

**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 Committee on Children, Families, and Elder Affairs

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BILL: SB 756

INTRODUCER: Senator Diaz

SUBJECT: Public Records/Human Trafficking Victims

DATE: January 10, 2022

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Moody</u>	<u>Cox</u>	<u>CF</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 756 amends s. 943.0583, F.S., creating a new exemption from public records disclosure under s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution for personal identifying information of a victim of human trafficking that is contained in a petition filed under that section and in all pleadings and documents related to the petition.

The bill makes findings that the new exemption from public records disclosure is a public necessity as required by the State Constitution. Two-thirds vote of both the House and the Senate is required for final passage.

The bill is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2027 in accordance with s. 119.15, F.S., unless the Legislature reviews and renews the exemption before that date.

There is no anticipated fiscal impact on state, county or municipal governments. Agency costs incurred in responding to public records requests for the specified information should be offset by authorized fees. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2022.

**II. Present Situation:**

**Access to Public Records - Generally**

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> The right to inspect or copy applies

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<sup>1</sup> FLA. CONST. art. I, s. 24(a).

to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>2</sup>

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.<sup>3</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.<sup>4</sup> Lastly, chapter 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

### **Executive Agency Records – The Public Records Act**

The Public Records Act provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.<sup>5</sup>

Section 119.011(12), F.S., defines “public records” to include:

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 connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”<sup>6</sup>

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

<sup>4</sup> *State v. Wooten*, 260 So. 3d 1060 (Fla. 4<sup>th</sup> DCA 2018).

<sup>5</sup> Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

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

<sup>7</sup> Section 119.07(1)(a), F.S.

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

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.<sup>9</sup> The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>10</sup>

General exemptions from the public records requirements are contained in the Public Records Act.<sup>11</sup> Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.<sup>12</sup>

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.<sup>13</sup> Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.<sup>14</sup> Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.<sup>15</sup>

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

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act<sup>16</sup> (the Act), prescribe a legislative review process for newly created or substantially amended<sup>17</sup> public records or open meetings exemptions, with specified exceptions.<sup>18</sup> The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>19</sup>

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>20</sup> An exemption serves an identifiable purpose if it meets one of the following purposes *and* the

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<sup>9</sup> FLA. CONST. art. I, s. 24(c).

<sup>10</sup> *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

<sup>11</sup> *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

<sup>12</sup> *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

<sup>13</sup> *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5<sup>th</sup> DCA 2004).

<sup>14</sup> *Id.*

<sup>15</sup> *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5<sup>th</sup> DCA 1991).

<sup>16</sup> Section 119.15, F.S.

<sup>17</sup> An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

<sup>18</sup> Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

<sup>19</sup> Section 119.15(3), F.S.

<sup>20</sup> Section 119.15(6)(b), F.S.

Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;<sup>21</sup>
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>22</sup> or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>23</sup>

The Act also requires specified questions to be considered during the review process.<sup>24</sup> In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>25</sup> If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.<sup>26</sup>

### **Human Trafficking**

Human trafficking is a form of modern-day slavery.<sup>27</sup> Human trafficking victims are young children, teenagers, and adults who may be citizens that are trafficked domestically within the borders of the United States or smuggled across international borders worldwide.<sup>28</sup> Many human trafficking victims are induced with false promises of financial or emotional security, but are forced or coerced into commercial sex, domestic servitude, or other types of forced labor.<sup>29</sup> Any minor who is younger than 18 years old and who is induced to perform a commercial sex act is a human trafficking victim even if there is no forced fraud or coercion.<sup>30</sup> Increasingly, criminal

<sup>21</sup> Section 119.15(6)(b)1., F.S.

<sup>22</sup> Section 119.15(6)(b)2., F.S.

<sup>23</sup> Section 119.15(6)(b)3., F.S.

<sup>24</sup> Section 119.15(6)(a), F.S. The specified questions are:

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

<sup>25</sup> See generally s. 119.15, F.S.

<sup>26</sup> Section 119.15(7), F.S.

<sup>27</sup> Section 787.06(1)(a), F.S.

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

<sup>29</sup> The Department of Education (the DOE), *Healthy Schools – Human Trafficking*, available at <http://www.fldoe.org/schools/healthy-schools/human-trafficking.stml> (last visited November 29, 2021).

<sup>30</sup> *Id.*

organizations, such as gangs, are enticing local school children into commercial sexual exploitation or trafficking.<sup>31</sup>

### ***Human Trafficking in Florida***

Florida law defines “human trafficking” as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining,<sup>32</sup> purchasing, patronizing, procuring, or obtaining<sup>33</sup> another person for the purpose of exploitation of that person.<sup>34</sup> In Florida, any person who knowingly, or in reckless disregard of the facts, engages in human trafficking, or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking for labor or services, or commercial sexual activity, commits a crime.<sup>35</sup> Florida law sets out several circumstances which give rise to specified penalties including, in part:

- Labor or services of any child under the age of 18 commits a first degree felony;<sup>36</sup>
- Labor or services of any child under the age of 18 who is an unauthorized alien<sup>37</sup> commits a first degree felony;<sup>38</sup>
- Labor or services who does so by the transfer or transport of any child under the age of 18 from outside of Florida to within Florida commits a first degree felony;<sup>39</sup>
- Commercial sexual activity<sup>40</sup> who does so by the transfer or transport of any child under the age of 18 from outside of Florida to within Florida commits a first degree felony;<sup>41</sup> or
- Commercial sexual activity in which any child under the age of 18, or in which any person who is mentally defective<sup>42</sup> or mentally incapacitated<sup>43</sup> is involved commits a life felony.<sup>44</sup>

<sup>31</sup> *Id.*

<sup>32</sup> Section 787.06(2)(f), F.S., provides “maintain” means, in relation to labor or services, to secure or make possible continued performance thereof, regardless of any initial agreement on the part of the victim to perform such type service. Section 787.06(2)(h), F.S., defines “services” as any act committed at the behest of, under the supervision of, or for the benefit of another, including forced marriage, servitude, or the removal of organs.

<sup>33</sup> Section 787.06(2)(g), F.S., provides “obtain” means, in relation to labor, commercial sexual activity, or services, to receive, take possession of, or take custody of another person or secure performance thereof. Section 787.06(2)(e), F.S., provides “labor” means work of economic or financial value.

<sup>34</sup> Section 787.06(2)(d), F.S.

<sup>35</sup> Section 787.06(3), F.S.

<sup>36</sup> Section 787.06(3)(a)1., F.S. A first degree felony is punishable by a state prison term not exceeding 30 years, a fine not exceeding \$10,000, or both. Sections 775.082 and 775.083, F.S.

<sup>37</sup> Section 787.06(2)(j), F.S., defines “unauthorized alien” as an alien who is not authorized under federal law to be employed in the United States, as provided in 8 U.S.C. s. 1324a(h)(3).

<sup>38</sup> Section 787.06(3)(c)1., F.S.

<sup>39</sup> Section 787.06(3)(e)1., F.S.

<sup>40</sup> Section 787.06(2)(b), F.S., defines “commercial sexual activity” as any violation of ch. 796, F.S., or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography. Section 787.06(2)(i), F.S., defines “sexual explicit performance” as an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy the sexual desires or appeal to the prurient interest.

<sup>41</sup> Section 787.06(3)(f)1., F.S., provides that an offense committed under these circumstances is punishable by a term of imprisonment not exceeding life or as provided in ss. 775.082, 775.083, or 775.084, F.S.

<sup>42</sup> Section 794.011(1)(b), F.S., defines “mentally defective” as a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.

<sup>43</sup> Section 794.011(1)(c), F.S., defines “mental incapacitated” as temporarily incapable of appraising or controlling a person’s own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.

<sup>44</sup> A life felony is punishable by a term of life imprisonment, \$15,000 fine, or both as provided in ss. 775.082(3)(a)6., 775.083, or 775.084, F.S.

The above-mentioned first degree felonies are reclassified as a life felony if a person causes great bodily harm, permanent disability, or permanent disfigurement to another person during the commission of the offense.<sup>45</sup> Ignorance of the human trafficking victim's age, the victim's misrepresentation of his or her age, or a bona fide belief of the victim's age cannot be raised as a defense by a defendant.<sup>46</sup>

Florida is ranked the third highest state of reported human trafficking cases in the United States.<sup>47</sup> In 2020, the Florida Abuse Hotline received an increase in reports of commercially exploited children from 3,088 reports in 2019 to 3,181 reports in 2020.<sup>48</sup>

### **Public Records Exemption relating to Human Trafficking**

In part, current law provides a public record exemption for criminal intelligence<sup>49</sup> and criminal investigative information<sup>50</sup> including:

- Any information that reveals the identity of a person under the age of 18 who is the victim of human trafficking for labor or services;
- Any information that may reveal the identity of a person who is the victim of human trafficking for commercial sexual activity; and
- A photograph, videotape, or image of any part of the body of a victim of human trafficking involving commercial sexual activity.<sup>51</sup>

### **Human Trafficking Victim Expunction**

In 2013, the Legislature created a process authorizing a victim of human trafficking to petition a court for the expunction<sup>52</sup> of a criminal history record resulting from his or her arrest or filing of charges for an offense committed or reported to have been committed while he or she was a victim of human trafficking.<sup>53</sup>

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<sup>45</sup> Section 787.06(8)(b), F.S.

<sup>46</sup> Section 787.06(9), F.S.

<sup>47</sup> Florida Alliance to End Human Trafficking, *We need to End Human Trafficking in the State of Florida*, available at [Home \(floridaallianceendht.com\)](https://floridaallianceendht.com) (last visited November 29, 2021).

<sup>48</sup> The Office of Program Policy Analysis and Government Accountability, *Annual Report on the Commercial Sexual Exploitation of Children in Florida*, 2021, p. 2, July 2021, available at [Annual Report on CSE of Children, 2021 \(fl.gov\)](https://www.fl.gov) (last visited November 29, 2021).

<sup>49</sup> Section 119.011(3)(a), F.S., defines "criminal intelligence information" as information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.

<sup>50</sup> Section 119.011(3)(b), F.S., defines "criminal investigative information" as information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

<sup>51</sup> Section 119.071(2)(h)1., F.S.

<sup>52</sup> When a criminal history record is ordered to be expunged, the record must be physically destroyed by any criminal justice agency possessing such record, except that any criminal history record in the custody of the Florida Department of Law Enforcement (FDLE) must be retained. *See* s. 943.045(16), F.S.

<sup>53</sup> Section 943.0583(3), F.S.

For purposes of human trafficking victim expunction, “victim of human trafficking” means a person subjected to coercion<sup>54</sup> for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.<sup>55</sup>

To be eligible for expunction, the criminal offense must be related to a human trafficking scheme of which the person was a victim or the offense must have been committed at the direction of an operator of the scheme and must not be one of the following offenses:

- Arson;
- Sexual battery;
- Robbery;
- Kidnapping;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Aggravated assault with a deadly weapon;
- Murder;
- Manslaughter;
- Aggravated manslaughter of an elderly person or disabled adult;
- Aggravated manslaughter of a child;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Armed burglary; or
- Aggravated stalking.<sup>56</sup>

The human trafficking victim is eligible to receive the expunction regardless of the disposition of the arrest or of any charges.

The court with original jurisdiction over the crime that the human trafficking victim seeks to expunge is the court designated to hear the victim’s petition.<sup>57</sup> A petition must be initiated by the petitioner with due diligence after he or she is no longer a victim of human trafficking or has sought human trafficking services.<sup>58</sup> The petition must be accompanied by the following:

- A sworn statement attesting that the petitioner is eligible for an expunction to the best of his or her knowledge and does not have other petitions to expunge or seal pending before any court; and

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<sup>54</sup> Section 787.06, F.S., defines “coercion” as “1. Using or threatening to use physical force against any person; 2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority against his or her will; 3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined; 4. Destroying, concealing removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person; 5. Causing or threatening to cause financial harm to any person; 6. Enticing or luring any person by fraud or deceit; or 7. Providing a controlled substance as outlined in Schedule I or Schedule II of s. 893.03, F.S., to any person for the purpose of exploitation of that person.”

<sup>55</sup> Section 943.0583(1)(c), F.S.

<sup>56</sup> Section 943.0583(3), F.S. This subsection provides that expunction is not permitted if the offense is related to an offense enumerated in s. 775.084(1)(b)1., F.S., related to habitual violent felony offenders.

<sup>57</sup> Section 943.0583(2), F.S.

<sup>58</sup> Section 943.0583(4), F.S.

- Official documentation of the petitioner’s status as a human trafficking victim, if any exists.<sup>59</sup>

Florida law does not currently provide a public records exemption for a human trafficking victim’s petition and any accompanying documents for expunction of his or her criminal history record resulting from an offense committed while he or she was a victim of human trafficking.

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

The bill amends s. 943.0583, F.S., establishing that personal identifying information of a victim of human trafficking that is contained in a petition filed under that section and in all pleadings and documents related to the petition is confidential and exemption from public records disclosure requirements.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2027, unless the Legislature reviews and renews the exemption before that date.

The bill also provides a statement of public necessity as required by the State Constitution, which notes:

[t]he Legislature finds that it is a public necessity that personal identifying information of a victim of human trafficking in a petition filed under s. 943.0583, F.S., and in all pleadings and documents related to the petition be made confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. Persons who are victims of human trafficking and who have been convicted of crimes committed at the behest of their traffickers are themselves victims of crimes. These victims face barriers to employment and loss of other life opportunities, and the fact that they are seeking expungement, as well as the information contained in related pleadings and documents, would expose these petitioners to possible discrimination due to details of their past lives becoming public knowledge. Therefore, it is necessary that the personal identifying information of victims of human trafficking in these petitions, pleadings, and related documents be made confidential in order for human trafficking victims to have the chance to rebuild their lives and reenter society.

The bill is effective July 1, 2022.

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

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

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

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<sup>59</sup> Section 943.0583(6), F.S.

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

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for specified public records relating to personal identifying information of human trafficking victims that is contained in a petition for expunction and in all pleadings and documents related to the petition, thus the bill will require two-thirds vote to be enacted.

**Public Necessity Statement**

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

**Scope of Exemption**

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The stated purpose of the law is to protect human trafficking victims from exposure to possible discrimination due to details of their past lives becoming public knowledge. This bill exempts only those persons who are at risk of harm, and their personal identifying information which could pose a harm to them, from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill does not appear to have a fiscal impact on state or local governments. Costs incurred by an agency in responding to public records requests regarding these exemptions should be offset by authorized fees.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 943.0583 of the Florida Statutes.

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

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

None.

**B. Amendments:**

None.