire
 65 custodial property will terminate upon the expiration of a fixed
 66 period that begins with the custodian's delivery of a written
 67 notice to the minor of the existence of such right. To be
 68 effective to terminate the minor's right to compel an immediate
 69 distribution of the entire custodial property when the minor
 70 attains 21 years of age, the custodian's written notice must be
 71 delivered at least 30 days before, and not later than 30 days
 72 after, the date upon which the minor attains 21 years of age,
 73 and the fixed period specified in the notice for the termination
 74 of such right may not expire before the later of 30 days after
 75 the minor attains 21 years of age or 30 days after the custodian
 76 delivers such notice.

77 (4) Notwithstanding the definition of the term "minor" in
 78 s. 710.102, if the transferor creates the custodianship to
 79 terminate when the minor attains 25 years of age, solely for
 80 purposes of the application of the termination provisions of
 81 this section, the term "minor" means an individual who has not
 82 attained 25 years of age.

83 (5) A financial institution has no liability to a custodian
 84 or minor for distribution of custodial property to, or for the
 85 benefit of, the minor in a custodianship created by irrevocable
 86 gift or by irrevocable exercise of a general power of
 87 appointment when the minor attains 21 years of age.

Page 3 of 4

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

597-02400-15

2015630c1

88 Section 4. Subsection (2) of s. 710.117, Florida Statutes,
 89 and subsections (2) and (6) of s. 710.121, Florida Statutes, are
 90 reenacted for the purpose of incorporating the amendment made by
 91 this act to s. 710.105, Florida Statutes, in references thereto.

92 Section 5. This act shall take effect July 1, 2015.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Criminal and
Civil Justice, *Vice Chair*
Appropriations
Health Policy
Higher Education
Judiciary
Rules

JOINT COMMITTEE:

Joint Legislative Budget Commission

SENATOR ARTHENIA L. JOYNER

Democratic Leader
19th District

March 17, 2015

Senator David Simmons, Chair
Senate Committee on Rules
402 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Simmons:

This is to request that CS/Senate Bill 630, Transfers to Minors, be placed on the agenda for the Committee on Rules. Your consideration of this request is greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Arthenia L. Joyner".

Arthenia L. Joyner
State Senator, District 19

REPLY TO:

- 508 W. Dr. Martin Luther King, Jr. Blvd., Suite C, Tampa, Florida 33603-3415 (813) 233-4277
- 200 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5019 FAX: (813) 233-4280

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/26/15

Meeting Date

630

Bill Number (if applicable)

Topic Transfers to Minors

Amendment Barcode (if applicable)

Name Kenneth Pratt

Job Title Senior VP of Governmental Affairs

Address 1001 Thomasville Rd Ste 200
Street

Phone 850-224-2265

Tallahassee FL 32303
City State Zip

Email kpratt@floridabankers.com

Speaking: For Against Information

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

Representing Florida Bankers Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

630
Bill Number (if applicable)

Topic Transfers to Minors

Amendment Barcode (if applicable)

Name Brittany Finkbeiner

Job Title _____

Address _____
Street

Phone _____

City _____ State _____ Zip _____

Email _____

Speaking: For Against Information

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

Representing Real Property, Probate, + Trust Law section of the Bar

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 7016

INTRODUCER: Judiciary Committee

SUBJECT: OGSR/Minor Identifying Information

DATE: March 25, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Davis</u>	<u>Cibula</u>		JU Submitted as Committee Bill
1.	<u>Kim</u>	<u>McVane</u>	<u>GO</u>	Favorable
2.	<u>Davis</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 7016 continues an existing public record exemption. The exemption makes confidential and exempt information that might be used to identify a minor petitioning for a judicial waiver of parental notice under the Parental Notice of Abortion Act. The exemption protects from disclosure any identifying information held by the office of criminal conflict and civil regional counsel or the Justice Administrative Commission. These offices are in possession of the information when either the office of criminal conflict and civil regional counsel represents the minor in a court proceeding. The Justice Administrative Commission may possess this information as a result of it processing payments for a court-appointed private attorney who represents the minor.

It is essential that any identifying information of a minor held by either of these agencies be exempted from public disclosure or the current statute will not meet constitutional requirements.

The original exemption was enacted in 2010 and is scheduled for repeal on October 2, 2015, unless continued by the Legislature.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution

Under the Florida Constitution, the public is guaranteed the right of access to government records and meetings. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, unless the record is exempted or specifically made confidential.¹

¹ FLA. CONST., art. I, s. 24(a).

The public is also guaranteed the right to be notified and have access to meetings of any collegial public body of the executive branch of state government or of any local government.² The Legislature's meetings must also be open and noticed to the public, unless an exception is provided for in the Constitution.³

The Florida Statutes

Similarly, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. Chapter 119, F.S., which deals with public records access, guarantees every person's right to inspect and copy any state or local government public record.⁴ Section 286.011, F.S., which is often referred to as the state's sunshine law, requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.⁵

The Legislature may create an exemption to public records or open meetings requirements.⁶ An exemption must specifically state the public necessity justifying the exemption and must be tailored to accomplish the stated purpose of the law.⁷

Open Government Sunset Review Act

The Open Government Sunset Review Act prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.⁸ The act provides that an exemption automatically repeals on October 2nd of the fifth year after creation or

² FLA. CONST., art. I, s. 24(b).

³ *Id.*

⁴ Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The public records chapter does not apply to legislative records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). The Legislature's records are public pursuant to s. 11.0431, F.S.

⁵ Section 286.011(1) and (2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provides that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ 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 s. 119.15(2), F.S.

substantial amendment. However, in order to save an exemption from repeal, the Legislature must reenact the exemption before it expires.⁹

The Sunset Review Act provides that a public record or open meeting exemption may be created or maintained only if it serves an identifiable public purpose and is written no broader than is necessary.¹⁰ An exemption serves an identifiable purpose if it meets one of the stated requirements below *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption. The exemption must:

- Allow the state or its political subdivisions to effectively and efficiently administer a program, which administration would be significantly impaired without the exemption;¹¹
- Protect sensitive personal information that would be defamatory or damaging to someone's reputation 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;¹² or
- Protect confidential information of entities including trade or business secrets.¹³

The act also requires specified questions to be considered during the review process.¹⁴ In examining an exemption, the act directs 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.¹⁵ 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.¹⁶

Parental Notice of Abortion Act

The Legislature first enacted a Parental Notice of Abortion Act in 1999. As its name indicates, the act required that a parent be given advance notice of a child's intent to have an abortion.¹⁷ The statute was challenged in court on the basis that the law violated a person's right to privacy

⁹ Section 119.15(3), F.S.

¹⁰ Section 119.15(6)(b), F.S.

¹¹ Section 119.15(6)(b)1., F.S.

¹² Section 119.15(6)(b)2., F.S.

¹³ Section 119.15(6)(b)3., F.S.

¹⁴ 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?

¹⁵ FLA. CONST., art. I, s. 24(c).

¹⁶ Section 119.15(7), F.S.

¹⁷ Chapter 99-322, Laws of Fla. (Creating s. 390.01115, F.S., effective July 1, 1999. A companion measure, the public records exemption bill that would shield identifying information of the minor, was passed that same session and became Chapter 99-321, Laws of Fla.)

under the Florida Constitution.¹⁸ The Florida Supreme Court determined that the law violated the state's constitutional right to privacy because the minor was not given a method to "bypass" the parental notification provision when certain circumstances existed.¹⁹ In response to the Florida Supreme Court's decision, the Legislature proposed a constitutional amendment that authorized the Legislature, notwithstanding a minor's right to privacy under the State Constitution, to require a physician to notify a minor's parent or guardian prior to the abortion. The amendment was ratified by the voters in 2004.²⁰

In response to the adoption of the proposed amendment, the Legislature passed another Parental Notice of Abortion Act in 2005.²¹ In its current version, the statute requires an attending physician to give actual notice, in person or by phone, to a parent or legal guardian of the minor, at least 48 hours before the inducement or performance of a termination of a pregnancy on the minor.²² If actual notice is not possible after a reasonable effort, the physician performing or inducing the termination of the pregnancy or the referring physician must give constructive notice.²³ Parental notice is not required under the act if certain circumstances are present.²⁴

Judicial Waiver of Parental Notice or the Judicial Bypass Proceeding

The Parental Notice of Abortion Act provides that a minor may petition the circuit court where she resides for a waiver of the notice requirements under the act.²⁵ To initiate the process, she may file the petition under a pseudonym or by using initials, as provided by court rule. The petition must contain a statement that the petitioner is pregnant and notice has not been waived. The court must advise the petitioner that she has a right to court-appointed counsel and must provide her with counsel, if she requests, at no cost to the young woman.²⁶

¹⁸ FLA. CONST., art. I s. 23.

¹⁹ *North Florida Women's Health and Counseling Services v. State*, 866 So. 2d 612 (Fla. 2003).

²⁰ FLA. CONST. art. X. s. 22. The amendment states:

The Legislature shall not limit or deny the privacy right guaranteed to a minor under the United States Constitution as interpreted by the United States Supreme Court. Notwithstanding a minor's right of privacy provided in Section 23 of Article I, the Legislature is authorized to require by general law for notification to a parent or guardian of a minor before the termination of the minor's pregnancy. The Legislature shall provide exceptions to such requirement for notification and shall create a process for judicial waiver of the notification.

²¹ Chapter 2005-52, s. 2, Laws of Fla.

²² Section. 390.01114(3)(a), F.S. and s. 390.01114(2)(a), F.S.

²³ Section 390.01114(3)(a), F.S. Constructive notice is defined to mean notice given in writing, signed by the physician, and mailed at least 72 hours before the procedure to the last known address of the parent or legal guardian of the minor, by first-class mail and by certified mail, return receipt requested with delivery restricted to the parent or legal guardian. Notice is deemed to have occurred after 72 hours have passed pursuant to s. 390.01114(2)(c). F.S.

²⁴ Parental notice is not necessary under s. 390.01114(3)(b), F.S., if: In the good faith clinical judgment of the physician, a medical emergency exists and there is insufficient time for the attending physician to comply with the notification requirements; notice is waived in writing by the person entitled to notice and the waiver is notarized; notice is waived by the minor who is or has been married or has had the disability of nonage removed in compliance with law; notice is waived by the patient because she has a minor child dependent on her; or notice is waived by a circuit court in a judicial bypass proceeding according to statute.

²⁵ Section 390.01114(4)(a), F.S.

²⁶ *Id.*

Once a petition is filed, the court must rule and issue written findings of fact and conclusions of law within three business days after the petition is filed. This time period may be extended at the request of the minor.²⁷

If the circuit court determines, by clear and convincing evidence, that the minor is sufficiently mature to decide whether to terminate her pregnancy, the court must issue an order authorizing the minor to consent to the abortion without the notification of a parent or guardian. If the court finds that the minor does not possess the requisite maturity to make that determination, it must dismiss the petition.²⁸ If the court determines by a preponderance of the evidence, that the minor is a victim of child abuse or sexual abuse inflicted by her parent or guardian, or if the court determines by clear and convincing evidence that the notification of a parent or guardian is not in her best interest, the court must issue an order authorizing the minor to consent to the performance or inducement of a termination of the pregnancy without the notification of a parent or guardian.²⁹

Court Records Exemption for Judicial Bypass Cases

When the current Florida Parental Notice of Abortion Act was passed in 2005, the Legislature created a corresponding public records exemption that prohibited public access to judicial records pertaining to parental notification bypass proceedings. Any information contained in documents related to the petition, which could be used to identify the minor, were made confidential and exempt from the disclosure requirements in the Florida Statutes and Florida Constitution.³⁰ The Florida Rules of Juvenile Procedure³¹ provide that “any information including the petition, documents, transcripts, recording of cases, and any other information that” might be used to identify the young woman are confidential and exempt. Additionally, to ensure that the minor’s identity remains anonymous, the court file must be sealed unless otherwise ordered by the court.³²

The public records exemption, enacted in 2005, was set to be repealed on October 2, 2010, but the Legislature reviewed and saved the exemption from repeal.³³ Accordingly, all information held by a circuit court or an appellate court remains confidential and exempt.

²⁷ Section 390.01114(4)(b)1., F.S. If the court does not rule within the required three business days and the minor has not requested an extension, the minor may immediately petition for a hearing with the chief judge of the circuit. The chief judge is responsible for guaranteeing that a hearing is held within 48 hours after the receipt of the minor’s petition and an order must be entered within 24 hours after the hearing. If the circuit court does not grant a judicial waiver of the required parental notice, the minor has a right to appeal and that ruling must be issued within seven days after receipt of the appeal. Section 390.01114(4)(b) 2., F.S.

²⁸ Section 390.01114(4)(c), F.S.

²⁹ Section 390.01114(4)(d), F.S.

³⁰ Chapter 2005-104, Laws of Fla. (amending s. 390.01116, F.S.).

³¹ FLA. R. JUV. P. 8.835.

³² *Id.*

³³ Chapter 2010-41, Laws of Fla. The measure made an editorial change and the statute now provides that identifying information that can be used to identify a minor seeking a judicial bypass is confidential and exempt only from s. 24(a), art. I of the State Constitution. The previous reference to an exemption pursuant to s. 119.07(1), F.S., was deleted because that provision pertains to agencies, and the court is not deemed to fall within the definition of an agency.

Expansion of the Initial Exemption

When reenacted in 2010, the public records exemption was expanded to include records in possession of additional entities – the offices of criminal conflict and civil regional counsel and the Justice Administrative Commission. Section 390.01116(2)(a), F.S. provides that any information that can be used to identify a minor petitioning a circuit court for a judicial waiver is confidential and exempt from section 119.071(1), F.S., and Article I, section 24(a) of the Florida Constitution if held by the office of criminal conflict and civil regional counsel or the Justice Administrative Commission.

The exemption for those two agencies was made subject to the Open Government Sunset Review Act in accordance with statute and will stand repealed on October 2, 2015, unless reviewed and saved from repeal through reenactment by the Legislature.

In the statement of public necessity³⁴ detailing the need to create the exemption for information held by the office of criminal conflict and civil regional counsel or the Justice Administrative Commission, the Legislature recognized that:

The information contained in these records is of a sensitive, personal nature regarding a minor petitioner, the release of which could harm the reputation of the minor, as well as jeopardize her safety. Disclosure of this information could jeopardize the safety of the minor in instances in which child abuse or child sexual abuse against her is present by exposing her to further acts of abuse from an abuser who, without the public record exemption, could learn of the minor's pregnancy, her plans to terminate the pregnancy, and her petition to the court. The Legislature further finds that it is a public necessity to keep this identifying information in records held by the office of criminal conflict and civil regional counsel or the Justice Administrative Commission confidential and exempt in order to protect the privacy of the minor.

Additionally, the Legislature took notice of the constitutional requirements expressed through case law in the statement of public necessity. After acknowledging that the State Constitution contains an express right of privacy it noted that:

the United States Supreme Court has repeatedly required parental-notification laws to contain judicial-bypass procedures and to preserve confidentiality at every level of court proceedings in order to protect the privacy rights of the minor. Without the public record exemption provided in this act, the disclosure of personal identifying information would violate the right of privacy of the minor. Further, without the confidential and exempt status for this information, the constitutionality of the state's program providing for notification of a minor's termination of pregnancy, and the judicial-bypass procedure in particular, would be in question. Thus, the public record exemption provided in this act is necessary

³⁴ Chapter 2010-41, s. 2, Laws of Fla,

for the effective administration of the state’s program, which administration would be impaired without the exemption.³⁵

Roles of the office of criminal conflict and civil regional counsel and the Justice Administrative Commission

When a minor initiates a judicial bypass proceeding in the circuit court, a private court-appointed attorney is available to represent her should she request counsel.³⁶ The statute is clear that private court-appointed counsel approved for this type of work are to be used first for minors who request counsel, but if no attorney is available through the clerk’s list of attorneys, then the office of criminal conflict and civil regional counsel in that area will supply an attorney for the proceedings.³⁷ Court precedent interpreting the U.S. Constitution says it is essential that the office’s records be exempt from public access.

The Justice Administrative Commission serves in the capacity of paying the invoices for the attorneys who volunteer for these cases through the clerk of court’s list of attorneys. Similarly, their records which could identify a minor should be exempt from public disclosure. It should be noted that the Justice Administrative Commission records do not contain the full name of the minor, but only her initials or a pseudonym.

The public records exemption will stand repealed on October 2, 2015, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act.³⁸

Data Obtained from the Office of the State Courts Administrator

The Florida Supreme Court, through the Office of the State Courts Administrator, is required to report by February 1 of each year to the Governor, the President of the Senate, and the Speaker of the House of Representatives the number of petitions filed for judicial bypass waivers in the previous year for each circuit court. The report must also contain the timing and manner of disposal of the petitions by each circuit.³⁹ Below is a statewide summary of the number of petitions filed in recent years.

<u>Year</u>	<u>Total Petitions Filed</u>
2013	319
2012	353
2011	391
2010	381
2009	476 ⁴⁰

³⁵ *Id.*

³⁶ The chief judge of the circuit maintains a list of qualified attorneys in private practice, by county and by category of cases, and provides the list to the clerk of court in each county. Section 27.40(3)(a), F.S.

³⁷ Section 27.511(6)(a), F.S.

³⁸ Chapter 2010-41, s. 1, Laws of Fla.

³⁹ Section 390.01114(6), F.S.

⁴⁰ Florida Office of the State Court Administrator, *Fiscal Years 2009-2013, Parental Notice of Abortion Act, Petitions Filed and Disposed by Circuit and County, January through December* (on file with the Senate Committee on Judiciary).

Judiciary Committee's Open Government Sunset Review

Based upon a review of this public record exemption under the Open Government Sunset Review Act and discussions with the different offices of criminal conflict and civil regional counsel and the Justice Administrative Commission, the professional staff of the Judiciary Committee recommends that the Legislature retain the public records exemption established in s. 390.01116(2)(a), F.S. The exemption is necessary to comply with the requirements of the decisions of the U.S. Supreme Court. The identifying information held by either of these two entities must remain confidential at every level of court proceedings to protect the privacy rights of the minor seeking to bypass parental notification. If this exemption did not remain in statute, the disclosure of the identifying information would violate the right of privacy of the minor and the constitutionality of the state's program would be in jeopardy.

Staff has concluded that, in addition to ensuring the privacy of the minor, the exemptions are necessary to administer the Parental Notice of Abortion Act and are also essential to the constitutionality of the act.

III. Effect of Proposed Changes:

This legislation continues a public record exemption that was created in 2010 and which otherwise is subject to repeal on October 2, 2015. The exemption protects from disclosure any identifying information of a minor seeking a judicial bypass under the Parental Notice of Abortion Act if the information is held by the office of criminal conflict and civil regional counsel or by the Justice Administrative Commission.

Section 1 amends s. 390.01116(2)(b), F.S., to remove the scheduled repeal of the public records exemption for identifying information held by the office of criminal conflict and civil regional counsel or the Justice Administrative Commission.

Section 2 provides that the bill takes effect on October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The office of criminal conflict and civil regional counsel and the Justice Administrative Commission will need to redact confidential information from their records if the records are disclosed to the public. This is their current practice and will not impose an additional burden on them.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 390.01116 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 the Committee on Judiciary

590-01496-15

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A bill to be entitled

An act relating to a review under the Open Government
Sunset Review Act; amending s. 390.01116, F.S.,
relating to an exemption from public record
requirements for certain information that could
identify a minor petitioning a court to waive parental
notice requirements before terminating a pregnancy;
saving the exemption from repeal under the Open
Government Sunset Review Act; providing an effective
date.

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

Section 1. Subsection (2) of section 390.01116, Florida
Statutes, is amended to read:

390.01116 Public records exemptions; minors seeking waiver
of notice requirements.—Any information that can be used to
identify a minor petitioning a circuit court for a judicial
waiver, as provided in s. 390.01114, of the notice requirements
under the Parental Notice of Abortion Act is:

(2) ~~(a)~~ Confidential and exempt from s. 119.07(1) and s.
24(a), Art. I of the State Constitution if held by the office of
criminal conflict and civil regional counsel or the Justice
Administrative Commission.

~~(b) Paragraph (a) is subject to the Open Government Sunset
Review Act in accordance with s. 119.15 and shall stand repealed
on October 2, 2015, unless reviewed and saved from repeal
through reenactment by the Legislature.~~

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

CourtSmart Tag Report

Room: EL 110
Caption: Senate Rules Committee

Case:
Judge:

Type:

Started: 3/26/2015 9:02:23 AM
Ends: 3/26/2015 9:27:12 AM Length: 00:24:50

9:02:29 AM Senator Simmons calls the meeting to order
9:02:41 AM Roll call
9:02:59 AM Quorum present
9:04:00 AM Without objection CS/CS/SB 182 temporarily postponed
9:04:19 AM CS/SB 552
9:04:21 AM Senator Hays explains the bill
9:04:51 AM Senator Joyner with a question
9:05:01 AM Senator Hays answers
9:05:50 AM Bryan Cherry, Florida Coalition for the Homeless waives in support
9:06:28 AM Senator Hays waives close on the bill
9:06:40 AM Roll call
9:07:11 AM CS/SB 552 reported favorably
9:07:32 AM CS/SB 526
9:07:44 AM Marty Mielke, Legislative Assistant, explains the bill
9:08:31 AM Sgt. Jay Toth, Volusia County Sheriff's Office, representing Florida Sheriff's Association, waives in support
9:09:05 AM Marty Mielke waives close on the bill
9:09:18 AM Roll call
9:09:51 AM CS/SB 526 reported favorably
9:09:58 AM SB 672
9:10:21 AM Chase Daniels, Legislative Assistant, explains the bill
9:10:56 AM Sgt. Jay Toth, Volusia County Sheriff's Office, representing Florida Sheriff's Association, waives in support
9:11:15 AM Sheldon Gusky, Executive Director, Florida Public Defender Association, Inc., waives in support
9:11:51 AM Chase Daniels waives close on the bill
9:12:07 AM Roll call
9:12:19 AM SB 672 reported favorably
9:12:42 AM SB 7032
9:12:53 AM Daniel Looke, Analyst with Health Policy, explains the bill
9:14:55 AM Daniel Looke waives close on the bill
9:15:04 AM Roll call
9:15:32 AM SB 7032 reported favorably
9:15:39 AM CS/SB 7034
9:15:49 AM Senator Richter explains the bill
9:16:26 AM Senator Richter waives close on the bill
9:16:29 AM Roll call
9:17:01 AM CS/SB 7034 reported favorably
9:17:07 AM CS/SB 630
9:17:16 AM Senator Joyner explains the bill
9:18:25 AM Kenneth Pratt, Senior VP of Governmental Affairs, Florida Bankers Association, waives in support
9:18:44 AM Brittany Finkbeiner, Real Property, Probate and Trust Law Section of the Bar waives in support
9:19:14 AM Senator Joyner waives close on the bill
9:19:21 AM Roll call
9:19:44 AM CS/SB 630 reported favorably
9:19:51 AM SB 7016
9:20:02 AM Senator Diaz de la Portilla explains the bill
9:21:06 AM Senator Diaz de la Portilla waives close on the bill
9:21:20 AM Roll call
9:21:48 AM SB 7016 reported favorably
9:21:55 AM Senator Gibson recognizes special guest, Ernest Gibson
9:23:25 AM Senator Montford recognizes Florida A & M University Day
9:24:17 AM Senator Simmons recognizes special guests, Alicya Simmons and Jared Coxley

9:25:20 AM

Senator Simmons comments

9:27:06 AM

Senator Diaz de la Portilla moves the meeting be adjourned



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Education, *Chair*
Appropriations
Education Pre-K - 12
Ethics and Elections
Health Policy
Higher Education
Rules

SENATOR DON GAETZ
1st District

March 26, 2015

The Honorable David Simmons
Chairman
Senate Committee on Rules
402 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

3/26/15
OK
DAG

Dear Senator Simmons,

I respectfully request to be excused from the Senate Committee on Rules today, Thursday, March 26, 2015.

Thank you for your consideration.

Respectfully,

A handwritten signature in cursive script, appearing to read "Don Gaetz".

Senator Don Gaetz

cc: Mr. John Phelps

REPLY TO:

- 4300 Legendary Drive, Suite 230, Destin, FL 32541 (850) 897-5747 FAX: (888) 283-2259
- 420 Senate Office Building, 404 South Monroe Street, Tallahassee, FL 32399-1100 (850) 487-5001
- 5230 West U.S. Highway 98, Administration Building, 2nd Floor, Panama City, FL 32401 (850) 747-5856

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore