

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**  
**GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY**  
**Senator Ring, Chair**  
**Senator Siplin, Vice Chair**

**MEETING DATE:** Monday, January 9, 2012  
**TIME:** 1:00 —3:00 p.m.  
**PLACE:** *Toni Jennings Committee Room*, 110 Senate Office Building

**MEMBERS:** Senator Ring, Chair; Senator Siplin, Vice Chair; Senators Benacquisto, Bogdanoff, Dean, Flores, Garcia, Latvala, Margolis, Montford, and Wise

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 446</b> Children, Families, and Elder Affairs (Identical H 7019)	OGSR/Insurance Claim Data Exchange Information/Past Due Child Support; Amending provisions relating to a public records exemption for insurance claim data exchange information used for identifying parents who owe past due child support; saving the exemption from repeal under the Open Government Sunset Review Act; removing the scheduled repeal of the exemption, etc.  CF 12/07/2011 Favorable GO 01/09/2012 Favorable	Favorable Yeas 11 Nays 0
2	<b>SB 538</b> Bogdanoff (Identical H 153)	Preference to Florida Businesses in Procurement of Personal Property and Services; Citing this act as the "Buy Florida Act"; requiring an agency, county, municipality, school district, or other political subdivision of the state to grant a specified preference to a vendor located within the state when awarding a contract for printing; specifying the percentage of preference to be granted; requiring, rather than authorizing, an agency, county, municipality, school district, or other political subdivision of the state in making purchases of personal property through competitive solicitation to award a preference to the lowest responsible and responsive vendor having a principal place of business within this state under specified circumstances; specifying the percentage of preference to be granted; providing nonapplicability, etc.  CA 12/05/2011 Favorable GO 01/09/2012 Favorable BC	Favorable Yeas 10 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Governmental Oversight and Accountability  
 Monday, January 9, 2012, 1:00 —3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	<b>CS/SB 560</b> Environmental Preservation and Conservation / Dean (Compare H 157)	Water Management Districts; Authorizing a district to designate another single affected district to conduct resource management responsibilities under an interagency agreement; requiring that the district providing funding assistance for an activity, study, or project receive some or all of the benefits; requiring districts to apply specific reservations, minimum flows and levels, and recovery and prevention strategies in determining certain effects of proposed consumptive uses of water; authorizing a district to provide group health insurance for the employees of another district, etc.  EP 12/06/2011 Fav/CS GO 01/09/2012 Favorable BC	Favorable Yeas 11 Nays 0
4	<b>SB 570</b> Ring (Identical H 351)	Public Records/Donor Identity/Publicly Owned Performing Arts Center; Defining the term "publicly owned performing arts center"; creating an exemption from public records requirements for information that identifies a donor or prospective donor of a donation made for the benefit of a publicly owned performing arts center if the donor desires to remain anonymous; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act, etc.  CA 12/05/2011 Favorable GO 01/09/2012 Favorable	Favorable Yeas 11 Nays 0
5	<b>SB 678</b> Smith (Identical H 649)	State Contracts; Requiring all state contracts of more than a certain amount to require any call-center services to be staffed by persons located within the United States, etc.  GO 01/09/2012 Favorable CM BC	Favorable Yeas 11 Nays 0
6	<b>SB 880</b> Ring	State Investments; Increasing the amount of money that may be invested in alternative investments by the State Board of Administration; reducing the amount of the Lawton Chiles Endowment Fund which is available for biomedical research; specifying the real value of the net assets of the fund as of a certain date, etc.  GO 01/09/2012 Temporarily Postponed BC	Temporarily Postponed

Consideration of proposed committee bill:

**COMMITTEE MEETING EXPANDED AGENDA**

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	<b>SPB 7040</b>	State Retirement; Specifying that a retiree who is elected or appointed for the first time to an elective office may not be enrolled as a renewed member; specifying that a retiree who is reemployed in a regularly established position as an elected official may not renew membership in the Senior Management Service Class or annuity program; providing exceptions from the prohibition against paying benefits for certain purposes under the Senior Management Service Optional Annuity Program; specifying that a retiree who is reemployed in a regularly established position after a certain date may not be enrolled as a renewed member, etc.	Submitted as Committee Bill

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Other Related Meeting Documents

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# CourtSmart Tag Report

Room: EL 110

Case:

Caption: Governmental Oversight and Accountability

Type:

Judge:

Started: 1/9/2012 1:03:50 PM

Ends: 1/9/2012 2:33:19 PM Length: 01:29:30

1:03:51 PM Call to Order  
1:04:00 PM Call to Order  
1:04:04 PM Call Roll  
1:04:26 PM SB 678  
1:04:48 PM Senator Smith Presents  
1:05:18 PM State Contract - Call Centers  
1:06:14 PM Chairman asks question  
1:06:30 PM Senator Smith responds  
1:06:57 PM Member Questions?  
1:07:13 PM Frank Meiners AIF waves in opposition  
1:07:49 PM Mike Feins speaks against  
1:08:27 PM Senator Garcia asks question  
1:08:59 PM Senator Smith responds  
1:11:38 PM Senator Flores asks a question  
1:12:22 PM Senator Smith responds  
1:13:00 PM Senator Siplin asks a question  
1:13:20 PM Senator Smith responds  
1:13:56 PM Senator Benacquisto asks a question  
1:14:19 PM Senator Smith responds  
1:15:26 PM Senator Dean asks a question  
1:15:36 PM Senator Smith responds  
1:16:35 PM Chairman asks a questions  
1:16:43 PM Senator Smith responds  
1:16:51 PM Senator Latvala asks a question  
1:17:15 PM Debate  
1:18:15 PM Senator Garcia comments  
1:19:50 PM Senator Montford comments  
1:20:28 PM Senator Smith closes on the bill  
1:21:32 PM Call roll for SB 678  
1:22:03 PM Show SB 678 as reporting favorably  
1:22:27 PM SB 446  
1:22:37 PM return to bill later  
1:22:56 PM SB 538  
1:23:04 PM Senator Bogdanoff presents  
1:23:28 PM Questions?  
1:23:32 PM Chairman asks a question  
1:23:44 PM Senator Bognadoff responds  
1:24:14 PM Harry Duncanson waves in support  
1:24:29 PM Call roll  
1:24:33 PM Show SB 538 as reporting favorably  
1:24:58 PM CS/SB 560  
1:25:07 PM Senator Dean presents  
1:26:21 PM amendment 669138 withdrawn  
1:26:40 PM Frank Bernardino rep Polk County and the Florida Section of the AWWA  
1:27:22 PM Speaks against the bill  
1:28:40 PM David Cullen absent  
1:28:51 PM Steve Mennis waves in support  
1:29:08 PM Diane Salz waves in support  
1:29:21 PM Kathy Till waves in support  
1:29:37 PM David Cullen waves in support  
1:29:45 PM Senator Dean closes  
1:29:58 PM Roll call

1:30:03 PM Show CS/SB 560 reporting favorably  
1:30:47 PM SB 446  
1:30:53 PM Ashley Daniell, Attorney, presents  
1:31:22 PM Member Questions?  
1:31:28 PM Roll call  
1:31:31 PM Show SB 446 reporting favorably  
1:31:56 PM Chairman turns the meeting over to Senator Siplin  
1:32:11 PM SB 570  
1:32:18 PM Presented by Senator Ring  
1:32:43 PM Questions?  
1:32:53 PM Dave waves in support  
1:33:28 PM roll call  
1:33:31 PM SB 570 reports favorably  
1:33:48 PM SB 880  
1:34:19 PM Senator Ring presents  
1:34:42 PM Questions?  
1:34:46 PM Senator Latvala asks questions  
1:35:48 PM Senator Ring responds  
1:36:28 PM Senator Latvala asks a question  
1:36:41 PM Senator Ring responds  
1:37:09 PM Senator Latvala comments  
1:37:22 PM Senator Ring responds  
1:38:30 PM Senator Latvala asks a question  
1:39:20 PM Senator Ring responds  
1:40:29 PM Senator Latvala asks a question  
1:41:00 PM Senator Ring responds  
1:42:33 PM Senator Latvala asks a question  
1:42:46 PM Senator Ring responds  
1:45:23 PM Senator Margolis asks a question  
1:46:07 PM Senator Ring responds  
1:46:16 PM Ash Williams, Executive Director SBA  
1:46:43 PM Answers Senator Margolis' question  
1:47:32 PM Senator Margolis comments  
1:47:53 PM Mr. Williams recognized  
1:48:12 PM Senator Margolis asks a question  
1:48:33 PM Mr. Williams responds  
1:49:34 PM Senator Dean asks a question  
1:49:42 PM Mr. Williams responds  
1:51:15 PM Senator Montford asks a question  
1:51:28 PM Mr. Williams responds  
1:57:48 PM Senator Montford asks a question  
1:58:07 PM Mr. Williams responds  
1:58:26 PM Senator Wise asks a question  
1:58:35 PM Mr. Williams responded  
1:59:32 PM Senator Wise asks a question  
2:00:31 PM Mr. Williams responds  
2:01:22 PM Senator Wise asks a questions  
2:01:36 PM Mr. Williams responds  
2:02:53 PM Senator Wise asks a question  
2:03:04 PM Mr. Williams responds  
2:03:59 PM Senator Wise asks a question  
2:04:08 PM Mr. Williams responds  
2:05:19 PM Senator Wise comments  
2:06:23 PM Senator Margolis asks a question  
2:06:59 PM Senator Latvala asks a question  
2:07:48 PM Mr. Williams responds  
2:07:55 PM Senator Latvala asks a question  
2:08:10 PM Senator Latvala asks a question  
2:08:22 PM Mr. Williams responds  
2:08:28 PM Senator Latvala asks a question  
2:08:38 PM Mr. Williams responds  
2:10:01 PM Senator Latvala asks a question

2:10:16 PM Mr. Williams responds  
2:11:45 PM Senator Latvala asks a question  
2:11:58 PM Mr. Williams responds  
2:12:26 PM Senator Latvala asks a question  
2:12:38 PM Mr. Williams responds  
2:15:07 PM Senator Latvala asks a question  
2:15:16 PM Mr. Williams responds  
2:16:32 PM Senator Latvala asks a question  
2:16:43 PM Mr. Williams responds  
2:19:12 PM Senator Latvala asks a question  
2:19:22 PM Mr. Williams responds  
2:20:02 PM Senator Siplin discusses the bill  
2:21:13 PM Mr. Williams comment  
2:21:32 PM Florida Alt. Investment supports the bill  
2:22:00 PM Pat Dix with FL Education Assn waves in support  
2:22:17 PM Senator Latvala comments  
2:22:44 PM Senator Latvala suggests more time be given  
2:23:48 PM Senator Siplin agrees with Senator Latvala  
2:24:03 PM Chairman agrees to bring this bill back at a later time  
2:25:18 PM Senator Siplin responds to Mr. Williams  
2:25:52 PM Motion to temporarily postpone bill  
2:26:05 PM motion adopted  
2:26:10 PM Chairman Ring  
2:26:25 PM SPB 7040  
2:26:39 PM Glitch bill  
2:27:16 PM Senator Ring explains  
2:27:30 PM Questions?  
2:27:36 PM Senator Latvala asks a question  
2:27:47 PM Senator Ring responds  
2:28:15 PM Senator Latvala asks a question  
2:29:18 PM Senator Ring responds  
2:30:47 PM Senator Dean asks a question  
2:32:13 PM Senator Ring responds  
2:32:22 PM Garry Green of Dept. of Management serves  
2:32:48 PM Senator Garcia moves  
2:32:59 PM Concludes the items  
2:33:06 PM Senator Siplin moves we rise

**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.)

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

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BILL: SB 446

INTRODUCER: Children, Families, and Elder Affairs Committee

SUBJECT: OGSR/Insurance Claim Data Exchange Information/Past Due Child Support

DATE: January 3, 2012

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Farmer	CF	<b>Favorable</b>
2.	Seay	Roberts	GO	<b>Favorable</b>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill is the result of the Children, Families, and Elder Affairs Committee’s Open Government Sunset Review of the public records exemption for personal information obtained during an insurance claim data exchange. The exemption will expire October 2, 2012, unless saved from repeal through reenactment by the Legislature.

Section 409.25659, F.S., currently requires the Department of Revenue (DOR) to develop and operate a data match system in which an insurer may voluntarily provide DOR with the name, address, and if known, date of birth, and Social Security Number or other taxpayer identification number for each noncustodial parent who has a claim with the insurer and who owes past-due child support. The exemption provides that specified information collected by DOR regarding a noncustodial parent who owes past-due child support is confidential and exempt from public records requirements. This bill reenacts this public records exemption.

This bill substantially section 409.25661 of the Florida Statutes.

**II. Present Situation:**

**Public Records Law**

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.<sup>1</sup> One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of

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<sup>1</sup> Section 1390, 1391 F.S. (Rev. 1892).

access to public records to a constitutional level.<sup>2</sup> Article I, s. 24 of the State Constitution, provides that:

Every person has 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 persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,<sup>3</sup> which pre-dates public records provision of the State Constitution, specifies conditions under which public access must be provided to records of an agency.<sup>4</sup> Section 119.07(1)(a), F.S., states:

- (a) Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.

Unless specifically exempted, all agency records are available for public inspection. The term “public record” is broadly defined 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.<sup>5</sup>

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.<sup>6</sup> All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.<sup>7</sup>

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<sup>2</sup> Article I, s. 24, Fla. Constitution.

<sup>3</sup> Chapter 119, F.S.

<sup>4</sup> The word “agency” is defined in s. 119.011(2), F.S., 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 Florida Constitution also establishes a right of access to 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, except those records exempted by law or the state constitution.

<sup>5</sup> Section 119.011(11), F.S.

<sup>6</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

<sup>7</sup> *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).



Only the Legislature is authorized to create exemptions to open government requirements.<sup>8</sup> Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.<sup>9</sup> A bill enacting an exemption<sup>10</sup> may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>11</sup>

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.<sup>12</sup> If a record is simply made exempt from disclosure requirements then an agency is not prohibited from disclosing the record in all circumstances.<sup>13</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act (Act)<sup>14</sup> provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.<sup>15</sup>

The Act states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, whose administration would be significantly impaired without the exemption;
- Protects information of a sensitive, personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is

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<sup>8</sup> Article I, s. 24(c), Fla. Constitution.

<sup>9</sup> *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

<sup>10</sup> Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

<sup>11</sup> Art. I, s. 24(c), Fla. Constitution.

<sup>12</sup> Attorney General Opinion 85-62.

<sup>13</sup> *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5<sup>th</sup> DCA), review denied, 589 So.2d 289 (Fla. 1991).

<sup>14</sup> Section 119.15, F.S.

<sup>15</sup> Section 119.15(5)(a), F.S.

used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.<sup>16</sup>

The Act also requires consideration of the following:

- 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?

### **Insurance Claim Data Exchange**

Section 409.25659, F.S., was established during the 2004 Regular Session to provide for the identification of claims<sup>17</sup> on liability insurance which could potentially be applied to child support arrearages in Title IV-D cases.<sup>18</sup>

The department was directed by statute to develop and operate a data match system to identify noncustodial parents who owe past-due child support and who also have a claim with an insurer. This process allows insurers to voluntarily provide the Department of Revenue (DOR) with the name, address, and, if known, date of birth, and Social Security number or other taxpayer identification number for each noncustodial parent identified as having a claim.<sup>19</sup> This data can only be used for purposes of child support enforcement.<sup>20</sup>

Within the data match system, an insurer may provide DOR with the needed information in one of three ways:

- An insurer may provide the required data for each claim directly to DOR electronically so that the department can conduct a data match;
- An insurer may receive or access data from DOR and conduct a data match of all noncustodial parents who have a claim with the insurer and who owe past-due child support, and submit the match data regarding each noncustodial parent to DOR; or

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<sup>16</sup> Section 119.15(4)(b), F.S.

<sup>17</sup> A “claim” is considered an open, unresolved bodily injury claim on liability coverage in excess of \$3,000 in an insurance contract payable to an individual, or to a third party for the benefit of the individual, who is a Florida resident or who had an accident or loss that occurred in Florida, or who has an outstanding child support obligation in Florida. Section 409.24659(1), F.S.

<sup>18</sup> Chapter 2004-334, Laws of Fla. The term “Title IV-D” refers to state-run child support enforcement programs which are funded through grants provided for by the Social Security Act of 1975. Title IV of the Social Security Act covers grants to states for the purpose of providing aid and services to needy families with children and for child-welfare services. Part “D” of that law covers child support and the establishment of paternity.

<sup>19</sup> Section 409.25659(2), F.S.

<sup>20</sup> Section 409.25659(5), F.S.

- An insurer may authorize an insurance claim data collection organization to complete one of the two options mentioned above.<sup>21</sup>

Due to the variety of data submission methods provided within the system, it would be possible for DOR to receive information on individuals having a claim with an insurer, who do not owe child support.<sup>22</sup>

In 2004, DOR contacted most of the top 25 insurers in the state to begin implementation of the statute. However, during this time insurers were responding to claims resulting from damage caused by the 2004 hurricane season so DOR decided to postpone working on the insurance claim data exchange initiative.<sup>23</sup>

In February 2006 Congress passed the Deficit Reduction Act of 2005 (the Act), which authorized the Federal Department of Health and Human Services (HHS) to compare information concerning individuals owing past-due child support with information maintained by insurers concerning insurance claims, settlements, awards, and payments. The Act further allows HHS to furnish information resulting from the data matches to state agencies responsible for child support enforcement.<sup>24</sup> A federal workgroup was established to implement this provision. The department monitored the activities of the federal workgroup charged with implementing the nationwide insurance data match program and began implementing the changes necessary to receive data from the federal program.<sup>25</sup>

In November 2008, DOR began data matching activities with the federal program and began issuing income deduction notices on matches.<sup>26</sup> Between November 2008 and October 2009, the department received 2,996 data matches from the federal program.<sup>27</sup> Of those matches, 422 were previously made by the department through other means.<sup>28</sup> According to department representatives, approximately \$2 million has been collected since the department implemented the federal matching program.<sup>29</sup>

During the 2009 Regular Session, there was discussion over whether the federal voluntary insurance data match program would replace the state's voluntary program. The department sent 84 letters to Florida-based insurance companies from November 2009 through February 2010

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<sup>21</sup> Section 409.25659(2)(a)-(c), F.S.

<sup>22</sup> Conversation between representatives from the Fla. Dept. of Revenue and staff of the Senate Committee on Children, Families, and Elder Affairs (Jul. 12, 2011) [hereinafter Dept. of Revenue].

<sup>23</sup> Committee on Children, Families, and Elder Affairs, The Florida Senate, *Open Government Sunset Review Regarding Noncustodial Parents Owing Past-Due Child Support*, 4 (Interim Report 2009-202) (Sept. 2008), available at [http://archive.flsenate.gov/data/Publications/2009/Senate/reports/interim\\_reports/pdf/2009-202cf.pdf](http://archive.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-202cf.pdf) (last visited Jan. 3, 2012).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> E-mail from Debbie Thomas, Dep't of Revenue, to staff of the Senate Committee on Children, Families, and Elder Affairs (Jun. 14, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

<sup>27</sup> Governmental Affairs Policy Committee, The Florida House of Representatives, *House of Representatives Staff Analysis HB 7091* (Mar. 5, 2010), available at <http://archive.flsenate.gov/data/session/2010/House/bills/analysis/pdf/h7091.GAP.pdf> (last visited Jan. 3, 2012).

<sup>28</sup> *Id.*

<sup>29</sup> Dept. of Revenue, *supra* note 22.

inviting them to participate in the voluntary state program. The department received responses from two companies, both of which stated they do not handle personal liability insurance. In February 2011, DOR sent an additional 135 letters to Florida-based insurance companies and as of June 1, 2011, they had received only three responses, including one from Citizens Property Insurance Corporation (Citizens).<sup>30</sup> The department has been working with Citizens to design a data match system and by 2012, DOR should begin receiving data from Citizens.<sup>31</sup> The department continues to encourage voluntary participation in the state insurance claim data match through annual contact letters to Florida-based insurers.<sup>32</sup>

The department reports that as of May 2011, the number of noncustodial parents eligible to be matched using the insurance claim data exchange is 448,965.<sup>33</sup>

### **Public Records Exemption for Insurance Claim Data Exchange**

Section 409.25661, F.S., provides that information obtained by DOR during an insurance claim data exchange pursuant to s. 409.25659, F.S., is confidential and exempt from public disclosure until the department determines whether a match exists. If a match does exist, the matched data is no longer considered confidential and exempt and becomes available for public disclosure unless otherwise exempt. If a match does not exist, the information must be destroyed.

This public records exemption was first created by the Legislature in 2004. During the 2009 and 2010 Regular Sessions, the Legislature extended the repeal date of the exemption to provide DOR with ample time to determine the success of the provisions contained in the federal Deficit Reduction Act of 2005. This exemption stands repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.

### **Committee on Children, Families, and Elder Affairs' Open Government Sunset Review**

Based on an Open Government Sunset Review of this exemption, Senate professional staff of the Children, Families, and Elder Affairs Committee recommended that the Legislature retain the public records exemption established in s. 409.25661, F.S., which makes personal information obtained by DOR during an insurance claim data exchange pursuant to s. 409.25659, F.S., confidential and exempt from public disclosure until the department determines whether a match exists.<sup>34</sup>

This recommendation was made in light of the information gathered for the Open Government Sunset Review, which indicated that a public necessity continues to exist in maintaining the confidential nature of personal information gathered by the department relating to persons having open liability claims with participating insurers. Additionally, the department reports that

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<sup>30</sup> Dept. of Revenue, *CSE Insurance Data Match Public Records Exemption* (Jun. 14, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

<sup>31</sup> Dept. of Revenue, *supra* note 22.

<sup>32</sup> *Id.*

<sup>33</sup> E-mail from Debbie Thomas, Dept. of Revenue, to staff of the Senate Committee on Children, Families, and Elder Affairs (Jun. 24, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

<sup>34</sup> Senate Committee on Children, Families, and Elder Affairs, *Open Government Sunset Review of Section 409.25661, Relating to Insurance Claim Data Exchange Information* (Interim Report 2012-301) (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-301CF.pdf> (last visited Jan. 3, 2011).

insurance providers may be less likely to participate in the insurance claim data exchange program without the exemption, making the exemption vital to the effective administration of the program.

### **III. Effect of Proposed Changes:**

**Section 1** reenacts and saves from repeal the public records exemption allowing information obtained by the Department of Revenue (DOR) during an insurance claim data exchange to remain confidential and exempt from public disclosure until such time as the department determines whether a match exists.

**Section 2** provides an effective date of October 1, 2012.

#### **Other Potential Implications:**

If the Legislature chooses not to retain the public records exemption for information obtained by DOR during an insurance claim data exchange, the exemption will expire on October 2, 2012. Without the exemption, the names, addresses, dates of birth, social security numbers, and claim numbers of noncustodial parents will become public.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

The bill retains an already-existing public records exemption and thus is not subject to requirement that the exemption must pass with a two-thirds vote of both houses of the Legislature. The bill complies with the requirement of Article I, section 24 of the State Constitution that public records exemptions may only be addressed in legislation separate from substantive changes to law.

#### **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. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

By the Committee on Children, Families, and Elder Affairs

586-00539-12

2012446\_\_

1                   A bill to be entitled  
2           An act relating to a review under the Open Government  
3           Sunset Review Act; amending s. 409.25661, F.S.,  
4           relating to a public records exemption for insurance  
5           claim data exchange information used for identifying  
6           parents who owe past due child support; saving the  
7           exemption from repeal under the Open Government Sunset  
8           Review Act; removing the scheduled repeal of the  
9           exemption; providing an effective date.

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

12  
13           Section 1. Section 409.25661, Florida Statutes, is amended  
14 to read:

15           409.25661 Public records exemption for insurance claim data  
16 exchange information.-

17           ~~(1)~~ Information obtained by the Department of Revenue  
18 pursuant to s. 409.25659 is confidential and exempt from s.  
19 119.07(1) and s. 24(a), Art. I of the State Constitution until  
20 such time as the department determines whether a match exists.  
21 If a match exists, such information becomes available for public  
22 disclosure. If a match does not exist, the nonmatch information  
23 shall be destroyed as provided in s. 409.25659.

24           ~~(2) This section is subject to the Open Government Sunset~~  
25 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~  
26 ~~on October 2, 2012, unless reviewed and saved from repeal~~  
27 ~~through reenactment by the Legislature.~~

28           Section 2. This act shall take effect October 1, 2012.

**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.)

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

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BILL: SB 538

INTRODUCER: Senator Bogdanoff and others

SUBJECT: Preference to Florida Businesses in Procurement of Personal Property and Services

DATE: January 3, 2012

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Yeatman	CA	<b>Favorable</b>
2.	McKay	Roberts	GO	<b>Favorable</b>
3.			BC	
4.				
5.				
6.				

**I. Summary:**

The bill modifies the existing in-state vendor preference for public printing contracts to include counties, municipalities, school districts, and other political subdivisions as entities that may grant preference, and specifies the preference.

The bill alters the preference for in-state vendors by requiring, rather than authorizing, the preference for in-state vendors. The bill provides the preference shall be 5 percent for public printing contracts and in the procurement of personal property and services.

This bill substantially amends the following sections of the Florida Statutes: ss. 283.35 and 287.084.

**II. Present Situation:**

**Public Printing Vendor Preference**

Chapter 283 of the Florida Statutes regulates public printing. Section 283.35, F.S., provides that “[e]very agency must give preference to vendors located within the state when awarding contracts to have materials printed, whenever such printing can be done at no greater expense than the expense of awarding a contract to a vendor located outside the state and can be done at a level of quality comparable to that obtainable from a vendor located outside the state.”

Section 283.30(1), F.S., defines the term “agency” for purposes of ch. 283, F.S., to mean any official, officer, department, board, commission, division, bureau, section, district, office,



authority, committee, or council, or any other unit of organization, however designated, of the executive branch of state government, and the Public Service Commission.

### **State Agency Procurement Vendor Preference**

Chapter 287 of the Florida Statutes regulates state agency<sup>1</sup> procurement of personal property and services. In providing preference to Florida businesses, s. 287.084, F.S., states:

- (1) When an agency, county, municipality, school district, or other political subdivision of the state is required to make purchases of personal property through competitive solicitation and the lowest responsible and responsive bid, proposal, or reply is by a vendor whose principal place of business is in a state or political subdivision thereof which grants a preference for the purchase of such personal property to a person whose principal place of business is in such state, then the agency, county, municipality, school district, or other political subdivision of this state may award a preference to the lowest responsible and responsive vendor having a principal place of business within this state, which preference is equal to the preference granted by the state or political subdivision thereof in which the lowest responsible and responsive vendor has its principal place of business. However, this section does not apply to transportation projects for which federal aid funds are available.
- (2) If a solicitation provides for the granting of a preference as is provided in this section, any vendor whose principal place of business is outside the State of Florida must accompany any written bid, proposal, or reply documents with a written opinion of an attorney at law licensed to practice law in that foreign state, as to the preferences, if any or none, granted by the law of that state to its own business entities whose principal places of business are in that foreign state in the letting of any or all public contracts.

### **III. Effect of Proposed Changes:**

**Section 1** provides a short title: the “Buy Florida Act.”

**Section 2** amends s. 283.35, F.S., by expanding application of the printing preference to each county, municipality, school district, or other political subdivision of this state. The preference shall be five percent if the lowest bid is submitted by a vendor whose principal place of business is located outside the state if the printing can be performed in this state at a level of quality comparable to that obtainable from the vendor submitting the lowest bid located outside the state.

---

<sup>1</sup> As defined in s. 287.012(1), F.S., “agency” means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. “Agency” does not include the university and college boards of trustees or the state universities and colleges.

**Section 3** amends s. 287.084, F.S., by requiring preferences be given to in-state vendors and adding an additional provision to the existing preference. The preference for in-state vendors will be mandatory, rather than authorized. The bill provides the preference shall be 5 percent for public printing contracts and in the procurement of personal property and services. In a competitive solicitation in which the lowest bid is submitted by a vendor whose principal place of business is located outside the state and that state does not grant a preference in competitive solicitation to vendors having a principal place of business in that state, the preference to the lowest responsible and responsive vendor having a principal place of business in this state must be 5 percent.

**Section 4** provides an effective date of July 1, 2012.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

None.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

##### D. Other Constitutional Issues:

The establishment of local preference laws may potentially implicate the Equal Protection Clause and the Commerce Clause of the U.S. Constitution.

##### *The Equal Protection Clause*

The United States Constitution provides that “no State shall . . . deny to any person within its jurisdiction, the equal protection of law.”<sup>2</sup> The in-state preference provisions in this bill may constitute an equal protection violation. If such legislation is challenged, the court would use a rational basis test to determine the constitutionality of the alleged discriminatory treatment.<sup>3</sup> Under the rational basis test, a court must uphold a state statute so long as the classification bears a rational relationship to a legitimate state interest.<sup>4</sup>

##### *The Commerce Clause*

The United States Constitution provides that Congress shall have the power “to regulate commerce . . . among the states.”<sup>5</sup> The Commerce Clause acts not only as a positive grant of power to Congress, but also as a negative constraint upon the states.<sup>6</sup>

<sup>2</sup> U.S. CONST. amend. XIV, § 1. *See also* FLA. CONST. art. I, s. 2.

<sup>3</sup> *Nordlinger v. Hahn*, 505 U.S. 1, 33-34 (1992) (stating that a “classification *rationaly* furthers a state interest when there is some fit between the disparate treatment and the legislative purpose.”).

<sup>4</sup> *Id.*

<sup>5</sup> U.S. CONST. art. I, s. 8, cl. 3.

Courts have used a two-tiered analysis to determine whether a statutory scheme violates the Commerce Clause:

1. “If a statute ‘directly regulates or discriminates against interstate commerce, or [if] its effect is to favor in-state economic interests over out-of-state interests,’ the court may declare it unconstitutional as applied, without further inquiry.”<sup>7</sup>
2. “. . . if the statute regulates evenhandedly and if it has only an indirect effect on interstate commerce, the court must determine whether the state’s interest is legitimate and, if so, whether the burden on interstate commerce exceeds the local benefits.”<sup>8</sup>

However, when a state or local government is acting as a “market participant” rather than a “market regulator,” it is not subject to the limitations of the Commerce Clause.<sup>9</sup> A state is considered to be a “market participant” when it is acting as an economic actor such as a purchaser of goods and services.<sup>10</sup> Since the state is acting as a “market participant” under this bill, the in-state preference provisions herein are likely to be upheld as an exception to the Commerce Clause.

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

This bill could result in more business being awarded to in-state vendors as a product of the preference being given to them.

### C. Government Sector Impact:

As a result of this bill, counties, municipalities, school districts, and other political subdivisions will be required to grant in-state vendor preference for public printing contracts.

The bill provides that the preference for in-state vendors shall be 5 percent for public printing contracts and in the procurement of personal property and services.

The fiscal impact of these changes is indeterminate.

<sup>6</sup> See *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824).

<sup>7</sup> *National Collegiate Athletic Ass’n v. Associated Press*, 18 So. 3d 1201, 1211-1212 (Fla. 1st DCA 2009) (citing *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573, 578-579).

<sup>8</sup> *Id.* (citations omitted); See *Bainbridge v. Turner*, 311 F.3d 1104, 1108-1109.

<sup>9</sup> See *White v. Massachusetts Council of Constr. Employers*, 460 U.S. 204, 204 (1983) (providing that a state may grant and enforce a preference to local residents when entering into construction projects for public projects).

<sup>10</sup> *Id.*

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

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

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

None.

**B. Amendments:**

None.

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

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By Senators Bogdanoff and Gaetz

25-00370B-12

2012538\_\_

A bill to be entitled

An act relating to preference to Florida businesses in procurement of personal property and services; providing a short title; amending s. 283.35, F.S.; requiring an agency, county, municipality, school district, or other political subdivision of the state to grant a specified preference to a vendor located within the state when awarding a contract for printing; specifying the percentage of preference to be granted; amending s. 287.084, F.S.; requiring, rather than authorizing, an agency, county, municipality, school district, or other political subdivision of the state in making purchases of personal property through competitive solicitation to award a preference to the lowest responsible and responsive vendor having a principal place of business within this state under specified circumstances; specifying the percentage of preference to be granted; providing nonapplicability; providing an effective date.

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

Section 1. This act may be cited as the "Buy Florida Act."

Section 2. Section 283.35, Florida Statutes, is amended to read:

283.35 Preference given printing within the state. ~~Every agency shall give preference to vendors located within the state~~ When awarding a contract ~~contracts~~ to have materials printed,

Page 1 of 3

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

25-00370B-12

2012538\_\_

the agency, county, municipality, school district, or other political subdivision of this state awarding the contract shall grant a preference to the lowest responsible and responsive vendor having a principal place of business within this state. The preference shall be 5 percent if the lowest bid is submitted by a vendor whose principal place of business is located outside the state and if the ~~whenever such~~ printing can be performed in this state ~~done at no greater expense than the expense of awarding a contract to a vendor located outside the state and can be done~~ at a level of quality comparable to that obtainable from ~~the~~ a vendor submitting the lowest bid located outside the state.

Section 3. Section 287.084, Florida Statutes, is amended to read:

287.084 Preference to Florida businesses.—

(1) (a) When an agency, county, municipality, school district, or other political subdivision of the state is required to make purchases of personal property through competitive solicitation and the lowest responsible and responsive bid, proposal, or reply is by a vendor whose principal place of business is in a state or political subdivision thereof which grants a preference for the purchase of such personal property to a person whose principal place of business is in such state, then the agency, county, municipality, school district, or other political subdivision of this state shall ~~may~~ award a preference to the lowest responsible and responsive vendor having a principal place of business within this state, which preference is equal to the preference granted by the state or political subdivision thereof

Page 2 of 3

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

25-00370B-12

2012538

59 in which the lowest responsible and responsive vendor has its  
60 principal place of business. In a competitive solicitation in  
61 which the lowest bid is submitted by a vendor whose principal  
62 place of business is located outside the state and that state  
63 does not grant a preference in competitive solicitation to  
64 vendors having a principal place of business in that state, the  
65 preference to the lowest responsible and responsive vendor  
66 having a principal place of business in this state shall be 5  
67 percent.

68 (b) Paragraph (a) However, this section does not apply to  
69 transportation projects for which federal aid funds are  
70 available.

71 (2) If a solicitation provides for the granting of such  
72 preference as is provided in this section, Any vendor whose  
73 principal place of business is outside the State of Florida must  
74 accompany any written bid, proposal, or reply documents with a  
75 written opinion of an attorney at law licensed to practice law  
76 in that foreign state, as to the preferences, if any or none,  
77 granted by the law of that state to its own business entities  
78 whose principal places of business are in that foreign state in  
79 the letting of any or all public contracts.

80 Section 4. This act shall take effect July 1, 2012.

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/9/12

Meeting Date

Topic Preferences for Florida Businesses Bill Number SB 538 (if applicable)

Name HARRY DUNCANSON Amendment Barcode \_\_\_\_\_ (if applicable)

Job Title Chair, Government Affairs

Address 9204 Waters Meet Dr Phone 954 401 5933

Street Tallahassee State FL Zip 32312

E-mail HarryDunc@comcast.net

Speaking:  For  Against  Information

Representing PRINTING ASSOCIATION OF FLORIDA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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 Governmental Oversight and Accountability Committee

BILL: CS/SB 560

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Dean

SUBJECT: Water Management Districts

DATE: January 3, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Yeatman	EP	<b>Fav/CS</b>
2.	McKay	Roberts	GO	<b>Favorable</b>
3.			BC	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

The bill provides the water management districts (WMDs) greater flexibility to:

- Enter into interagency agreements for resource study and management for impacts to water resources that cross WMD boundaries;
- Apply an adjoining WMD’s reservations, minimum flows and levels (MFLs), and recovery or prevention strategies without having to undertake rulemaking to adopt them for those rules adopted after July 1, 2012;
- Allow a WMD to issue a consumptive use permit (CUP) under certain circumstances when that CUP would violate another WMD’s reservations, MFLs, or recovery and prevention strategies;
- Grandfather CUPs issued before July 1, 2012, from the provisions of the bill unless the permittee requests modification or increase of the CUP;
- Allow a WMD to offer its employees and the employees of another WMD a group health insurance program in order to minimize health insurance premiums; and
- Jointly develop the water supply development component of a regional water supply plan with a regional water supply authority.



The bill also clarifies that a WMD's cooperative funding programs are not subject to chapter 120, F.S., rulemaking requirements unless they affect a substantial interest of a party.

The bill substantially amends sections 373.046, 373.223, 373.605, 373.709 and 373.171, Florida Statutes.

## **II. Present Situation:**

### **Interagency Agreements**

Subsection 373.046(6), F.S., currently allows the WMDs to enter into an interagency agreement designating one WMD with regulatory responsibilities for the geographic area of projects that affect multiple WMDs or a local government. However, the WMDs do not have the statutory authority to enter into similar agreements for non-regulatory resource management activities, studies, or projects. In addition, a WMD may not fund resource management activities in another WMD even if some benefits inure to it from the activities.

### **Conditions for Issuance of Consumptive Use Permits**

The WMDs were established along surface hydrological boundaries. As Florida's population has grown and groundwater pumping increased, withdrawals along the boundary of one WMD can cause significant harm to the resources in an adjoining WMD. Such effects are becoming more common as technological advances have provided better data on groundwater resources. While a WMD has the authority to protect all water resources, including water bodies in an adjacent WMD, it cannot use the adopted reservation, MFL, and recovery and prevention strategies adopted by a neighboring WMD without separately going through its own rule making process. The current statutory authority may result in duplication of effort and rulemaking activity when a withdrawal affects water bodies in adjoining WMDs. It can also create inconsistent and inequitable treatment of water use permit applicants.

The goal of establishing MFLs is to ensure there is enough water to satisfy the consumptive use of the water resource without causing significant harm to the resource. By establishing MFLs for non-consumptive uses, the WMDs are able to determine how much water is available for consumptive use. This is useful when evaluating a new consumptive use permit (CUP) application.

Section 373.042, F.S., requires the Department of Environmental Protection (DEP) or WMDs to establish MFLs for priority water bodies to prevent significant harm from water withdrawals. However, the WMDs have thus far been solely responsible for establishing MFLs. The WMDs submit annual MFL priority lists to the DEP for review and approval. MFLs are considered rules by the WMDs and are subject to chapter 120, F.S., challenges. MFLs are established using the best available data and are independently and scientifically peer reviewed. To date, 322 MFLs have been adopted and 200 are on the current priority lists from the WMDs.

### **Health Insurance Benefits for Employees of WMDs**

Section 373.605, F.S., authorizes the WMDs to provide group insurance programs for their employees. However, no legislative authority exists for WMDs to pool their employees to

negotiate better insurance rates. Each WMD provides its own insurance programs. WMDs with smaller workforces have difficulty providing plans with adequate coverage at competitive rates. In addition, the quality of health care plans provided currently varies widely among WMDs.

### **Regional Water Supply Planning**

The WMDs are required to conduct water supply needs assessments. A WMD that determines existing resources will not be sufficient to meet reasonable-beneficial uses for the planning period must prepare a regional water supply plan.<sup>1</sup> The plans must contain:

- A water supply development component,
- A water resource development component,
- A recovery and prevention strategy,
- A funding strategy,
- The impacts on the public interest, costs, natural resources, etc.,
- Technical data and information,
- Any MFLs established for the planning area,
- The water resources for which future MFLs must be developed, and
- An analysis of where variances may be used to create water supply development or water resource development projects.<sup>2</sup>

Currently, only the Southwest Florida WMD is required to jointly develop the water supply development component with a regional water supply authority.<sup>3</sup>

### **Cooperative Funding Programs**

Senate Bill 2080, passed during the 2009 Regular Session, addressed cooperative funding programs.<sup>4</sup> However, its statutory placement in s. 373.0363, F.S., limits its application instead of applying generally to all cooperative funding programs, as was intended. Cooperative funding is not considered a regulatory program. It is a cost-share program for local governments for projects that develop sustainable water resources, provide flood protection, and enhance conservation efforts. Therefore, if a district needed to adopt rules for all of the procedures and policies in a cooperative funding program, it would be unable to adapt or modify the program as necessary.

## **III. Effect of Proposed Changes:**

**Section 1** amends s. 373.046, F.S., to allow the WMDs to enter into interagency agreements to share funding and resource management responsibilities for activities, studies, or projects for resources that affect multiple WMDs in a geographic area. This section does not apply to shared regulatory responsibilities already provided for in subsection 373.046(6), F.S. In addition, this section allows a WMD to provide funding assistance to another WMD for resource management activities, studies, or projects if the funding WMD receives some or all of the benefits of the

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<sup>1</sup> See s. 373.709, F.S.

<sup>2</sup> Section 373.709(2), F.S.

<sup>3</sup> Section 373.709(3), F.S.

<sup>4</sup> Chapter 2009-243, s. 1, L.O.F.

resource management activities. The bill also clarifies that it does not impair any interagency agreement in effect on July 1, 2012.

**Section 2** amends s. 373.223, F.S., to allow a WMD to use and consider an adjoining WMD's reservations, minimum flows and levels, and recovery and prevention strategies without adopting them by rule when determining the effect a proposed CUP may have on an adjoining WMD's water resources. The WMD may not issue the CUP if doing so would violate the adjoining WMD's reservations, minimum flows and level, and recovery and prevention strategies. If a party brings a chapter 120, F.S., challenge, the WMD that adopted the rule is responsible for defending it.

**Section 3** amends s. 373.605, F.S., to allow a WMD to offer its employees and the employees of other WMDs a group health insurance program. It also deletes an obsolete section.

**Section 4** amends s. 373.709, F.S., to direct the WMDs to jointly develop the water supply development component of a regional water supply plan with a regional water supply authority. Currently, only the Southwest Florida WMD is required to do so.

**Section 5** amends s. 373.171, F.S., to clarify that a WMD's cooperative funding programs are not subject to chapter 120, F.S., rulemaking requirements. However, parties may challenge the program pursuant to s. 120.569, F.S., if any part of the program affects their substantial interests.

**Section 6** provides an effective date of July 1, 2012.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill will result in a positive but indeterminate fiscal impact to the WMDs. It may also allow for streamlining of some administrative and non-regulatory functions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

**CS by Environmental Preservation and Conservation on December 6, 2011:**

The CS provides the WMDs greater flexibility to:

- Apply an adjoining WMD's reservations, minimum flows and levels (MFLs), and recovery or prevention strategies without undertaking rulemaking to adopt them for rules adopted after July 1, 2012;
- Allow a WMD to issue a CUP under certain circumstances when that CUP would violate another WMD's reservations, MFLs, or recovery and prevention strategies;
- Grandfather CUPs issued before July 1, 2012, from the provisions of the bill unless the permittee requests modification or increase of the CUP; and
- Jointly develop the water supply development component of a regional water supply plan with a regional water supply authority.

The CS clarifies that a WMD's cooperative funding programs are not subject to chapter 120, F.S., rulemaking requirements unless they affect a substantial interest of a party.

Finally, the CS fixed the technical deficiency that limited the WMDs to providing only health insurance benefits.

B. Amendments:

None.



669138

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/09/2012	.	
	.	
	.	
	.	

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

**Senate Amendment**

Delete lines 66 - 69  
and insert:  
compliance report submitted pursuant to s. 373.236. However, a  
district must consider a reservation, minimum flows and levels,  
and recovery strategies adopted by the adjoining district by  
rule on or after July 1, 2012, if a modification of a permit  
issued before July 1, 2012, is requested by the permittee to  
increase permitted quantities or to transfer permitted  
quantities to a new or existing source.

By the Committee on Environmental Preservation and Conservation;  
and Senator Dean

592-01541-12

2012560c1

1 A bill to be entitled  
2 An act relating to water management districts;  
3 amending s. 373.046, F.S.; authorizing a district to  
4 designate another single affected district to conduct  
5 resource management responsibilities under an  
6 interagency agreement; requiring that the district  
7 providing funding assistance for an activity, study,  
8 or project receive some or all of the benefits;  
9 amending s. 373.223, F.S.; requiring districts to  
10 apply specific reservations, minimum flows and levels,  
11 and recovery and prevention strategies in determining  
12 certain effects of proposed consumptive uses of water;  
13 providing an exception; providing requirements for the  
14 challenge of specified rules; providing for  
15 applicability; amending s. 373.605, F.S.; authorizing  
16 a district to provide group health insurance for the  
17 employees of another district; removing obsolete  
18 provisions; amending s. 373.709, F.S., relating to  
19 regional water supply planning; removing a reference  
20 to the Southwest Florida Water Management District;  
21 requiring a regional water supply authority and the  
22 applicable water management district to jointly  
23 develop the water supply component of the regional  
24 water supply plan; amending s. 373.171, F.S.;

25 exempting cooperative funding programs from certain  
26 rulemaking requirements; 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.

592-01541-12

2012560c1

30 Section 1. Subsection (7) is added to section 373.046,  
31 Florida Statutes, to read:  
32 373.046 Interagency agreements.—  
33 (7) If the geographic area of a resource management  
34 activity, study, or project crosses water management district  
35 boundaries, the affected districts may designate a single  
36 affected district to conduct all or part of the applicable  
37 resource management responsibilities under this chapter, with  
38 the exception of those regulatory responsibilities that are  
39 subject to subsection (6). If funding assistance is provided to  
40 a resource management activity, study, or project, the district  
41 providing the funding must ensure that some or all the benefits  
42 accrue to the funding district. This subsection may not impair  
43 any interagency agreement in effect on July 1, 2012.  
44 Section 2. Subsection (6) is added to section 373.223,  
45 Florida Statutes, to read:  
46 373.223 Conditions for a permit.—  
47 (6) In determining the effect of a proposed consumptive use  
48 of water on the water resources of an adjoining district, the  
49 governing board shall apply, without adopting by rule, the  
50 reservations, minimum flows and levels, and recovery or  
51 prevention strategies adopted by rule after July 1, 2012, by the  
52 adjoining district. The governing board may not authorize a  
53 consumptive use of water which violates any reservation adopted  
54 pursuant to subsection (4) or any minimum flow or level adopted  
55 pursuant to ss. 373.042 and 373.0421 after July 1, 2012, unless  
56 such permit is issued in accordance with the recovery or  
57 prevention strategy adopted by rule by the adjoining district.  
58 The district may grant a variance from the recovery or

Page 2 of 4

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

592-01541-12 2012560c1

59 prevention strategy if the applicant identifies an alternative  
 60 strategy to assist with the recovery of or the prevention of  
 61 harm to a water body. Any rule applied pursuant to this  
 62 subsection which is challenged under s. 120.56 or s. 120.569  
 63 shall be defended by the district that adopted the rule. This  
 64 subsection does not apply to and may not be considered for any  
 65 permit issued before July 1, 2012, including a review of a  
 66 compliance report submitted pursuant to s. 373.236, or a permit  
 67 modification requested by the permittee unless the permittee  
 68 requests an increase in permitted quantities or a transfer of  
 69 permitted quantities to a new or existing source.

70 Section 3. Section 373.605, Florida Statutes, is amended to  
 71 read:

72 373.605 Group insurance for water management districts.-

73 (1) The governing board of a any water management district  
 74 may is hereby authorized and empowered to provide group  
 75 insurance for its employees in the same manner and with the same  
 76 provisions and limitations authorized for other public employees  
 77 by ss. 112.08, 112.09, 112.10, 112.11, and 112.14.

78 (2) The governing board of a water management district may  
 79 provide group insurance for its employees and the employees of  
 80 another water management district in the same manner and with  
 81 the same provisions and limitations authorized for other public  
 82 employees by ss. 112.08, 112.09, 112.10, 112.11, and 112.14.

83 ~~(2) Any and all insurance agreements in effect as of~~  
 84 ~~October 1, 1974, which conform to the provisions of this section~~  
 85 ~~are hereby ratified.~~

86 Section 4. Subsection (3) of section 373.709, Florida  
 87 Statutes, is amended to read:

592-01541-12 2012560c1

88 373.709 Regional water supply planning.-

89 (3) The water supply development component of a regional  
 90 water supply plan which deals with or affects public utilities  
 91 and public water supply for those areas served by a regional  
 92 water supply authority and its member governments ~~within the~~  
 93 ~~boundary of the Southwest Florida Water Management District~~  
 94 shall be developed jointly by the authority and the applicable  
 95 water management district. In areas not served by regional water  
 96 supply authorities, or other multijurisdictional water supply  
 97 entities, and where opportunities exist to meet water supply  
 98 needs more efficiently through multijurisdictional projects  
 99 identified pursuant to paragraph (2) (a), water management  
 100 districts are directed to assist in developing  
 101 multijurisdictional approaches to water supply project  
 102 development jointly with affected water utilities, special  
 103 districts, and local governments.

104 Section 5. Subsection (5) is added to section 373.171,  
 105 Florida Statutes, to read:

106 373.171 Rules.-

107 (5) Cooperative funding programs are not subject to the  
 108 rulemaking requirements of chapter 120. However, any portion of  
 109 an approved program which affects the substantial interests of a  
 110 party is subject to s. 120.569.

111 Section 6. This act shall take effect July 1, 2012.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/9/12

Meeting Date

Topic WATER MGT. DISTRICTS

Bill Number SB 560  
*(if applicable)*

Name KATHY TILL

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title LOBBYIST

Address 1208 ERROL PARKWAY

Phone 407-484-3597

Street

APODKA

FL

32712

City

State

Zip

E-mail Kathyspud@aol.com

Speaking:  For  Against  Information

Representing FLORIDA LEAGUE OF CITIES

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Meeting Date

Topic SB 560 Water Mgmt

Bill Number 560  
*(if applicable)*

Name Diane Satz

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title lobbyist

Address \_\_\_\_\_

Phone 850 339 8550

Street

Tallah

City

State

Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Withlacoochee Regional Water Authority

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 (10/20/11)



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

January 9, 2012

Meeting Date

Topic Water Management Districts Bill Number CS/SB 560  
(if applicable)  
Name Steven Minnis Amendment Barcode \_\_\_\_\_  
(if applicable)  
Job Title Director of Governmental Affairs  
Address 9225 CR 49 Phone 386.362.1001  
Street  
Live Oak FL 32060  
City State Zip  
E-mail sam@srwmd.org  
Speaking:  For  Against  Information  
Representing Suwannee River Water Management District

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 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1-9-12

Meeting Date

Topic WMDs Bill Number 560  
(if applicable)  
Name DAVID CULLEN Amendment Barcode \_\_\_\_\_  
(if applicable)  
Job Title \_\_\_\_\_  
Address 1674 UNIVERSITY PARKWAY #296 Phone 941-323-2404  
Street  
SARASOTA FL 34243  
City State Zip  
E-mail cullenasea@aol.com  
Speaking:  For  Against  Information  
Representing SIERRA CLUB FL

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/9/12

Meeting Date

Topic Water Management Districts

Bill Number CS/SB 560  
*(if applicable)*

Name Frank Bernardino

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 324 E. Virginia St.

Phone 561/718-2345

Street

Tallahassee

FL

State

32308

Zip

E-mail franke@ntfieldflorida.com

Speaking:  For  Against  Information

Representing Polk Co. and the Florida Section of the AWWA

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 (10/20/11)

**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.)

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

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BILL: SB 570

INTRODUCER: Senator Ring

SUBJECT: Public Records/Donor Identity/Publicly Owned Performing Arts Centers

DATE: January 3, 2012

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Yeatman	CA	<b>Favorable</b>
2.	Seay	Roberts	GO	<b>Favorable</b>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**I. Summary:**

This bill creates a public records exemption for information that identifies a donor or a prospective donor to a publicly owned performing arts center should the donor wish to remain anonymous. The exemption is subject to legislative review and repeal under the provisions of the Open Government Sunset Review Act. The bill contains a statement of public necessity as required by the State Constitution.

Because this bill creates a new public records exemption, it requires a two-thirds vote of each house of the Legislature for passage.

This bill creates two undesignated sections of law.

**II. Present Situation:**

**Public Records Law**

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.<sup>1</sup> One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.<sup>2</sup> Article I, s. 24 of the State Constitution, provides that:

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<sup>1</sup> Section 1390, 1391 F.S. (Rev. 1892).

<sup>2</sup> Article I, s. 24, Fla. Constitution.

Every person has 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 persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,<sup>3</sup> which pre-dates the public records provision of the State Constitution, specifies conditions under which public access must be provided to records of an agency.<sup>4</sup> Section 119.07(1)(a), F.S., states:

- (a) Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.

Unless specifically exempted, all agency records are available for public inspection. The term “public record” is broadly defined 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.<sup>5</sup>

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.<sup>6</sup> All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.<sup>7</sup>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>8</sup> Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to

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<sup>3</sup> Chapter 119, F.S.

<sup>4</sup> The word “agency” is defined in s. 119.011(2), F.S., 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 Florida Constitution also establishes a right of access to 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, except those records exempted by law or the state constitution.

<sup>5</sup> Section 119.011(11), F.S.

<sup>6</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

<sup>7</sup> *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

<sup>8</sup> Article I, s. 24(c), Fla. Constitution.

accomplish the stated purpose of the law.<sup>9</sup> A bill enacting an exemption<sup>10</sup> may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>11</sup>

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.<sup>12</sup> If a record is simply made exempt from disclosure requirements then an agency is not prohibited from disclosing the record in all circumstances.<sup>13</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act (Act)<sup>14</sup> provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.<sup>15</sup>

The Act states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, whose administration would be significantly impaired without the exemption;
- Protects information of a sensitive, personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.<sup>16</sup>

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<sup>9</sup> *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

<sup>10</sup> Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

<sup>11</sup> Art. I, s. 24(c), Fla. Constitution.

<sup>12</sup> Attorney General Opinion 85-62.

<sup>13</sup> *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5<sup>th</sup> DCA), review denied, 589 So.2d 289 (Fla. 1991).

<sup>14</sup> Section 119.15, F.S.

<sup>15</sup> Section 119.15(5)(a), F.S.

<sup>16</sup> Section 119.15(4)(b), F.S.

The Act also requires consideration of the following:

- 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?

**Examples of Existing Exemptions for Donors or Prospective Donors**

<i>Entity</i>	<i>Exemption</i>	<i>Florida Statute</i>	<i>Status</i>
Enterprise Florida, Inc.	Identity of donor or prospective donor who desires to remain anonymous and all identifying information	s. 11.45(3)(i)	Confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution.
Florida Development Finance Corporation, Inc.	Identity of donor or prospective donor who desires to remain anonymous and all identifying information	s. 11.45(3)(j)	Confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution.
Cultural Endowment Program (Department of State)	Information which, if released, would identify donors and amounts contributed. Information which, if released, would identify prospective donors.	s. 265.605(2)	Confidential and exempt from s. 119.07(1), F.S.
Direct Support Organization (University of West Florida)	Identity of donor or prospective donor of property to a DSO who desires to remain anonymous, and all identifying information.	s. 267.1732(8)	Confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution.
Citizen Support Organization (Fish and Wildlife Commission)	Identity of donor or prospective donor to a CSO who desires to remain anonymous and all identifying information.	s. 379.223(3)	Confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution.
Florida Agricultural Museum (Department of Agriculture and Consumer Services)	Identity of donor or prospective donor who desires to remain anonymous and all identifying information.	s. 570.903(6)	Confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution.

<i>Entity</i>	<i>Exemption</i>	<i>Florida Statute</i>	<i>Status</i>
John and Mable Ringling Museum of Art Direct Support Organization (Florida State University)	Information that, if released, would identify donors who wish to remain anonymous or prospective donors who wish to remain anonymous when the DSO has identified the prospective donor and has not obtained the name in another manner.	s. 1004.45(2)(h)	Confidential and exempt from s. 119.07(1), F.S.
Florida Prepaid College Board Direct Support Organization	Identity of donors who wish to remain anonymous. Any sensitive, personal information regarding contract beneficiaries, including identity.	s. 1009.983(4)	Confidential and exempt from s. 119.07(1) and s. 24(a), Art. I, State Constitution.

**Publicly-Owned Performing Arts Centers in Florida**

According to the Florida Department of State’s Division of Cultural Affairs (FSDCA), arts and culture organizations create \$5 in revenue for the public sector for every \$1 that federal, state, and local governments invest in arts and culture.<sup>17</sup> Florida has dozens of performing arts centers located throughout the state, and their ownership, management, and financing varies widely according to information on their websites.

**III. Effect of Proposed Changes:**

**Section 1** creates an undesignated section of law providing that if a donor or a prospective donor of a donation made for the benefit of a publicly owned performing arts center wishes to remain anonymous, then information that would identify the name, address, or telephone number of that donor or prospective donor is confidential and exempt from section 119.07(1), F.S., and section 24(a), Art. I of the State Constitution.

This section defines a “publicly owned performing arts center” as:

A facility consisting of at least 200 seats, owned and operated by a county, municipality, or special district, which is used and occupied to promote development of any or all of the performing, visual or fine arts or any or all matters relating thereto, and to encourage and cultivate public and professional knowledge and appreciation of the arts.<sup>18</sup>

**Section 2** provides a statement that this public records exemption is a public necessity:

<sup>17</sup> Florida Division of Cultural Affairs, Arts and Culture Facts, available at <http://www.florida-arts.org/documents/factsheet/2010DCAFactSheet.pdf> (last visited Jan. 3, 2012).

<sup>18</sup> Based on a list of performing arts centers provided by the Department of State’s Division of Cultural Affairs, at least one appears to meet the bill’s definition: the Broward Center for the Performing Arts in Fort Lauderdale, because it is owned by the county and managed by a county board.

- To encourage private support for publicly owned performing arts centers and the direct-support organization;
- To promote the giving of gifts to, and the raising of private funds for, the acquisition, renovation, rehabilitation, and operation of a publicly owned performing arts centers; and
- To avoid a “chilling effect” on private donations to publicly owned performing arts centers due to the concern of potential donors that disclosure of their personal identifying information could lead to theft and threats to their personal safety and security.

**Section 3** provides an effective date of October 1, 2012.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

###### **Vote Requirement**

Section 24(c), Art. I of the State Constitution requires a two-thirds vote of each house of the Legislature for passage of a newly-created or expanded public records or public meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

###### **Public Necessity Statement**

Section 24(c), Art. I of the State Constitution requires a public necessity statement for a newly created or expanded public records or public meetings exemption. Because this bill creates a new public records exemption, it includes a public necessity statement.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

Donors or prospective donors to a publicly owned performing arts center would have the option of requesting anonymity, which may encourage more private entities to donate to these facilities.



**C. Government Sector Impact:**

This public records exemption may encourage donations, and therefore result in a financial gain to counties and municipalities that own and operate publicly owned performing arts centers.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

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

None.

**B. Amendments:**

None.

By Senator Ring

32-00617-12

2012570\_\_

A bill to be entitled

An act relating to public records; defining the term "publicly owned performing arts center"; creating an exemption from public records requirements for information that identifies a donor or prospective donor of a donation made for the benefit of a publicly owned performing arts center if the donor desires to remain anonymous; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing an effective date.

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

Section 1. Confidentiality of certain donor information related to a publicly owned performing arts center.—

(1) As used in this section, the term "publicly owned performing arts center" means a facility consisting of at least 200 seats, owned and operated by a county, municipality, or special district, which is used and occupied to promote development of any or all of the performing, visual, or fine arts or any or all matters relating thereto and to encourage and cultivate public and professional knowledge and appreciation of the arts.

(2) If a donor or prospective donor of a donation made for the benefit of a publicly owned performing arts center desires to remain anonymous, information that would identify the name, address, or telephone number of that donor or prospective donor is confidential and exempt from s. 119.07(1), Florida Statutes,

Page 1 of 3

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

32-00617-12

2012570\_\_

and s. 24(a), Article I of the State Constitution.

(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15, Florida Statutes, and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that information that would identify the name, address, or telephone number of a donor or prospective donor of a donation made for the benefit of a publicly owned performing arts center be made confidential and exempt from public records requirements if such donor or prospective donor desires to remain anonymous. In order to encourage private support for publicly owned performing arts centers, it is a public necessity to promote the giving of gifts to, and the raising of private funds for, the acquisition, renovation, rehabilitation, and operation of publicly owned performing arts centers. An essential element of an effective plan for promoting the giving of private gifts and the raising of private funds is the need to protect the identity of prospective and actual donors who desire to remain anonymous. If the identity of prospective and actual donors who desire to remain anonymous is subject to disclosure, there is a chilling effect on donations because donors are concerned about disclosure of personal information leading to theft and, in particular, identity theft, including personal safety and security. Therefore, the Legislature finds that it is a public necessity to make confidential and exempt from public records requirements information that would identify a donor or prospective donor of a donation made for the benefit of a publicly owned performing arts center if such donor or

Page 2 of 3

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

32-00617-12

2012570\_\_

59 prospective donor wishes to remain anonymous.

60 Section 3. This act shall take effect October 1, 2012.

THE FLORIDA SENATE

APPEARANCE RECORD

Jan 8, 12  
Meeting Date

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

Topic Public Records Perf. Arts

Bill Number SB 570  
*(if applicable)*

Name Dave Ericks

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 205 S Adams St

Phone 850-224-0880

Tallahassee FL 32301  
City State Zip

E-mail dave@ericks  
consultants.com

Speaking:  For  Against  Information

Representing Broward Center Performing Arts

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.)

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

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BILL: SB 0678

INTRODUCER: Senator Smith

SUBJECT: State Contracts

DATE: January 3, 2012

REVISED: 01/09/12

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jenkins	Roberts	GO	<b>Favorable</b>
2.			CM	
3.			BC	
4.				
5.				
6.				

---

**I. Summary:**

This bill adds a requirement that all state contracts exceeding \$35,000 include a provision requiring any call-center services to be staffed by persons located within the United States.

This bill amends section 287.058 of the Florida Statutes.

**II. Present Situation:**

Chapter 287, Florida Statutes, governs public procurement of personal property and services. Section 287.058, Florida Statutes, contains the minimum requisite provisions that must be present in public procurement contracts that exceed \$35,000.<sup>1</sup>

**World Trade Organization Government Procurement Agreement**

The State of Florida was one of 37 states to agree to procure in accordance with the Government Procurement Agreement (Agreement), concluded under the auspices of the World Trade Organization (WTO).<sup>2</sup> The Agreement's objective is expansion of world trade through three primary measures:

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<sup>1</sup> § 287.017, F.S., sets forth purchasing categories by the threshold amount; procurement contracts that exceed \$35,000 are designated as a category two.

<sup>2</sup> In a letter dated November 7, 1991, Governor Lawton Chiles authorized coverage of Florida under the GATT/WTO Government Procurement Agreement. (See email correspondence with Jean Grier, Senior Procurement Negotiator in the Office of the United States Trade Representative, on file with the Senate Committee on Governmental Oversight and Accountability).

- Prohibition on discrimination based on national origin;
- Establishment of clear, transparent laws, regulations, procedures, and practices regarding governmental procurement; and
- Application of competitive procedural requirements related to notification, tendering (bidding), contract award, tender (bid) protest, etc.<sup>3</sup>

The types of purchases covered by this agreement are State of Florida executive branch agency purchases which exceed \$552,000 for commodities and services, and \$777,000 for construction.<sup>4</sup>

### III. Effect of Proposed Changes:

The bill amends section 287.058, Florida Statutes, to require that state agency contracts in excess of \$35,000 must include a provision specifying that all call center services provided by the contractor and all subcontractors must be staffed by persons located within the United States.

The bill takes effect July 1, 2012.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

#### D. Other Constitutional Issues:

Requiring domestic call-center services for state contracts may potentially implicate the Commerce Clause of the U.S. Constitution.

#### The Foreign Commerce Clause

The United States Constitution provides that Congress shall have the power “to regulate commerce with foreign Nations, and among the several States.”<sup>5</sup> The Commerce Clause

<sup>3</sup> 1994 Uruguay Round Agreement on Government Procurement, April 15, 1994, WTO Agreement, Annex 4(b) (hereinafter “GPA”), available at [http://www.wto.org/english/docs\\_e/legal\\_e/gpr-94\\_e.pdf](http://www.wto.org/english/docs_e/legal_e/gpr-94_e.pdf), and see GPA Appendix I (United States), Annex 2 (Sub-Central Government Entities).

<sup>4</sup> 76 F.R. 76809, Dec. 8, 2011. Federal Executive Order 12260 requires the United States Trade Representative to set the U.S. dollar thresholds for application of Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*), which implements U.S. trade agreement obligation, including those under the World Trade Organization Agreement on Government Procurement. (WTO Committee on Government Procurement, Decisions on Procedural Matters Under the Agreement on Government Procurement, GPA/1 (Mar. 5, 1996), available at <http://docsonline.wto.org> (search for “Doc. No. 96-0792)).

acts not only as a positive grant of power to Congress, but also as a negative constraint upon the states.<sup>6</sup> States may not enact laws which improperly intrude upon the Federal Government's exclusive power to set foreign affairs policy for the nation as a whole.<sup>7</sup>

Courts review state action affecting foreign commerce with heightened scrutiny.<sup>8</sup> The U.S. Supreme Court has explained the applicable standard as follows: "It is a well-accepted rule that state restrictions burdening foreign commerce are subjected to a more rigorous and searching scrutiny. It is crucial to the efficient execution of the Nation's foreign policy that 'the Federal Government ... speak with one voice when regulating commercial relations with foreign governments.'"<sup>9</sup>

### **Market Participant Exception**

Because the state is acting as a "market participant" under this bill, the market participant exception to the Commerce Clause limitations on state action might be applicable.<sup>10</sup> When a state or local government is acting as a "market participant" rather than a "market regulator," it is not subject to the limitations of the Interstate Commerce Clause.<sup>11</sup> A state is considered to be a "market participant" when it is acting as an economic actor, such as a purchaser of goods and services.<sup>12</sup> The law is unsettled regarding the applicability of the market participant exception to the Foreign Commerce Clause, however. The two Federal Courts of Appeals that have been faced with the issue reached contradictory conclusions,<sup>13</sup> and neither the 11<sup>th</sup> Circuit nor the U.S. Supreme Court has spoken on the matter.

## **V. Fiscal Impact Statement:**

### **A. Tax/Fee Issues:**

None.

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<sup>5</sup> U.S. CONST. Art. I, s. 8.

<sup>6</sup> See *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824).

<sup>7</sup> *Japan Line, Ltd. v. County of Las Angeles*, 441 U.S. 434 (1970), and see Shannon Klinger and Lynn Sykes, *Exporting the Law: A Legal Analysis of State and Federal Outsourcing Legislation*, National Foundation for American Policy, April 2004.

<sup>8</sup> *Japan Line* at 446. ("When construing Congress' power to 'regulate commerce with foreign Nations,' a more extensive constitutional inquiry is required.")

<sup>9</sup> *South-Central Timber Develop., Inc. v. Wunnicke*, 467 U.S. 82, 100 (1984), citing *Michelin Tire Corp. v. Wages*, 723 U.S. 276, 285 (1979).

<sup>10</sup> *Id.*

<sup>11</sup> See *White v. Massachusetts Council of Constr. Employers*, 460 U.S. 204, 204 (1983) (providing that a state may grant and enforce a preference to local residents when entering into construction projects for public projects).

<sup>12</sup> *Id.*

<sup>13</sup> *Trojan Techs. Inc. v. Pennsylvania*, 916 F. 2d 903 (3d Cir. 1990), (Law applied to all foreign steel but State was acting as market participant; statute did not violate Commerce Clause); *National Foreign Trade Counsel v. Nastios*, 181 F. 3d 38, 57 (1<sup>st</sup> Cir. 1999), (Law restricted ability of Mass. agencies to purchase goods or services from companies that do business with Burma. Court explicitly held that there is no market participant exception to the foreign affairs power; law violated the Commerce Clause).

**B. Private Sector Impact:**

Indeterminate.

**C. Government Sector Impact:**

This bill could have fiscal implications if the cost of domestic labor is higher than the cost of labor in foreign markets.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Florida's commitment under the World Trade Organization Government Procurement Agreement could potentially be implicated if the contracts affected by this bill exceed the applicable threshold set by the United States Trade Representative in accordance with Federal Executive Order 12260.<sup>14</sup> This commitment appears to have arisen out of a unilateral act by the Governor,<sup>15</sup> and therefore would not serve as a constraint upon the Legislature.<sup>16</sup>

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

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

None.

**B. Amendments:**

None.

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

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<sup>14</sup> In 2012-2013 Florida GPA coverage includes executive branch agency purchases which exceed \$552,000 for commodities and services and \$777,000 for construction. (76 F.R. 76809, Dec. 8, 2011).

<sup>15</sup> In a letter dated November 7, 1991, Governor Lawton Chiles authorized coverage of Florida under the GATT/WTO Government Procurement Agreement.

<sup>16</sup> The Legislature maintains the exclusive power to establish the laws of this State. *Florida House of Representatives v. Crist*, 999 So. 2d 601, 614 (Fla. 2008), (Holding that the Governor has no authority to change or amend state law).



By Senator Smith

29-00658-12

2012678\_\_

A bill to be entitled

An act relating to state contracts; amending s. 287.058, F.S.; requiring all state contracts of more than a certain amount to require any call-center services to be staffed by persons located within the United States; providing an effective date.

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

Section 1. Subsection (1) of section 287.058, Florida Statutes, is amended to read:

287.058 Contract document.—

(1) A ~~Every~~ procurement of contractual services in excess of the threshold amount provided under ~~in~~ s. 287.017 for CATEGORY TWO, except for ~~the providing of~~ health and mental health services or drugs in the examination, diagnosis, or treatment of sick or injured state employees or ~~the providing of~~ other benefits as required by ~~the provisions of~~ chapter 440, must shall be evidenced by a written agreement embodying all provisions and conditions for ~~of~~ the procurement of such services, which ~~shall~~, where applicable, must include, but need not be limited to, a provision:

(a) Providing that bills for fees or other compensation for services or expenses be submitted in detail sufficient for a proper preaudit and postaudit ~~thereof~~.

(b) Providing that bills for any travel expenses be submitted in accordance with s. 112.061. A state agency may establish rates lower than the maximum provided in s. 112.061.

(c) Specifying that all call-center services provided

Page 1 of 3

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

29-00658-12

2012678\_\_

pursuant to the contract be staffed by persons located within the United States. This also applies to all call-center services performed by a subcontractor pursuant to the contract.

~~(d)~~ (e) Allowing unilateral cancellation by the agency for refusal by the contractor to allow public access to all documents, papers, letters, or other material made or received by the contractor in conjunction with the contract, unless the records are exempt from s. 24(a) of Art. I of the State Constitution and s. 119.07(1).

~~(e)~~ (d) Specifying a scope of work which ~~that~~ clearly establishes all tasks the contractor is required to perform.

~~(f)~~ (e) Dividing the contract into quantifiable, measurable, and verifiable units of deliverables which ~~that~~ must be received and accepted in writing by the contract manager before payment. Each deliverable must be directly related to the scope of work and specify the required minimum level of service to be performed and criteria for evaluating the successful completion of each deliverable.

~~(g)~~ (f) Specifying the criteria and the final date by which such criteria must be met for completion of the contract.

~~(h)~~ (g) Specifying that the contract may be renewed for up to a period that may not exceed 3 years or the term of the original contract, whichever ~~period~~ is longer, specifying the renewal price for the contractual service as set forth in the bid, proposal, or reply, specifying that costs for the renewal may not be charged, and specifying that renewals are ~~shall be~~ contingent upon satisfactory performance evaluations by the agency and subject to the availability of funds. Exceptional purchase contracts pursuant to s. 287.057(3)(a) and (c) may not

Page 2 of 3

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

29-00658-12

2012678\_\_

59 be renewed.

60 (i)~~(h)~~ Specifying the financial consequences that the  
61 agency must apply if the contractor fails to perform in  
62 accordance with the contract.

63 (j)~~(i)~~ Addressing the property rights of any intellectual  
64 property related to the contract and the specific rights of the  
65 state regarding the intellectual property if the contractor  
66 fails to provide the services or is no longer providing  
67 services.

68

69 In lieu of a written agreement, the department may authorize the  
70 use of a purchase order for classes of contractual services, if  
71 the provisions of paragraphs (a)-(j) ~~(a)-(i)~~ are included in the  
72 purchase order or solicitation. The purchase order must include,  
73 but need not be limited to, an adequate description of the  
74 services, the contract period, and the method of payment. In  
75 lieu of printing the provisions of paragraphs (a)-(j) ~~(a)-(i)~~ in  
76 the contract document or purchase order, agencies may  
77 incorporate the requirements of those paragraphs ~~(a)-(i)~~ by  
78 reference.

79 Section 2. This act shall take effect July 1, 2012.

APPEARANCE RECORD

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

1/10/12

Meeting Date

Topic \_\_\_\_\_

Bill Number 678 (if applicable)

Name Frank Meiners

Amendment Barcode \_\_\_\_\_ (if applicable)

Job Title \_\_\_\_\_

Address PO Box 1633

Phone (850) 596-0577

Street Tall City FL State 32301 Zip

E-mail frank@comcast.com

Speaking:  For  Against  Information

Representing AIF

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 (10/20/11)

APPEARANCE RECORD

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

1/9/11

Meeting Date

Topic Call centers

Bill Number 678 (if applicable)

Name Mika Heins

Amendment Barcode \_\_\_\_\_ (if applicable)

Job Title FL. Pres.

Address 315 S. CANTON ST

Phone \_\_\_\_\_

Street IAU City IL State 32301 Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

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 (10/20/11)

**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 Governmental Oversight and Accountability Committee

BILL: SB 880

INTRODUCER: Senator Ring

SUBJECT: State Investments

DATE: January 3, 2012                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	<b>Pre-meeting</b>
2.			BC	
3.				
4.				
5.				
6.				

**I. Summary:**

This bill increases the amount of money the State Board of Administration can invest in alternative investments from 10 percent to 20 percent. The bill also “resets” a figure for the amount of contributed principal in the Lawton Chiles Endowment Fund.

This bill substantially amends sections 215.47 and 215.5601 of the Florida Statutes.

**II. Present Situation:**

**The State Board of Administration**

The State Board of Administration (SBA) is created in Art. IV, s. 4 (e) of the State Constitution. Its members are the Governor, the Chief Financial Officer, and the Attorney General. The board derives its powers to oversee state funds from Art. XII, s. 9 of the State Constitution.

The SBA has responsibility for oversight of the Florida Retirement System (FRS) Pension Plan and the FRS Investment Plan, which represent approximately \$128 billion, or 86 percent, of the \$149 billion in assets managed by the SBA, as of October 31, 2011. The Pension Plan is a defined benefit plan and the Investment Plan is a defined contribution plan that employees choose in lieu of the Pension Plan. The SBA also manages 33 other investment portfolios, with combined assets of \$21 billion, including the Florida Hurricane Catastrophe Fund (CAT Fund),

the Florida Lottery Fund, the Florida Pre-Paid College Plan, and various debt-service accounts for state bond issues<sup>1</sup>.

In investing assets, the SBA follows the Florida Statutes' fiduciary standards of care, subject to certain limitations.<sup>2</sup> Pursuant to s. 215.444, F.S., a nine-member Investment Advisory Council provides recommendations on investment policy, strategy, and procedures. The SBA's ability to invest the FRS assets is governed by s. 215.47, F.S., which provides for a "legal list" of the types of investments and for how much of the total fund may be invested in each investment type. Some of the key guidelines in the "legal list" specific to the investment of FRS Pension Plan assets include:

- No more than 80 percent of assets should be invested in domestic common stocks.
- No more than 75 percent of assets should be invested in internally managed common stocks.
- No more than 3 percent of equity assets should be invested in the equity securities of any one corporation, except when the securities of that corporation are included in any broad equity index or with approval of the Board; and in such case, no more than 10 percent of equity assets can be invested in the equity securities of any one corporation.
- No more than 80 percent of assets should be placed in corporate fixed income securities.
- No more than 25 percent of assets should be invested in notes secured by FHA-insured or VA-guaranteed first mortgages on Florida real property, or foreign government general obligations with a 25-year default-free history.
- No more than 20 percent of assets should be invested in foreign corporate or commercial securities or obligations.
- No more than 35 percent of assets should be invested in foreign securities.
- No more than 10 percent<sup>3</sup> of assets should be invested in alternative investments,<sup>4</sup> alternative investment vehicles,<sup>5</sup> and other non publicly-traded investments.

### **Alternative Investments<sup>6</sup>**

According to information provided by staff of the SBA, the increase in authority for such investments is needed to implement the recommendations contained in Hewitt EnnisKnupp asset liability studies conducted in 2010 and 2011 for the FRS Pension Plan Trust, and would have the benefit of lowering long-term employer cost. The FRS Pension Plan's relatively low allocation to alternative investments (compared to other large and leading public and corporate pension plans) has detracted from performance during the severe global stock market declines experienced in 2000-02 and 2007-09.

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<sup>1</sup> State Board of Administration "Monthly Performance Report to the Trustees" as of October 31, 2011, issued November 30, 2011.

<sup>2</sup> Section 215.44, F.S.

<sup>3</sup> The cap on alternative investments was last changed in 2008, when it was raised from 5% to 10% by Ch. 2008-31, L.O.F.

<sup>4</sup> An "alternative investment" is defined in s. 215.4401(3)(a)1., F.S., as "an investment by the State Board of Administration in a private equity fund, venture fund, hedge fund, or distress fund or a direct investment in a portfolio company through an investment manager."

<sup>5</sup> An "alternative investment vehicle" is defined in s. 215.4401(3)(a)2., F.S., as the "limited partnership, limited liability company, or similar legal structure or investment manager through which the State Board of Administration invests in a portfolio company."

<sup>6</sup> All information in this section comes from an SBA analysis of SB 880, on file with the Committee on Governmental Oversight and Accountability.

Hewitt EnnisKnupp's recommendations to modestly increase the allocation to alternative investments were approved by the SBA Investment Advisory Council and Trustees in 2010 and 2011. The SBA Trustees directed the Executive Director to seek expanded statutory authority to invest in alternative investments (and other securities or investments that are not publicly traded and are not otherwise authorized under s. 217.47, F.S.) beyond the current limit of 10%. It would take several years to actually implement an expanded allocation to such investments. As of October 31, 2011, the FRS pension plan had \$5.7 billion in private equity, and \$4.7 billion in strategic investments.<sup>7</sup>

### **Lawton Chiles Endowment Fund**

In 1999, the legislature created the Lawton Chiles Endowment Fund in s. 215.5601, F.S., to accept monies from the settlement with various tobacco manufacturers, and provide the authority to the SBA to invest the monies for the purpose of funding health and human service initiatives.

Section 215.5601(3)(d), F.S., provides that for fiscal year 2001-2002, \$150 million of the existing principal in the endowment is to be accounted for separately, the income from which is to be used for biomedical research activities pursuant to s. 215.5602, F.S., the James and Esther King Biomedical Research Program.

Section 215.5601(4)(b), F.S., provides that the investment objective is the long-term preservation of the "net contributed principal," and also provides that 5 percent of the annual cash outflow dedicated to the biomedical research portion of the endowment shall be reinvested and applied to that portion of the endowment's principal, with the remainder to be spent on biomedical research activities consistent with this section.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 215.47, F.S., to allow the SBA to invest up to 20 percent of any fund in alternative investments, up from the current 10 percent.

**Section 2** amends a provision in the Lawton Chiles Endowment Fund in s. 215.5601, F.S., by replacing the phrase "contributed principal" with a specific amount- \$434,354,314. According to staff of the SBA<sup>8</sup>:

The "reset figure" was developed through consultation with stakeholders to roughly coincide with the closest fiscal year end to the large extraordinary appropriations during the global financial crisis. The real value of the endowment was approximately \$1.6 billion before the Legislature began reducing the amount through appropriating portions of the endowment for other budget needs during the 2008-09 market collapse. The amount of the endowment as of September 23, 2011 was \$697 million. With the proposed resetting, the estimated annual payout for the 2011-2012 fiscal year would increase from \$14 million to \$18.1 million,

<sup>7</sup> SBA "Monthly Performance Report to the Trustees" as of October 31, 2011.

<sup>8</sup> SBA analysis of SB 880, on file with the Committee on Governmental Oversight and Accountability.

and the payout amounts are projected to increase in the future. All else equal, utilizing a more current “reset figure” would lower the projected distributions.

The bill also changes the amount of the existing principal in the endowment to be accounted for separately, the income from which is to be used for biomedical research activities, from \$150 million to \$50 million. The bill also deletes a provision that 5 percent of the biomedical research cash outflow must be reinvested and applied to principal.

**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 changes to s. 215.5601 affect the amount of monies available to support biomedical research.

C. Government Sector Impact:

The changes to s. 215.5601 affect the amount of monies available to support biomedical research.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

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

None.

- B. **Amendments:**

None.

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

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By Senator Ring

32-00784-12

2012880\_\_

A bill to be entitled

An act relating to state investments; amending s. 215.47, F.S.; increasing the amount of money that may be invested in alternative investments by the State Board of Administration; amending s. 215.5601, F.S.; reducing the amount of the Lawton Chiles Endowment Fund which is available for biomedical research; specifying the real value of the net assets of the fund as of a certain date; providing an effective date.

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

Section 1. Subsection (15) of section 215.47, Florida Statutes, is amended to read:

215.47 Investments; authorized securities; loan of securities.—Subject to the limitations and conditions of the State Constitution or of the trust agreement relating to a trust fund, moneys available for investments under ss. 215.44-215.53 may be invested as follows:

(15) With no more, in the aggregate, than 20 ~~10~~ percent of any fund in alternative investments, ~~as defined in s. 215.4401(3)(a)1.~~ through participation in an alternative investment vehicle as those terms are ~~the vehicles~~ defined in s. 215.4401(3)(a)2, or in securities or investments that are not publicly traded and ~~are~~ not otherwise authorized by this section.

Section 2. Paragraph (d) of subsection (3) and paragraph (b) of subsection (4) of section 215.5601, Florida Statutes, are

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

32-00784-12

2012880\_\_

amended to read:

215.5601 Lawton Chiles Endowment Fund.—

(3) LAWTON CHILES ENDOWMENT FUND; CREATION; PRINCIPAL.—

(d) For the 2012-2013 fiscal year ~~2001-2002~~, \$50 ~~\$150~~ million of the existing principal in the endowment shall be reserved and accounted for within the endowment, the income from which shall be used solely for ~~the funding for~~ biomedical research activities as provided in s. 215.5602. The income from the remaining principal shall be used solely as the source of funding for health and human services programs for children and elders as provided in subsection (5). The separate account for biomedical research shall be dissolved and the entire principal in the endowment ~~shall be~~ used exclusively for health and human services programs when cures have been found for tobacco-related cancer, heart, and lung disease.

(4) ADMINISTRATION.—

(b) The endowment shall be managed as an annuity. The investment objective is the long-term preservation of the real value of the net assets of the fund on June 30, 2009, which was \$434,354,314, ~~contributed principal~~ and a specified regular annual cash outflow for appropriation, as nonrecurring revenue. From the annual cash outflow, a pro rata share shall be used solely for biomedical research activities as provided in paragraph (3) (d), until such time as cures are found for tobacco-related cancer and heart and lung disease. ~~Five percent of the annual cash outflow dedicated to the biomedical research portion of the endowment shall be reinvested and applied to that portion of the endowment's principal, with the remainder to be spent on biomedical research activities consistent with this~~

Page 2 of 3

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32-00784-12

2012880

59 ~~section.~~ The schedule of annual cash outflow must be included  
60 within the investment plan adopted under paragraph (a).  
61 Withdrawals other than specified regular cash outflow are  
62 considered reductions in contributed principal for the purposes  
63 of this subsection.

64 Section 3. This act shall take effect July 1, 2012.

THE FLORIDA SENATE

APPEARANCE RECORD

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

01/09/2012

Meeting Date

Topic FRS Trust Fund Investment

Bill Number SB 880 (if applicable)

Name Pat Dix

Amendment Barcode (if applicable)

Job Title Legislative Specialist

Address 213 S. Adams Street

Phone 850-274-8781

Tallahassee FL 32301

E-mail pat.dix@floridaca.org

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

Representing FL Education Assn

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-9-12

Meeting Date

Topic STATE INVESTMENTS

Bill Number SB 880 (if applicable)

Name SIATER BATHISS

Amendment Barcode (if applicable)

Job Title

Address 215 S MONROE ST #602

Phone 850-222-8900

Tallahassee, FL 32301

E-mail SWB@CARDENASPARTNERS.COM

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

Representing THE FLORIDA ALTERNATIVE INVESTMENT 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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/9/12  
Meeting Date

Topic SBA

Bill Number SB 880  
*(if applicable)*

Name Ash WILLIAMS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title EXECUTIVE DIRECTOR + CIO

Address 1801 Hermitage Blvd

Phone 413-1253

Jalohasse St 32308  
*City State Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing SBA

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.)

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

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BILL: SPB 7040

INTRODUCER: For consideration by the Governmental Oversight and Accountability Committee

SUBJECT: Florida Retirement System

DATE: January 3, 2012

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts		<b>Pre-meeting</b>
2.				
3.				
4.				
5.				
6.				

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**I. Summary:**

This bill cleans up and clarifies a number of issues raised by the enactment last session of Senate Bill 2100, which made a number of substantial changes to the Florida Retirement System (FRS). The bill corrects a cross reference, clarifies the existing prohibition on enrolling as a renewed member in the FRS, clarifies that loans and hardship withdrawals are prohibited in the FRS and optional retirement programs, and makes Deferred Retirement Option Program (DROP) deferral ages consistent with normal retirement ages.

This bill amends the following sections of the Florida Statutes: 121.0515, 121.053, 121.055, 121.071, 121.091, 121.122, 121.35, 121.4501, 121.591, and 1012.875.

**II. Present Situation:**

**Florida Retirement System**

The Florida Retirement System (FRS) is a multi-employer, non-contributory pension plan providing retirement income benefits to the 572,000 active and 319,000 retired members and beneficiaries of its more than 900 state and local government public employers. Originally established in 1970 as the successor to the Teachers' Retirement System and the State and County Officers' and Employees' Retirement System, the FRS is today a combination of five previously separate pension plans. Benefit payments are administered by the Department of Management Services through its Division of Retirement while investment management is undertaken by the Board of Administration. Established as a Section 401(a) government plan under the Internal Revenue Code, its benefits are exempt from federal taxation until received by the employee.

As a defined benefit plan, the FRS "Pension Plan" provides retirement income expressed as a percent of final pay. Members accrue retirement credits based upon their eligibility in one of several membership classes. Years of creditable service multiplied by average final salary multiplied by the accrual rate for the membership class, plus specified annual leave, yield a monthly annuity benefit at normal retirement. The accrual rates range from 1.60 percent for the Regular Class to 3.33 percent for Justices and Judges. Members seeking early retirement dates receive a five percent reduction in the benefit for each year below their normal age threshold.

All membership classes in the Pension Plan permit enrollment in a Deferred Retirement Option Program (DROP) under which a participant may extend employment for an additional five years - eight years for instructional personnel in district school boards - and receive a lump sum benefit at a fixed rate of interest for that additional service. Enrollment in DROP requires the participant to serve the employer with a deferred resignation from employment at the end of the period.

Reenrollment in the FRS is prohibited for retirees who are initially reemployed on or after July 1, 2010.

Management employees and instructional employees in higher educational units are also permitted to enroll in one of three other separate optional retirement programs that exist outside of FRS authority.

### **Optional Retirement Programs**

Eligible employees may elect to participate in one of three optional retirement programs in lieu of participation in the FRS.

Members of the Senior Management Service Class may elect to enroll in the Senior Management Service Optional Annuity Program.<sup>1</sup> Employees in specified positions in the State University System may elect to enroll in the State University System Optional Retirement Program.<sup>2</sup> Eligible employees of a community college may elect to enroll in the Community College Optional Retirement Program.<sup>3</sup>

### **Changes to the FRS in 2011**

The 2011 Legislature enacted<sup>4</sup> sweeping changes to the FRS, by providing for the following:

- Effective July 1, 2011, required 3 percent employee contribution for all FRS members. DROP participants are not required to pay employee contributions.
- For employees initially enrolled on or after July 1, 2011, the definition of "average final compensation" means the average of the 8 highest fiscal years of compensation for creditable service prior to retirement, for purposes of calculation of retirement benefits. For employees

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<sup>1</sup> Section 121.055(6), F.S.

<sup>2</sup> Section 121.35, F.S.

<sup>3</sup> Section 1012.875, F.S.

<sup>4</sup> Chapter 2011-68, L.O.F.; Senate Bill 2100.

initially enrolled prior to July 1, 2011, the definition of “average final compensation” continues to be the average of the 5 highest fiscal years of compensation.

- For employees initially enrolled in the pension plan on or after July 1, 2011, such members will vest in 100 percent of employer contributions upon completion of 8 years of creditable service. For existing employees, vesting will remain at 6 years of creditable service.
- For employees, initially enrolled on or after July 1, 2011, increased the normal retirement age and years of service requirements, as follows:
  - For Special Risk Class: Increased the age from 55 to 60 years of age; and increased the years of creditable service from 25 to 30.
  - For all other classes: Increased the age from 62 to 65 years of age; and increased the years of creditable service from 30 to 33 years.
- Maintained DROP; however, employees entering DROP on or after July 1, 2011 will earn interest at a reduced accrual rate of 1.3 percent. For employees currently in DROP or entering before July 1, 2011, the interest rate remains 6.5 percent.
- Eliminated the cost-of-living adjustment (COLA) for service earned on or after July 1, 2011. Subject to the availability of funding and the Legislature enacting sufficient employer contributions specifically for the purpose of funding the reinstatement of the COLA, the new COLA formula will expire effective June 30, 2016, and the current 3 percent cost-of-living adjustment will be reinstated.
- To implement the bill for the 2011-12 fiscal year, funded the Division of Retirement with four positions and \$207,070 in recurring funds and \$31,184 in non-recurring funds.

### III. Effect of Proposed Changes:

**Section 1** corrects a reference in s. 121.0515(3)(k), F.S., to the appropriate section describing employees eligible for membership in the Special Risk Class. Without this change, the cross-reference in s. 121.0515(3)(k), F.S., incorrectly refers to inclusion of certain forensic employees in s. 121.0515(2)(f), F.S., instead of the correct cross-reference for continued Special Risk Class membership by members who suffer a specified in-line-of-duty injury and can no longer perform Special Risk Class duties, but who remain employed by the same employer at the time of injury in s. 121.0515(2)(i), F.S.

**Section 2** amends s. 121.055, F.S., to clarify that a retiree of a state-administered retirement system who is elected or appointed for the first time to an elective office in a regularly established position with a covered employer may not be enrolled as a renewed member in any state-administered retirement system.

**Section 3** amends s. 121.055, F.S., by specifying a date for clarity and clarifies that loans and hardship withdrawals are prohibited in the Senior Management Service Optional Annuity program.

**Section 4** amends s 121.071, F.S., to clarify that that loans and hardship withdrawals are prohibited in the FRS.

**Section 5** amends s. 121.091, F.S., to adjust the DROP deferral ages for members enrolled after July 1, 2011, for those entering DROP based on years of service instead of normal retirement age. This change makes the DROP deferral age 5 years before normal retirement age - age 55 for

Special Risk Class members and age 60 for all other members, which will line up the DROP deferral age with the normal retirement ages.

**Section 6** amends s. 121.122, F.S., to clarify that a retiree of a state-administered retirement system who is initially reemployed in a regularly established position on or after July 1, 2010, may not be enrolled as a renewed member.

**Section 7** amends s. 121.35, F.S., to clarify that that loans and hardship withdrawals are prohibited in the State University System Optional Retirement Program. The bill also provides a definition of the term “benefit,” to clarify when distributions received by a member prohibit enrollment as a renewed member in a state-administered retirement system.

**Section 8** amends s. 121.4501, F.S., to clarify that a retiree of a state-administered retirement system initially reemployed in a regularly established position on or after July 1, 2010 is not eligible to participate in a state-administered retirement system.

**Section 9** amends s. 121.591, F.S., clarify that that loans and hardship withdrawals are prohibited in the FRS Investment Plan.

**Section 10** amends s. 1012.875, F.S., to clarify that that loans and hardship withdrawals are prohibited in the State Community College System Optional Retirement Program.

The bill takes effect July 1, 2012.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.



C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

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1 A bill to be entitled  
 2 An act relating to state retirement; amending s.  
 3 121.0515, F.S.; correcting a cross-reference; amending  
 4 s. 121.053, F.S.; specifying that a retiree who is  
 5 elected or appointed for the first time to an elective  
 6 office may not be enrolled as a renewed member;  
 7 amending s. 121.055, F.S.; specifying that a retiree  
 8 who is reemployed in a regularly established position  
 9 as an elected official may not renew membership in the  
 10 Senior Management Service Class or annuity program;  
 11 providing exceptions from the prohibition against  
 12 paying benefits for certain purposes under the Senior  
 13 Management Service Optional Annuity Program;  
 14 specifying that a retiree who is reemployed in a  
 15 regularly established position after a certain date  
 16 may not be enrolled as a renewed member; amending s.  
 17 121.071, F.S.; providing exceptions from the  
 18 prohibition against paying benefits for certain  
 19 purposes under the pension plan; amending s. 121.091,  
 20 F.S.; specifying the age of eligibility to participate  
 21 in DROP for members enrolled after a certain date;  
 22 amending s. 121.122, F.S.; specifying that a retiree  
 23 who is reemployed in a regularly established position  
 24 after a certain date may not be enrolled as a renewed  
 25 member; amending s. 121.35, F.S.; providing exceptions  
 26 from the prohibition against paying benefits for  
 27 certain purposes under the optional retirement program  
 28 for the State University System; clarifying when  
 29 voluntary contributions may be paid out; defining the

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30 term "benefit" for the purposes of the optional  
 31 program; amending s. 121.4501, F.S.; specifying that  
 32 the definition of "eligible employee" does not include  
 33 certain members reemployed in a regularly established  
 34 position; amending s. 121.591, F.S.; providing  
 35 exceptions from the prohibition against paying  
 36 benefits for certain purposes under the Florida  
 37 Retirement System Investment Plan; amending s.  
 38 1012.875, F.S.; providing exceptions to the  
 39 prohibition against paying benefits for certain  
 40 purposes under the State Community College System  
 41 Optional Retirement Program; providing an effective  
 42 date.

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

45  
 46 Section 1. Paragraph (k) of subsection (3) of section  
 47 121.0515, Florida Statutes, is amended to read:

48 121.0515 Special Risk Class.—

49 (3) CRITERIA.—A member, to be designated as a special risk  
 50 member, must meet the following criteria:

51 (k) The member must have already qualified for and be  
 52 actively participating in special risk membership under  
 53 paragraph (a), paragraph (b), or paragraph (c), must have  
 54 suffered a qualifying injury ~~as defined in this paragraph~~, must  
 55 not be receiving disability retirement benefits under ~~as~~  
 56 ~~provided in~~ s. 121.091(4), and must satisfy the requirements of  
 57 this paragraph.

58 1. ~~The ability~~ To qualify for the class of membership

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59 defined in paragraph (2) (i), ~~(2) (f)~~ occurs when two licensed  
60 medical physicians, one of whom is the member's a primary  
61 treating physician ~~of the member~~, must certify the existence of  
62 ~~the physical injury and medical condition that constitute a~~  
63 ~~qualifying injury as defined in this paragraph~~ and that the  
64 member has reached maximum medical improvement after August 1,  
65 2008. The certifications ~~from the licensed medical physicians~~  
66 must include, at a minimum, that the injury ~~to the special risk~~  
67 ~~member~~ has resulted in a physical loss, or loss of use, of at  
68 least two of the following: left arm, right arm, left leg, or  
69 right leg; and that:

70 a. ~~The That~~ this physical loss or loss of use is total and  
71 permanent, unless ~~except in the event that~~ the loss of use is  
72 due to a physical injury to the member's brain, in which event  
73 the loss of use is permanent with at least 75 percent loss of  
74 motor function with respect to each arm or leg affected.

75 b. ~~The That~~ this physical loss or loss of use renders the  
76 member physically unable to perform the essential job functions  
77 of his or her special risk position.

78 c. ~~That~~, Notwithstanding the ~~this~~ physical loss or loss of  
79 use, the individual is able to perform the essential job  
80 functions required by the member's new position, as provided in  
81 subparagraph 3.

82 d. ~~The That~~ use of artificial limbs is ~~either~~ not possible  
83 or does not alter the member's ability to perform the essential  
84 job functions of the member's position.

85 e. ~~That~~ The physical loss or loss of use is a direct result  
86 of a physical injury and not a result of any mental,  
87 psychological, or emotional injury.

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88 2. For the purposes of this paragraph, "qualifying injury"  
89 means a physical ~~an~~ injury and medical condition sustained in  
90 the line of duty, as certified by the member's employing agency,  
91 by a special risk member which ~~that~~ does not result in total and  
92 permanent disability as defined in s. 121.091(4) (b). An injury  
93 is a qualifying injury if the injury is a physical injury to the  
94 member's physical body resulting in a physical loss, or loss of  
95 use, of at least two of the following: left arm, right arm, left  
96 leg, or right leg. Notwithstanding any other provision of this  
97 section, an injury that would otherwise qualify as a qualifying  
98 injury is not ~~considered~~ a qualifying injury if and when the  
99 member ceases employment with the employer for whom he or she  
100 was providing special risk services on the date the injury  
101 occurred.

102 3. The new position, as described in sub-subparagraph 1.c.,  
103 ~~that is required for qualification as a special risk member~~  
104 ~~under this paragraph~~ is not required to be a position with  
105 essential job functions that entitle an individual to special  
106 risk membership. Whether the ~~a~~ new position ~~as described in sub-~~  
107 ~~subparagraph 1.c.~~ exists and is available to the special risk  
108 member is a decision to be made solely by the employer in  
109 accordance with its hiring practices and applicable law.

110 4. This paragraph does not grant or create additional  
111 rights for an ~~any~~ individual to continued employment or to be  
112 hired or rehired by his or her employer which ~~that~~ are not  
113 already provided under state law ~~within the Florida Statutes,~~  
114 ~~the State Constitution~~, the Americans with Disabilities Act, if  
115 applicable, or any other applicable ~~state or~~ federal law.

116 Section 2. Paragraph (a) of subsection (3) of section

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117 121.053, Florida Statutes, is amended to read:

118 121.053 Participation in the Elected Officers' Class for  
119 retired members.—

120 (3) On or after July 1, 2010:

121 (a) A retiree of a state-administered retirement system who  
122 is elected or appointed for the first time to an elective office  
123 in a regularly established position with a covered employer may  
124 not be enrolled as a renewed member of a state-administered  
125 ~~reenroll in the Florida~~ retirement system.

126 Section 3. Paragraph (f) of subsection (1) and paragraph  
127 (e) of subsection (6) of section 121.055, Florida Statutes, are  
128 amended to read:

129 121.055 Senior Management Service Class.—There is hereby  
130 established a separate class of membership within the Florida  
131 Retirement System to be known as the "Senior Management Service  
132 Class," which shall become effective February 1, 1987.

133 (1)

134 (f) Effective July 1, 1997:

135 1. Except as provided in subparagraph 3., an elected state  
136 officer eligible for membership in the Elected Officers' Class  
137 under s. 121.052(2) (a), (b), or (c) who elects membership in the  
138 Senior Management Service Class under s. 121.052(3) (c) may,  
139 within 6 months after assuming office, or ~~within 6 months after~~  
140 ~~this act becomes a law~~ for serving elected state officers,  
141 within 6 months after May 30, 1997, elect to participate in the  
142 Senior Management Service Optional Annuity Program, as provided  
143 in subsection (6), in lieu of membership in the Senior  
144 Management Service Class.

145 2. Except as provided in subparagraph 3., an elected

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146 officer of a local agency employer eligible for membership in  
147 the Elected Officers' Class under s. 121.052(2) (d) who elects  
148 membership in the Senior Management Service Class under s.  
149 121.052(3) (c) may, within 6 months after assuming office, or  
150 ~~within 6 months after this act becomes a law~~ for serving elected  
151 officers of a local agency employer, within 6 months after May  
152 30, 1997, elect to withdraw from the Florida Retirement System,  
153 as provided in subparagraph (b)2., in lieu of membership in the  
154 Senior Management Service Class.

155 3. A retiree of a state-administered retirement system who  
156 is initially reemployed in a regularly established position on  
157 or after July 1, 2010, as an elected official eligible for the  
158 Elected Officers' Class may not be enrolled in renewed ~~renew~~  
159 membership in the Senior Management Service Class or in the  
160 Senior Management Service Optional Annuity Program as provided  
161 in subsection (6), and may not withdraw from the Florida  
162 Retirement System as a renewed member as provided in  
163 subparagraph (b)2., as applicable, in lieu of membership in the  
164 Senior Management Service Class.

165 (6)

166 (e) *Benefits.*—

167 1. Benefits under the Senior Management Service Optional  
168 Annuity Program are payable only to members of the program, or  
169 their beneficiaries as designated by the member in the contract  
170 with the provider company, and must be paid by the designated  
171 company in accordance with the terms of the annuity contract  
172 applicable to the member. A member must be terminated from all  
173 employment relationships with Florida Retirement System  
174 employers for 3 calendar months to begin receiving the employer-

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175 funded and employee-funded benefit. The member must meet the  
 176 definition of termination in s. 121.021(39) beginning the month  
 177 after receiving a benefit, including a distribution. Benefits  
 178 funded by employer and employee contributions are payable under  
 179 the terms of the contract to the member, his or her beneficiary,  
 180 or his or her estate, in addition to:

181 a. A lump-sum payment to the beneficiary upon the death of  
 182 the member;

183 b. A cash-out of a de minimis account upon the request of a  
 184 former member who has been terminated for a minimum of 6  
 185 calendar months from the employment that entitled him or her to  
 186 optional annuity program participation. Such cash-out must be a  
 187 complete liquidation of the account balance with that company  
 188 and is subject to the Internal Revenue Code;

189 c. A mandatory distribution of a de minimis account of a  
 190 former member who has been terminated for a minimum of 6  
 191 calendar months from the employment that entitled him or her to  
 192 optional annuity program participation as authorized by the  
 193 department; or

194 d. A lump-sum direct rollover distribution whereby all  
 195 accrued benefits, plus interest and investment earnings, are  
 196 paid from the member's account directly to the custodian of an  
 197 eligible retirement plan, as defined in s. 402(c)(8)(B) of the  
 198 Internal Revenue Code, on behalf of the member.

199 2. Under the Senior Management Service Optional Annuity  
 200 Program, benefits, including employee contributions, are not  
 201 payable for employee hardships, unforeseeable emergencies,  
 202 loans, medical expenses, educational expenses, purchase of a  
 203 principal residence, payments necessary to prevent eviction or

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204 foreclosure on an employee's principal residence, or any other  
 205 reason except for a requested distribution for retirement, a  
 206 mandatory de minimis distribution authorized by the  
 207 administrator, or a minimum distribution required pursuant to  
 208 the Internal Revenue Code before termination from all employment  
 209 relationships with participating employers for 3 calendar  
 210 months.

211 3. The benefits payable to a any person under the Senior  
 212 Management Service Optional Annuity Program, and any  
 213 contribution accumulated under such program, are not subject to  
 214 assignment, execution, or attachment or to any legal process  
 215 ~~whatsoever.~~

216 4. Except as provided in subparagraph 5., a member who  
 217 terminates employment and receives a distribution, including a  
 218 rollover or trustee-to-trustee transfer, funded by employer and  
 219 required employee contributions is a retiree of ~~deemed to be~~  
 220 ~~retired from~~ a state-administered retirement system. Such  
 221 retiree, who is initially reemployed in a regularly established  
 222 position on or after July 1, 2010, may not be enrolled as a  
 223 renewed member if the member is subsequently employed with an  
 224 employer that participates in the Florida Retirement System.

225 5. A member who receives optional annuity program benefits  
 226 funded by employer and employee contributions as a mandatory  
 227 distribution of a de minimis account authorized by the  
 228 department is not considered a retiree.

229  
 230 As used in this paragraph, a "de minimis account" means an  
 231 account with a provider company containing employer and employee  
 232 contributions and accumulated earnings of up to not more than

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233 \$5,000 made under this chapter.

234 Section 4. Subsection (7) of section 121.071, Florida  
235 Statutes, is amended to read:

236 121.071 Contributions.—Contributions to the system shall be  
237 made as follows:

238 (7) ~~Before termination of employment,~~ Benefits, including  
239 employee contributions, are not payable under the pension plan  
240 for employee hardships, unforeseeable emergencies, loans,  
241 medical expenses, educational expenses, purchase of a principal  
242 residence, payments necessary to prevent eviction or foreclosure  
243 on an employee's principal residence, or any other reason except  
244 for payment of retirement benefits, a refund of employee  
245 contributions, or a minimum distribution required pursuant to  
246 the Internal Revenue Code before termination from all employment  
247 relationships with participating employers.

248 Section 5. Paragraph (a) of subsection (13) of section  
249 121.091, Florida Statutes, is amended to read:

250 121.091 Benefits payable under the system.—Benefits may not  
251 be paid under this section unless the member has terminated  
252 employment as provided in s. 121.021(39) (a) or begun  
253 participation in the Deferred Retirement Option Program as  
254 provided in subsection (13), and a proper application has been  
255 filed in the manner prescribed by the department. The department  
256 may cancel an application for retirement benefits when the  
257 member or beneficiary fails to timely provide the information  
258 and documents required by this chapter and the department's  
259 rules. The department shall adopt rules establishing procedures  
260 for application for retirement benefits and for the cancellation  
261 of such application when the required information or documents

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262 are not received.

263 (13) DEFERRED RETIREMENT OPTION PROGRAM.—In general, and  
264 subject to this section, the Deferred Retirement Option Program,  
265 hereinafter referred to as DROP, is a program under which an  
266 eligible member of the Florida Retirement System may elect to  
267 participate, deferring receipt of retirement benefits while  
268 continuing employment with his or her Florida Retirement System  
269 employer. The deferred monthly benefits shall accrue in the  
270 Florida Retirement System on behalf of the member, plus interest  
271 compounded monthly, for the specified period of the DROP  
272 participation, as provided in paragraph (c). Upon termination of  
273 employment, the member shall receive the total DROP benefits and  
274 begin to receive the previously determined normal retirement  
275 benefits. Participation in the DROP does not guarantee  
276 employment for the specified period of DROP. Participation in  
277 DROP by an eligible member beyond the initial 60-month period as  
278 authorized in this subsection shall be on an annual contractual  
279 basis for all participants.

280 (a) *Eligibility of member to participate in DROP.*—All  
281 active Florida Retirement System members in a regularly  
282 established position, and all active members of the Teachers'  
283 Retirement System established in chapter 238 or the State and  
284 County Officers' and Employees' Retirement System established in  
285 chapter 122, which are consolidated within the Florida  
286 Retirement System under s. 121.011, may participate ~~are eligible~~  
287 ~~to elect participation~~ in DROP if:

288 1. The member is not a renewed member under s. 121.122 or a  
289 member of the State Community College System Optional Retirement  
290 Program under s. 121.051, the Senior Management Service Optional

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291 Annuity Program under s. 121.055, or the optional retirement  
292 program for the State University System under s. 121.35.

293 2. Except as provided in subparagraph 6., for members  
294 initially enrolled before July 1, 2011, election to participate  
295 must be ~~is~~ made within 12 months immediately following the date  
296 ~~on which~~ the member first reaches normal retirement date; ~~or,~~  
297 for a member who reaches normal retirement date based on service  
298 before he or she reaches age 62, or age 55 for Special Risk  
299 Class members, election to participate may be deferred to the 12  
300 months immediately following the date the member attains age 57,  
301 or age 52 for Special Risk Class members. Except as provided in  
302 subparagraph 6., for members initially enrolled on or after July  
303 1, 2011, election to participate must be made within the 12  
304 months immediately following the date on which the member first  
305 reaches normal retirement date; or, for a member who reaches  
306 normal retirement date based on service before he or she reaches  
307 age 65, or age 60 for Special Risk Class members, election to  
308 participate may be deferred to the 12 months immediately  
309 following the date the member attains age 60, or age 55 for  
310 Special Risk Class members. A member who delays DROP  
311 participation during the 12-month period immediately following  
312 his or her maximum DROP deferral date, ~~except as provided in~~  
313 ~~subparagraph 6.,~~ loses a month of DROP participation for each  
314 month delayed. A member who fails to make an election within the  
315 12-month limitation period forfeits all rights to participate in  
316 DROP. The member shall advise his or her employer and the  
317 division in writing of the date DROP begins. The beginning date  
318 may be subsequent to the 12-month election period but must be  
319 within the original 60-month participation period provided in

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320 subparagraph (b)1. When establishing eligibility to participate  
321 in DROP, the member may elect to include or exclude any optional  
322 service credit purchased by the member from the total service  
323 used to establish the normal retirement date. A member who has  
324 dual normal retirement dates may ~~is eligible to elect to~~  
325 participate in DROP after attaining normal retirement date in  
326 either class.

327 3. The employer of a member electing to participate in  
328 DROP, or employers if dually employed, shall acknowledge in  
329 writing to the division the date the member's participation in  
330 DROP begins and the date the member's employment and DROP  
331 participation terminates.

332 4. Simultaneous employment of a member by additional  
333 Florida Retirement System employers subsequent to the  
334 commencement of a member's participation in DROP is permissible  
335 if such employers acknowledge in writing a DROP termination date  
336 no later than the member's existing termination date or the  
337 maximum participation period provided in subparagraph (b)1.

338 5. A member may change employers while participating in  
339 DROP, subject to the following:

340 a. ~~The~~ A change of employment takes place without a break  
341 in service so that the member receives salary for each month of  
342 continuous DROP participation. If a member receives no salary  
343 during a month, DROP participation ceases unless the employer  
344 verifies a continuation of the employment relationship for such  
345 member pursuant to s. 121.021(39)(b).

346 b. The member and new employer notify the division of the  
347 identity of the new employer on forms required by the division.

348 c. The new employer acknowledges, in writing, the member's

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349 DROP termination date, which may be extended but not beyond the  
 350 maximum participation period provided in subparagraph (b)1.,  
 351 acknowledges liability for any additional retirement  
 352 contributions and interest required if the member fails to  
 353 timely terminate employment, and is subject to the adjustment  
 354 required in sub-subparagraph (c)5.d.

355 6. Effective July 1, 2001, for instructional personnel as  
 356 defined in s. 1012.01(2), election to participate in DROP may be  
 357 made at any time following the date on which the member first  
 358 reaches normal retirement date. The member shall advise his or  
 359 her employer and the division in writing of the date on which  
 360 DROP begins. When establishing eligibility of the member to  
 361 participate in DROP for the 60-month participation period  
 362 provided in subparagraph (b)1., the member may elect to include  
 363 or exclude any optional service credit purchased by the member  
 364 from the total service used to establish the normal retirement  
 365 date. A member who has dual normal retirement dates is eligible  
 366 to elect to participate in either class.

367 Section 6. Subsection (2) of section 121.122, Florida  
 368 Statutes, is amended to read:

369 121.122 Renewed membership in system.—

370 (2) A retiree of a state-administered retirement system who  
 371 is initially reemployed in a regularly established position on  
 372 or after July 1, 2010, may not be enrolled as a renewed member  
 373 ~~is not eligible for renewed membership.~~

374 Section 7. Paragraphs (a), (b), (g), and (h) of subsection  
 375 (5) of section 121.35, Florida Statutes, are amended to read:

376 121.35 Optional retirement program for the State University  
 377 System.—

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378 (5) BENEFITS.—

379 (a) Benefits are payable under the optional retirement  
 380 program only to vested members participating in the program, or  
 381 their beneficiaries as designated by the member in the contract  
 382 with a provider company, and such benefits shall be paid only by  
 383 the designated company in accordance with s. 403(b) of the  
 384 Internal Revenue Code and the terms of the annuity or investment  
 385 contract ~~or contracts~~ applicable to the member. Benefits accrue  
 386 in individual accounts that are member-directed, portable, and  
 387 funded by employer and employee contributions and the earnings  
 388 thereon. The member must be terminated for 3 calendar months  
 389 from all employment relationships with all Florida Retirement  
 390 System employers to begin receiving the benefit. Benefits funded  
 391 by employer and employee contributions are payable in accordance  
 392 with the following terms and conditions:

393 1. Benefits shall be paid only to a participating member,  
 394 to his or her beneficiaries, or to his or her estate, as  
 395 designated by the member.

396 2. Benefits shall be paid by the provider company or  
 397 companies in accordance with the law, the provisions of the  
 398 contract, and any applicable department rule or policy.

399 3. In the event of a member's death, moneys accumulated by,  
 400 or on behalf of, the member, less withholding taxes remitted to  
 401 the Internal Revenue Service, if any, shall be distributed to  
 402 the member's designated beneficiary or beneficiaries, or to the  
 403 member's estate, as if the member retired on the date of death,  
 404 as provided in paragraph (d). No other death benefits are  
 405 available to survivors of members under the optional retirement  
 406 program except for such benefits, or coverage for such benefits,



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407 as are separately afforded by the employer, at the employer's  
408 discretion.

409 (b) Benefits, including employee contributions, are not  
410 payable for employee hardships, unforeseeable emergencies,  
411 loans, medical expenses, educational expenses, purchase of a  
412 principal residence, payments necessary to prevent eviction or  
413 foreclosure on an employee's principal residence, or any other  
414 reason except for a requested distribution for retirement, a  
415 mandatory de minimis distribution authorized by the  
416 administrator, or a minimum distribution required pursuant to  
417 the Internal Revenue Code before termination from all employment  
418 relationships with participating employers for 3 calendar  
419 months.

420 (g) Benefits funded by the participating member's voluntary  
421 personal contributions may be paid out after termination of  
422 employment from all participating employers for 3 calendar  
423 months at any time and in any form within the limits provided in  
424 the contract between the member and the provider company. The  
425 member shall notify the provider company regarding the date and  
426 provisions under which he or she wants to receive the employee-  
427 funded portion of the plan.

428 (h) For purposes of this section, the term:

429 1. "Benefit" means a distribution requested by the member  
430 or surviving beneficiary funded in part or in whole by the  
431 employer or required employee contributions, plus earnings, and  
432 includes rolling a distribution over to another qualified plan.

433 2. "Retiree" means a former participating member of the  
434 optional retirement program who has terminated employment and  
435 has taken a distribution as provided in this subsection, except

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436 for a mandatory distribution of a de minimis account authorized  
437 by the department.

438 Section 8. Paragraph (e) of subsection (2) of section  
439 121.4501, Florida Statutes, is amended to read:

440 121.4501 Florida Retirement System Investment Plan.—

441 (2) DEFINITIONS.—As used in this part, the term:

442 (e) "Eligible employee" means an officer or employee, as  
443 defined in s. 121.021, who:

444 1. Is a member of, or is eligible for membership in, the  
445 Florida Retirement System, including any renewed member of the  
446 Florida Retirement System initially enrolled before July 1,  
447 2010; or

448 2. Participates in, or is eligible to participate in, the  
449 Senior Management Service Optional Annuity Program ~~as~~  
450 established under s. 121.055(6), the State Community College  
451 System Optional Retirement Program ~~as~~ established under s.  
452 121.051(2)(c), or the State University System Optional  
453 Retirement Program established under s. 121.35.

454  
455 The term does not include a any member participating in the  
456 Deferred Retirement Option Program established under s.  
457 121.091(13), a retiree of a state-administered retirement system  
458 initially reemployed in a regularly established position on or  
459 after July 1, 2010, or a mandatory participant of the State  
460 University System Optional Retirement Program established under  
461 s. 121.35.

462 Section 9. Section 121.591, Florida Statutes, is amended to  
463 read:

464 121.591 Payment of benefits.—Benefits may not be paid under

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465 the Florida Retirement System Investment Plan unless the member  
 466 has terminated employment as provided in s. 121.021(39) (a) or is  
 467 deceased and a proper application has been filed as prescribed  
 468 by the state board or the department. ~~Before termination of~~  
 469 ~~employment,~~ Benefits, including employee contributions, are not  
 470 payable under the investment plan for employee hardships,  
 471 unforeseeable emergencies, loans, medical expenses, educational  
 472 expenses, purchase of a principal residence, payments necessary  
 473 to prevent eviction or foreclosure on an employee's principal  
 474 residence, or any other reason except for a requested  
 475 distribution for retirement, a mandatory de minimis distribution  
 476 authorized by the board, or a minimum distribution required  
 477 pursuant to the Internal Revenue Code prior to termination from  
 478 ~~all employment relationships with participating employers.~~ The  
 479 state board or department, as appropriate, may cancel an  
 480 application for retirement benefits if the member or beneficiary  
 481 fails to timely provide the information and documents required  
 482 by this chapter and the rules of the state board and department.  
 483 In accordance with their respective responsibilities, the state  
 484 board and the department shall adopt rules establishing  
 485 procedures for applying application for retirement benefits and  
 486 for cancelling the cancellation of such application if the  
 487 required information or documents are not received. The state  
 488 board and the department, as appropriate, ~~may be authorized to~~  
 489 cash out a de minimis account of a member who has been  
 490 terminated from Florida Retirement System covered employment for  
 491 a minimum of 6 calendar months. A de minimis account is an  
 492 account containing employer and employee contributions and  
 493 accumulated earnings of up to not more than \$5,000 made under

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494 ~~the provisions of~~ this chapter. Such cash-out must be a complete  
 495 lump-sum liquidation of the account balance, subject to ~~the~~  
 496 ~~provisions of~~ the Internal Revenue Code, or a lump-sum direct  
 497 rollover distribution paid directly to the custodian of an  
 498 eligible retirement plan, as defined by the Internal Revenue  
 499 Code, on behalf of the member. Any nonvested accumulations and  
 500 associated service credit, including amounts transferred to the  
 501 suspense account of the Florida Retirement System Investment  
 502 Plan Trust Fund authorized under s. 121.4501(6), are shall be  
 503 forfeited upon payment of any vested benefit to a member or  
 504 beneficiary, except for de minimis distributions or minimum  
 505 required distributions as provided under this section. If any  
 506 financial instrument issued for the payment of retirement  
 507 benefits under this section is not presented for payment within  
 508 180 days after the last day of the month in which it was  
 509 originally issued, the third-party administrator or other ~~duly~~  
 510 authorized agent of the state board shall cancel the instrument  
 511 and credit the amount of the instrument to the suspense account  
 512 of the Florida Retirement System Investment Plan Trust Fund  
 513 ~~authorized under s. 121.4501(6).~~ Any amounts transferred to the  
 514 suspense account are payable upon a proper application, not  
 515 including to include earnings thereon, as provided in this  
 516 section, within 10 years after the last day of the month in  
 517 which the instrument was originally issued, after which time  
 518 such amounts and any earnings attributable to employer  
 519 contributions are shall be forfeited. Any forfeited amounts are  
 520 assets of the trust fund and are not subject to chapter 717.  
 521 (1) NORMAL BENEFITS.—Under the investment plan:  
 522 (a) Benefits in the form of vested accumulations as

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523 described in s. 121.4501(6) are payable ~~under this subsection~~ in  
524 accordance with the following terms and conditions:

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

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

530 3. The member must be terminated from all employment with  
531 all Florida Retirement System employers, as provided in s.  
532 121.021(39).

533 4. Benefit payments may not be made until the member has  
534 been terminated for 3 calendar months, except that the state  
535 board may authorize by rule for the distribution of up to 10  
536 percent of the member's account after being terminated for 1  
537 calendar month if the member has reached the normal retirement  
538 date as defined in s. 121.021.

539 5. If a member or former member of the Florida Retirement  
540 System receives an invalid distribution, such person must ~~either~~  
541 repay the full amount within 90 days after receipt of final  
542 notification by the state board or the third-party administrator  
543 that the distribution was invalid, or, in lieu of repayment, ~~the~~  
544 ~~member~~ must terminate employment from all participating  
545 employers. If such person fails to repay the full invalid  
546 distribution within 90 days after receipt of final notification,  
547 the person may be deemed retired from the investment plan by the  
548 state board and is subject to s. 121.122. If such person is  
549 deemed retired, any joint and several liability set out in s.  
550 121.091(9)(d)2. is void, and the state board, the department, or  
551 the employing agency is not liable for gains on payroll

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552 contributions that have not been deposited to the person's  
553 account in the investment plan, pending resolution of the  
554 invalid distribution. The member or former member who has been  
555 deemed retired or who has been determined by the state board to  
556 have taken an invalid distribution may appeal the agency  
557 decision through the complaint process ~~as~~ provided under s.  
558 121.4501(9)(g)3. As used in this subparagraph, the term "invalid  
559 distribution" means any distribution from an account in the  
560 investment plan which is taken in violation of this section, s.  
561 121.091(9), or s. 121.4501.

562 (b) If a member elects to receive his or her benefits upon  
563 termination of employment as defined in s. 121.021, the member  
564 must submit a written application or an application by  
565 electronic means to the third-party administrator indicating his  
566 or her preferred distribution date and selecting an authorized  
567 method of distribution as provided in paragraph (c). The member  
568 may defer application for and receipt of benefits ~~until he or~~  
569 ~~she chooses to make such application~~, subject to federal  
570 requirements.

571 (c) Upon receipt by the third-party administrator of a  
572 properly executed application for distribution of benefits, the  
573 total accumulated benefit is payable to the member pro rata  
574 across all Florida Retirement System benefit sources as:

575 1. A lump-sum or partial distribution to the member;

576 2. A lump-sum direct rollover distribution whereby all  
577 accrued benefits, plus interest and investment earnings, are  
578 paid from the member's account directly to the custodian of an  
579 eligible retirement plan, as defined in s. 402(c)(8)(B) of the  
580 Internal Revenue Code, on behalf of the member; or

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581 3. Periodic distributions, as authorized by the state  
582 board.

583 (d) The distribution payment method selected by the member  
584 or beneficiary, and the retirement of the member or beneficiary,  
585 is final and irrevocable at the time a benefit distribution  
586 payment is cashed, deposited, or transferred to another  
587 financial institution. Any additional service that remains  
588 unclaimed at retirement may not be claimed or purchased, and the  
589 type of retirement may not be changed, except that if a member  
590 recovers from a disability, the member may subsequently request  
591 benefits under subsection (2).

592 (e) A member may not receive a distribution of employee  
593 contributions if a pending qualified domestic relations order is  
594 filed against the member's investment plan account.

595 (2) DISABILITY RETIREMENT BENEFITS.—Benefits provided under  
596 this subsection are payable in lieu of ~~the~~ benefits that would  
597 otherwise be payable under ~~the provisions of~~ subsection (1).  
598 Such benefits must be funded from employer contributions made  
599 under s. 121.571, transferred employee contributions and funds  
600 accumulated pursuant to paragraph (a), and interest and earnings  
601 thereon.

602 (a) *Transfer of funds.*—To qualify to receive monthly  
603 disability benefits under this subsection:

604 1. All moneys accumulated in the member's accounts ~~account~~,  
605 including vested and nonvested accumulations as described in s.  
606 121.4501(6), must be transferred from the ~~such individual~~  
607 accounts to the division for deposit in the disability account  
608 of the Florida Retirement System Trust Fund. Such moneys must be  
609 accounted for separately. Earnings must be credited on an annual

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610 basis for amounts held in the disability accounts of the Florida  
611 Retirement System Trust Fund based on actual earnings of the  
612 trust fund.

613 2. If the member has retained retirement credit earned  
614 under the pension plan as provided in s. 121.4501(3), a sum  
615 representing the actuarial present value of such credit within  
616 the Florida Retirement System Trust Fund shall be reassigned by  
617 the division from the pension plan to the disability program as  
618 implemented under this subsection and ~~shall be deposited into~~ the  
619 disability account of the trust fund. Such moneys must be  
620 accounted for separately.

621 (b) *Disability retirement; entitlement.*—

622 1. A member of the investment plan who becomes totally and  
623 permanently disabled, as defined in paragraph (d), after  
624 completing 8 years of creditable service, or a member who  
625 becomes totally and permanently disabled in the line of duty  
626 regardless of length of service, is entitled to a monthly  
627 disability benefit.

628 2. In order for service to apply toward the 8 years of  
629 creditable service required for regular disability benefits, or  
630 toward the creditable service used in calculating a service-  
631 based benefit ~~as provided~~ under paragraph (g), the service must  
632 be creditable service as described below:

633 a. The member's period of service under the investment plan  
634 shall be considered creditable service, except as provided in  
635 subparagraph d.

636 b. If the member has elected to retain credit for service  
637 under the pension plan as provided under s. 121.4501(3), all  
638 such service is ~~shall be~~ considered creditable service.

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639 c. If the member elects to transfer to his or her member  
640 accounts a sum representing the present value of his or her  
641 retirement credit under the pension plan as provided under s.  
642 121.4501(3), the period of service under the pension plan  
643 represented in the present value amounts transferred is shall be  
644 considered creditable service, except as provided in  
645 subparagraph d.

646 d. If a member has terminated employment and has taken  
647 distribution of his or her funds as provided in subsection (1),  
648 all creditable service represented by such distributed funds is  
649 forfeited for purposes of this subsection.

650 (c) *Disability retirement effective date.*—The effective  
651 retirement date for a member who applies and is approved for  
652 disability retirement shall be established as provided under s.  
653 121.091(4) (a)2. and 3.

654 (d) *Total and permanent disability.*—A member is shall be  
655 considered totally and permanently disabled if, in the opinion  
656 of the division, he or she is prevented, by reason of a  
657 medically determinable physical or mental impairment, from  
658 rendering useful and efficient service as an officer or  
659 employee.

660 (e) *Proof of disability.*— Before approving payment of a any  
661 disability retirement benefit, the division shall require proof  
662 that the member is totally and permanently disabled as provided  
663 under s. 121.091(4) (c).

664 (f) *Disability retirement benefit.*—Upon the disability  
665 retirement of a member under this subsection, the member shall  
666 receive a monthly benefit that begins accruing on the first day  
667 of the month of disability retirement, as approved by the

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668 division, and is payable on the last day of that month and each  
669 month thereafter during his or her lifetime and continued  
670 disability. All disability benefits must be paid out of the  
671 disability account of the Florida Retirement System Trust Fund  
672 established under this subsection.

673 (g) *Computation of disability retirement benefit.*—The  
674 amount of each monthly payment must be calculated as provided  
675 under s. 121.091(4) (f). Creditable service under both the  
676 pension plan and the investment plan is shall be applicable as  
677 provided under paragraph (b).

678 (h) *Reapplication.*—A member whose initial application for  
679 disability retirement is denied may reapply for disability  
680 benefits as provided in s. 121.091(4) (g).

681 (i) *Membership.*—Upon approval of a member's application for  
682 disability benefits, the member shall be transferred to the  
683 pension plan, effective upon his or her disability retirement  
684 effective date.

685 (j) *Option to cancel.*—A member whose application for  
686 disability benefits is approved may cancel the application if  
687 the cancellation request is received by the division before a  
688 disability retirement warrant has been deposited, cashed, or  
689 received by direct deposit. Upon cancellation:

690 1. The member's transfer to the pension plan under  
691 paragraph (i) is shall be nullified;

692 2. The member shall be retroactively reinstated in the  
693 investment plan without hiatus;

694 3. All funds transferred to the Florida Retirement System  
695 Trust Fund under paragraph (a) must be returned to the member  
696 accounts from which the funds were drawn; and

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697 4. The member may elect to receive the benefit payable  
698 under subsection (1) in lieu of disability benefits.

699 (k) *Recovery from disability.*—

700 1. The division may require periodic reexaminations at the  
701 expense of the disability program account of the Florida  
702 Retirement System Trust Fund. Except as provided in subparagraph  
703 2., all other matters relating to recovery from disability are  
704 ~~shall be~~ as provided under s. 121.091(4)(h).

705 2. Upon recovery from disability, the recipient of  
706 disability retirement benefits under this subsection becomes  
707 ~~shall be~~ a compulsory member of the investment plan. The net  
708 difference between the recipient's original account balance  
709 transferred to the Florida Retirement System Trust Fund,  
710 including earnings and total disability benefits paid to the  
711 ~~such~~ recipient, if any, shall be determined as provided in sub-  
712 subparagraph a.

713 a. An amount equal to the total benefits paid shall be  
714 subtracted from that portion of the transferred account balance  
715 consisting of vested accumulations as described under s.  
716 121.4501(6), if any, and an amount equal to the remainder of  
717 benefit amounts paid, if any, shall be subtracted from any  
718 remaining nonvested accumulations.

719 b. Amounts subtracted under sub-subparagraph a. must be  
720 retained within the disability account of the Florida Retirement  
721 System Trust Fund. Any remaining account balance shall be  
722 transferred to the third-party administrator for disposition as  
723 provided under sub-subparagraph c. or sub-subparagraph d., as  
724 appropriate.

725 c. If the recipient returns to covered employment,

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726 transferred amounts must be deposited in individual accounts  
727 under the investment plan, as directed by the member. Vested and  
728 nonvested amounts shall be accounted for separately as provided  
729 in s. 121.4501(6).

730 d. If the recipient fails to return to covered employment  
731 upon recovery from disability:

732 (I) Any remaining vested amount must be deposited in  
733 individual accounts under the investment plan, as directed by  
734 the member, and is payable as provided in subsection (1).

735 (II) Any remaining nonvested amount must be held in a  
736 suspense account and is forfeitable after 5 years as provided in  
737 s. 121.4501(6).

738 3. If present value was reassigned from the pension plan to  
739 the disability program as provided under subparagraph (a)2., the  
740 full present value amount must be returned to the defined  
741 benefit account within the Florida Retirement System Trust Fund  
742 and the member's associated retirement credit under the pension  
743 plan must be reinstated in full. Any benefit based upon such  
744 credit must be calculated as provided in s. 121.091(4)(h)1.

745 (l) *Nonadmissible causes of disability.*—A member is not  
746 entitled to a disability retirement benefit if the disability  
747 results from an ~~any~~ injury or disease ~~as~~ described in s.  
748 121.091(4)(i).

749 (m) *Disability retirement of justice or judge by order of*  
750 *Supreme Court.*—

751 1. If a member is a justice of the Supreme Court, judge of  
752 a district court of appeal, circuit judge, or judge of a county  
753 court who has served for the years equal to, or greater than,  
754 the vesting requirement in s. 121.021(45) as an elected

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755 constitutional judicial officer, including service as a judicial  
 756 officer in any court abolished pursuant to Art. V of the State  
 757 Constitution, and who is retired for disability pursuant to s.  
 758 12, Art. V of the State Constitution, the member's Option 1  
 759 monthly disability benefit amount as provided in s.  
 760 121.091(6)(a)1. shall be two-thirds of his or her monthly  
 761 compensation as of the member's disability retirement date. The  
 762 member may alternatively elect to receive an actuarially  
 763 adjusted disability retirement benefit under any other option as  
 764 provided in s. 121.091(6)(a) or ~~to receive~~ the normal benefit  
 765 payable under subsection (1).

766 2. If any justice or judge who is a member of the  
 767 investment plan is retired for disability pursuant to s. 12,  
 768 Art. V of the State Constitution and elects to receive a monthly  
 769 disability benefit under the provisions of this paragraph:

770 a. Any present value amount that was transferred to his or  
 771 her investment plan account and all employer and employee  
 772 contributions made to such account on his or her behalf, plus  
 773 interest and earnings thereon, must be transferred to and  
 774 deposited in the disability account of the Florida Retirement  
 775 System Trust Fund; and

776 b. The monthly disability benefits payable under this  
 777 paragraph shall be paid from the disability account of the  
 778 Florida Retirement System Trust Fund.

779 (n) *Death of retiree or beneficiary.*—Upon the death of a  
 780 disabled retiree or beneficiary of the retiree who is receiving  
 781 monthly disability benefits under this subsection, the monthly  
 782 benefits shall be paid through the last day of the month of  
 783 death and ~~shall~~ terminate, or be adjusted, if applicable, as of

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784 that date in accordance with the optional form of benefit  
 785 selected at the time of retirement. The department may adopt  
 786 rules necessary to administer this paragraph.

787 (3) DEATH BENEFITS.—Under the Florida Retirement System  
 788 Investment Plan:

789 (a) Survivor benefits are payable in accordance with the  
 790 following terms and conditions:

791 1. To the extent vested, benefits are payable only to a  
 792 member's beneficiary or beneficiaries as designated by the  
 793 member under ~~as provided in~~ s. 121.4501(20).

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

797 3. ~~To receive benefits,~~ The member must be deceased.

798 (b) In the event of a member's death, all vested  
 799 accumulations as described in s. 121.4501(6), less withholding  
 800 taxes remitted to the Internal Revenue Service, shall be  
 801 distributed, as provided in paragraph (c) or as described in s.  
 802 121.4501(20), as if the member retired on the date of death. No  
 803 other death benefits are available for survivors of members,  
 804 except for benefits, or coverage for benefits, as are otherwise  
 805 provided by law or separately provided by the employer, at the  
 806 employer's discretion.

807 (c) Upon receipt by the third-party administrator of a  
 808 properly executed application for distribution of benefits, the  
 809 total accumulated benefit is payable by the third-party  
 810 administrator to the member's surviving beneficiary or  
 811 beneficiaries, as:

812 1. A lump-sum distribution payable to the beneficiary or

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813 beneficiaries, or to the deceased member's estate;  
 814 2. An eligible rollover distribution, if permitted, on  
 815 behalf of the surviving spouse of a deceased member, whereby all  
 816 accrued benefits, plus interest and investment earnings, are  
 817 paid from the deceased member's account directly to the  
 818 custodian of an eligible retirement plan, as described in s.  
 819 402(c)(8)(B) of the Internal Revenue Code, on behalf of the  
 820 surviving spouse; or  
 821 3. A partial lump-sum payment whereby a portion of the  
 822 accrued benefit is paid to the deceased member's surviving  
 823 spouse or other designated beneficiaries, less withholding taxes  
 824 remitted to the Internal Revenue Service, and the remaining  
 825 amount is transferred directly to the custodian of an eligible  
 826 retirement plan, if permitted, as described in s. 402(c)(8)(B)  
 827 of the Internal Revenue Code, on behalf of the surviving spouse.  
 828 The proportions must be specified by the member or the surviving  
 829 beneficiary.  
 830  
 831 This paragraph does not abrogate other applicable provisions of  
 832 state or federal law providing for payment of death benefits.  
 833 (4) LIMITATION ON LEGAL PROCESS.—The benefits payable to  
 834 any person under the Florida Retirement System Investment Plan,  
 835 and any contributions accumulated under the plan, are not  
 836 subject to assignment, execution, attachment, or any legal  
 837 process, except for qualified domestic relations orders by a  
 838 court of competent jurisdiction, income deduction orders as  
 839 provided in s. 61.1301, and federal income tax levies.  
 840 Section 10. Subsection (7) of section 1012.875, Florida  
 841 Statutes, is amended to read:

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842 1012.875 State Community College System Optional Retirement  
 843 Program.—Each Florida College System institution may implement  
 844 an optional retirement program, if such program is established  
 845 therefor pursuant to s. 1001.64(20), under which annuity or  
 846 other contracts providing retirement and death benefits may be  
 847 purchased by, and on behalf of, eligible employees who  
 848 participate in the program, in accordance with s. 403(b) of the  
 849 Internal Revenue Code. Except as otherwise provided herein, this  
 850 retirement program, which shall be known as the State Community  
 851 College System Optional Retirement Program, may be implemented  
 852 and administered only by an individual Florida College System  
 853 institution or by a consortium of Florida College System  
 854 institutions.  
 855 (7) Benefits, including employee contributions, are not  
 856 payable for employee hardships, unforeseeable emergencies,  
 857 loans, medical expenses, educational expenses, purchase of a  
 858 principal residence, payments necessary to prevent eviction or  
 859 foreclosure on an employee's principal residence, or any other  
 860 reason except for a requested distribution for retirement, a  
 861 mandatory de minimis distribution authorized by the college, or  
 862 a minimum distribution required pursuant to the Internal Revenue  
 863 Code before termination from all employment relationships with  
 864 participating employers for 3 calendar months.  
 865 Section 11. This act shall take effect July 1, 2012.



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/9/12  
Meeting Date

Topic Retirement Bill

Bill Number SPB 7040  
*(if applicable)*

Name Garry Green

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title OPERATIONS & Mgmt CONSULTANT MGR

Address Blairstone Road

Phone \_\_\_\_\_

Tallahassee FL 32379  
City State Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Dept. of Management Services

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)