

Tab 1	SB 844 by Hooper ; (Similar to H 00781) Public Records
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Tab 2	CS/SB 60 by CA, Bradley ; (Similar to H 00883) County and Municipal Code Enforcement
Tab 3	SB 758 by Diaz ; (Similar to H 00573) Fiduciary Duty of Care for Appointed Public Officials and Executive Officers
Tab 4	SB 788 by Cruz ; State Contracting
Tab 5	SB 952 by Burgess ; (Similar to H 00169) Water Management Districts
Tab 6	SB 1104 by Rodriguez ; Division of Library and Information Services

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY

Senator Rodrigues, Chair
 Senator Gruters, Vice Chair

MEETING DATE: Wednesday, March 3, 2021

TIME: 12:00 noon—2:00 p.m.

PLACE: *Mallory Horne Committee Room, 37 Senate Building*

MEMBERS: Senator Rodrigues, Chair; Senator Gruters, Vice Chair; Senators Mayfield, Stargel, Stewart, and Torres

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A2 AT THE DONALD L. TUCKER CIVIC CENTER, 505 W PENSACOLA STREET, TALLAHASSEE, FL 32301			
1	SB 844 Hooper (Similar H 781)	<p>Public Records; Authorizing certain persons to access information recorded in the Official Records of a county which is otherwise exempt from public records requirements, if specified conditions are met; authorizing clerks of the circuit court to enter into limited access licensing agreements to allow electronic access to official records for specified parties; prohibiting a county recorder or a clerk of the court from placing information subject to specified public records exemptions on a publicly available website; providing procedures for the restoration of previously redacted information, etc.</p> <p>GO 02/17/2021 Not Considered GO 03/03/2021 Fav/CS CA RC</p>	Fav/CS Yea 6 Nays 0
2	CS/SB 60 Community Affairs / Bradley (Similar H 883)	<p>County and Municipal Code Enforcement; Prohibiting code inspectors designated by boards of county commissioners from initiating investigations of potential violations of codes and ordinances by way of anonymous complaints; prohibiting code inspectors from initiating enforcement proceedings for potential violations of codes and ordinances by way of anonymous complaints; prohibiting code enforcement officers from initiating investigations of potential violations of codes and ordinances by way of anonymous complaints; prohibiting code inspectors designated by governing bodies of municipalities from initiating investigations of potential violations of codes and ordinances by way of anonymous complaints; requiring persons who report potential violations of codes and ordinances to provide specified information to the governing body before an investigation occurs, etc.</p> <p>CA 02/02/2021 Fav/CS GO 03/03/2021 Favorable RC</p>	Favorable Yea 4 Nays 1

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Wednesday, March 3, 2021, 12:00 noon—2:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	SB 758	Fiduciary Duty of Care for Appointed Public Officials and Executive Officers; Providing a directive to the Division of Law Revision to create part IX of ch. 112, F.S.; establishing standards for the fiduciary duty of care for appointed public officials and executive officers of specified governmental entities; requiring training on board governance beginning on a specified date; requiring the Department of Business and Professional Regulation to contract for or approve a training program or publish a list of approved training providers; requiring appointed public officials and executive officers to certify their completion of the annual training, etc.	Favorable Yea 5 Nays 0
GO 03/03/2021 Favorable CA AP	State Contracting; Prohibiting vendors that default or otherwise fail to fulfill terms and conditions of a state contract from submitting a bid, proposal, or reply, or entering into or renewing a contract, to provide any goods or services to an agency after placement on the suspended vendor list; prohibiting an agency from accepting any bids, proposals, or replies from, or entering into or renewing any contract with, any suspended vendor until certain conditions are met; requiring an agency to notify the Department of Management Services of, and provide certain information regarding, any such vendors, etc.	Favorable Yea 5 Nays 0	
GO 03/03/2021 Favorable AEG AP	Water Management Districts; Authorizing water management districts to purchase commodities and contractual services from the contracts of other specified entities under certain circumstances, etc.	Favorable Yea 5 Nays 0	

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Wednesday, March 3, 2021, 12:00 noon—2:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	SB 1104 Rodriguez	Division of Library and Information Services; Removing the date by which the division must submit an annual report regarding the allocation of library funding to the Chief Financial Officer; revising the duties and responsibilities of the division in the administration of the records and information management program; deleting a provision that provides for the title of a record to pass to the division under specified circumstances; removing a limitation on the annual grant amount that the administrative unit of a library cooperative may receive from the state for purposes of sharing library resources, etc.	Favorable Yea 5 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 844

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Hooper

SUBJECT: Public Records

DATE: March 4, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Ponder	McVaney	GO	<u>Fav/CS</u>
2.		CA	
3.		RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 844 amends s. 28.222, F.S., establishing the clerk as the county recorder, to improve readability, and s. 28.2221, F.S., which governs electronic access to Official Records to provide access to otherwise exempt information to specified parties and for limited purposes.

The bill prohibits a county recorder, unless otherwise required by the court, from removing a grantor name, grantee name, or party name from the index on the publicly available website on the basis of a public records exemption as defined in s. 119.011(8), F.S., unless the name of the grantor or grantee includes the street address portion of the home address. The bill expressly provides that home addresses¹ that are exempt from inspection or copying must not be included within the index or otherwise displayed on the county recorder's publicly available website on which images or copies of the county's official records are placed.

Current law prohibits a county recorder from placing an image or copy of a public record, including an Official Record, on a publicly available website for general public display if that copy or image is of a (1) military discharge; (2) death certificate; or (3) a court file, record, or paper relating to matters or cases governed by the Florida Rules of Family Law, the Florida

¹ Section 119.071(4)(d), F.S., defines "home address" to mean the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address.

Rules of Juvenile Procedure, or the Florida Probate Rules.² The bill amends s. 28.2221, F.S., to include information made exempt from inspection or copying by the public within this prohibition.

Current law provides for notice to affected parties of the right to request removal of records prohibited from being placed by the county recorder on a publicly available website and specifies that no fee may be charged for such request. The bill provides that a request for removal of information by eligible individuals claiming an exemption under s. 119.071, F.S., must:

- Be written;
- Be notarized;
- State under oath the statutory basis for removal of the information, image, or copy that is restricted from general public display; and
- Contain confirmation of the individual's eligibility for exempt status.

The bill requires any information restricted from public display pursuant to a request for removal under s. 119.071, F.S., must be provided to the individual whose information was removed upon written request meeting specified requirements.

The bill provides that a party making a false attestation in a written request for removal or for restricted information is subject to the penalty of perjury

The bill authorizes access to exempt information under s. 119.071(4)(d), F.S., for the purpose of conducting a title search, perfecting or enforcing a lien or other interest in real or personal property, or purchasing, leasing, or lending involving real or personal property to:

- An authorized title insurer and their affiliates;
- A title insurance agent, or title insurance agencies;
- An attorney duly admitted to practice law in this state and in good standing with The Florida Bar; or
- A financial institution.

The bill requires presentation of a photo identification and affirmation via sworn affidavit to the county recorder to access the otherwise exempt information. The affiant requestor must attest to his or her authority and the authorized purpose to access exempt information pursuant to this section for the property specified within the sworn affidavit.

The bill specifies that the county recorder must record the affidavit in the official record but must not place the image or copy of the affidavit on a publicly available website for general public display. Upon receipt of a property address from a county recorder, the affiant requestor must give notice of such disclosure to the affected party by providing a copy of the previously submitted affidavit to each affected party at the disclosed address. A party making a false attestation under this section is subject to the penalty of perjury under s. 837.012, F.S.

The bill also provides for access to restricted information under s. 119.071(4)(d), F.S., via a limited access license agreement. A county recorder may enter into a limited access license

² Section 28.2221(5)(a), F.S.

agreement with the entities specified above to grant access through electronic means, not subject to general public display, to the restricted information.

The bill provides that a person who unlawfully uses any Official Record in a manner not authorized in this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. Further, a person who unlawfully uses any Official Record with intent to cause bodily harm or with intent to threaten to cause bodily harm commits a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

The bill amends s. 119.071, F.S., which contains several general exemptions to the Public Records Act. Current law provides that an agency that is the custodian of certain exempt information and is not the employer of the individual benefiting from the exemption must maintain the exempt status of that exemption only if the individual or employing agency submits a written request for maintenance of the exemption to the custodial agency. The bill requires this request to be notarized and that the individual state under oath the statutory basis for his or her exemption and confirm his or her status as a party eligible for exempt status.

The bill requires a county property appraiser or county tax collector to comply with a written request for maintenance of exemption by removing the name of the individual with exempt status and the instrument number and/or Official Records book and page number identifying the property with the exempt status from all publicly available records maintained by the property appraiser or tax collector. The bill provides that for written requests received prior to July 1, 2021, a county property appraiser or county tax collector must comply by October 1, 2021. The bill prohibits a county property appraiser or county tax collector from removing the street address, legal description or other information identifying real property within agency records, so long as a name or personal information otherwise exempt under s. 19.071(4)(d), F.S., is associated with the property or otherwise displayed in the public records of the agency.

The bill provides notice to individuals eligible for exempt status under s. 119.071(4)(d), F.S., that such information may be disclosed pursuant to s. 28.2221, F.S., to specified entities for the purposes of conducting a title search, perfecting or enforcing a lien or other interest in real or personal property, or purchasing, leasing, or lending involving real or personal property.

Current law does not provide an expiration date for when the redacted or removed information is restored. The bill provides that the exempt status of a home address³ contained in the Official Records is maintained only during the period which the employee resides at the dwelling location. Upon conveyance of the dwelling location, the employee must submit a written request to release the removed information to the county recorder.

The bill requires a county recorder to include on the daily schedule of deeds and conveyances, which is provided to county property appraisers, notification of any information therein that is subject to a request for removal on file with the county recorder.

³ Section 119.071(4)(d)1.a., F.S., defines “home address” to mean “Home addresses” means the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address.

The bill also removes obsolete language.

Clerks of court may incur additional costs associated with as they process requests for access, facilitate limited access license agreements, include notification of removal requests on file within the daily schedule, and process requests to release home address information.

The bill takes effect July 1, 2021.

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.⁴ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.⁵

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.⁶ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁷ Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as 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.⁸

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁹ The Florida Supreme Court has interpreted the statutory definition of

⁴ FLA. CONST. art. I, s. 24(a).

⁵ *Id.*

⁶ 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)

⁷ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁸ 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.”

⁹ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

“public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.¹⁰

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.¹¹ A violation of the Public Records Act may result in civil or criminal liability.¹²

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.¹³ 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.¹⁴

General exemptions from the public records requirements are contained in the Public Records Act.¹⁵ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹⁶

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁷ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.

General Exemptions from Inspection under the Public Records Act

Section 119.071, F.S., provides categories of public records that are exempt from inspection or copying and is entitled “General exemptions from inspection or copying of public records.” It contains five subparts and exempts information related to:

- Agency Administration;¹⁸

¹⁰ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

¹¹ Section 119.07(1)(a), F.S.

¹² Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹³ FLA. CONST. art. I, s. 24(c).

¹⁴ *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).

¹⁵ *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).

¹⁶ *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).

¹⁷ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁸ Section 119.071(1), F.S. Includes information related to (1) examinations administered by an agency for purposes of licensure, certification or employment; (2) certain specified information related to a competitive solicitation; (3) any financial statement of a prospective bidder in submitted to prequalify for bidding or for responding to a proposal for a road or any other public works project; (4) certain attorney work product; (5) videotape or video signals involving a federally licensed

- Agency Investigations;¹⁹
- Security and Firesafety;²⁰
- Agency Personnel Information;²¹ and
- Other Personal Information.²²

Section 119.071, F.S., provides for disclosure of certain exempt information under specified circumstances. The individuals covered by the exemptions found in s. 119.071, F.S., are eligible for redaction of their personal identifying information from public records. Many agencies make requests for removal or redaction on behalf of their current employees.

Public Records Exemption for Agency Personnel Information

Provisions in s. 119.071(4)(d), F.S., exempt from public disclosure certain personal identification and location information of specified agency personnel and their spouses and children. Personnel covered by these exemptions include:

- Active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, certain investigative personnel of the Department of Children and Families and Department of Health, and certain personnel of the Department of Revenue and local governments involved in revenue collection and revenue and child support enforcement;²³
- Certain current or former nonsworn investigative personnel of the Department of Financial Services;²⁴
- Certain current or former nonsworn investigative personnel of the Office of Financial Regulation's Bureau of Financial Investigations;²⁵
- Current or former certified firefighters;²⁶
- Current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges;²⁷
- Current or former state attorneys, assistant state attorneys, statewide prosecutors, and assistant statewide prosecutors;²⁸
- General magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers;²⁹

radio television station; (6) certain data processing software; and (7) specified United States Census Bureau address and map information.

¹⁹ Section 119.071(2), F.S.

²⁰ Section 119.071(3), F.S.

²¹ Section 119.071(4), F.S.

²² Section 119.071(5), F.S.

²³ Section 119.071(4)(d)2.a., F.S.

²⁴ Section 119.071(4)(d)2.b., F.S.

²⁵ Section 119.071(4)(d)2.c., F.S.

²⁶ Section 119.071(4)(d)2.d., F.S.

²⁷ Section 119.071(4)(d)2.e., F.S.

²⁸ Section 119.071(4)(d)2.f., F.S.

²⁹ Section 119.071(4)(d)2.g., F.S.

- Certain current or former human resource, labor relations, or employee relations directors, assistant directors, managers, and assistant managers of any local government agency or water management district;³⁰
- Current or former code enforcement officers;³¹
- Current or former guardians ad litem;³²
- Current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice;³³
- Current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel;³⁴
- Current or former investigators or inspectors of the Department of Business and Professional Regulation;³⁵
- County tax collectors;³⁶
- Certain current or former personnel of the Department of Health;³⁷
- Certain current or former impaired practitioner consultants who are retained by an agency and certain current or former employees of an impaired practitioner consultant;³⁸
- Current or former certified emergency medical technicians and paramedics;³⁹
- Certain current or former personnel employed in an agency's office of inspector general or internal audit department;⁴⁰
- Current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility;⁴¹ and
- Current or former directors, managers, supervisors, and clinical employees of certain child advocacy centers.⁴²

The employing agency as well as the employee is authorized assert the maintenance of the exempt status by submitting a written request for maintenance of the exemption (Request for Maintenance of an Exemption) to each agency which holds the employee's information.⁴³ Further, all of these exemptions have retroactive application.⁴⁴

³⁰ Section 119.071(4)(d)2.h., F.S.

³¹ Section 119.071(4)(d)2.i., F.S.

³² Section 119.071(4)(d)2.j., F.S.

³³ Section 119.071(4)(d)2.k., F.S.

³⁴ Section 119.071(4)(d)2.l., F.S.

³⁵ Section 119.071(4)(d)2.m., F.S.

³⁶ Section 119.071(4)(d)2.n., F.S.

³⁷ Section 119.071(4)(d)2.o., F.S.

³⁸ Section 119.071(4)(d)2.p., F.S.

³⁹ Section 119.071(4)(d)2.q., F.S.

⁴⁰ Section 119.071(4)(d)2.r., F.S.

⁴¹ Section 119.071(4)(d)2.s., F.S.

⁴² Section 119.071(4)(d)2.t., F.S.

⁴³ Section 119.071(4)(d)3., F.S.

⁴⁴ Section 119.071(4)(d)4., F.S.

The information exempted by the various provisions of s. 119.071(4)(d)2., F.S., is similar but not identical. All of the provisions in s. 119.071(4)(d)2., F.S., exempt from public disclosure the home addresses, telephone numbers, and dates of birth of the specified personnel. However, exemptions are not uniform for names, photographs, and places of employment.

In 2019, the legislature defined term “home address” in s. 119.071(4), F.S., for the first time.⁴⁵ “Home address” is defined to mean:

the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address.

Thus, the rights of individuals specified under s. 119.071(4)(d), F.S., and their spouses and their children, to request redaction of specified information is applicable to property records throughout their entire lives with no requirement for renewal.⁴⁶ This change allows qualifying individuals to redact all property descriptions from a public record, which may limit the ability to determine ownership of or encumbrances on a property.⁴⁷

Redacting this information may limit the effectiveness of the public record to give notice of property ownership to interested parties, which may:

- Create potential issues related to constructive notice and chain of title;
- Increase the possibility of fraud;
- Provide protected parties a false sense of safety;
- Cause problems accurately surveying property; and
- Delay real property transactions.⁴⁸

Civil and Criminal Penalties Under The Public Records Act

If a person willfully and knowingly violates public records laws either by failing to release unprotected information or by releasing exempt or confidential information, that employee may be subject to criminal prosecution for a first degree misdemeanor, which carries a sentence of imprisonment up to one year and a fine of up to \$1000.⁴⁹ Additionally, knowing and willful failure to protect the public records of victims of crimes or accidents under s. 119.105, F.S., constitutes a third degree felony, punishable by a sentence of imprisonment up to five years and a fine of up to \$5,000.⁵⁰

⁴⁵ Chapter 2019-12, L.O.F.

⁴⁶ See OPPAGA Report at 2.

⁴⁷ Florida Office of Program Policy Analysis & Government Accountability, *A Review of Home Address Redaction Processes and Real Property Interests*, (hereinafter the “OPPAGA Report”), Report 20-06, December 2020, available at <https://oppaga.fl.gov/Documents/Reports/20-06.pdf> (last visited February 11, 2021).

⁴⁸ The OPPAGA Report at 10.

⁴⁹ Section 119.10(2)(a), F.S.

⁵⁰ Section 119.10(2)(b), F.S.

Reasonable attorney's fees will be assessed against an agency found to have violated public records law.⁵¹

Clerks of the Courts

Clerks of the circuit courts (Clerks) are constitutionally elected officers.⁵² A Clerk is considered to be the county recorder.⁵³ As county recorder, the Clerk must record all instruments in one general series called "official records."⁵⁴ Official records consist of each instrument that the Clerk is required or authorized to record.

The Clerk is responsible for:

- Keeping and maintaining all court documents and electronic filings in the Clerk's office;⁵⁵
- Affixing a stamp, which may be electronic, to each document indicating the date and time that the submission was filed;⁵⁶
- Maintaining a progress docket on which the filing of each pleading or motion is noted;⁵⁷
- Maintaining a general alphabetical index, direct and inverse of all instruments filed for recordation;⁵⁸
- Implementing an electronic filing process;⁵⁹ and
- Keeping and furnishing to respective county property appraisers a daily schedule of the deeds and conveyances filed for recordation (the schedule should set forth the name of the grantor, the names and addresses of each grantee and a description of the land as specified in each instrument so filed).⁶⁰

Official Records as Public Records

All instruments recorded in the Official Records must always be available to the public for inspection under the supervision of the Clerk.⁶¹ The term "public records" includes each official record.⁶² The purpose of recording a document is to put the public on notice about a particular matter. Clerks record numerous types of documents that are eligible for redaction or removal pursuant to s. 119.071, F.S.

Section 119.0714(3), F.S., provides that a person who prepares or files a record for recording in the Official Records may not include in that record a social security number or a bank account, debit, charge, or credit card number (Card Number) "unless otherwise expressly required by law." If the social security number or Card Number is in electronic format, the county recorder must use his or her best effort to keep the social security numbers confidential and exempt

⁵¹ Section 286.011(4), F.S.

⁵² See, FLA. CONST., art. V, s. 16 and art. VIII, s. 1.

⁵³ Section 28.222(1), F.S.

⁵⁴ Section 28.222(2), F.S.

⁵⁵ Section 28.13, F.S.

⁵⁶ *Id.*

⁵⁷ Section 28.211, F.S.

⁵⁸ Section 28.222(2), F.S.

⁵⁹ Section 28.22205, F.S.

⁶⁰ Section 695.22, F.S.

⁶¹ Section 28.222(7), F.S.

⁶² Section 28.001(2), F.S.

pursuant to s. 119.071(5)(a), F.S., and to keep the complete Card Numbers exempt pursuant to s. 119.071(5)(b), F.S., without any person having to request redaction.⁶³ A holder of a social security number or a Card Number, or the attorney or legal guardian may request that a county record redact his social security number or Card Number that is part of an Official Record and made publicly available.⁶⁴ A request for redaction must be:

- Signed;
- Legibly written;
- Delivered by mail, facsimile, electronic transmission, or in person to the county recorder; and
- Specify the identification page number of the record that contains the number to be redacted.⁶⁵

The county recorder does not have a duty to inquire beyond the written request to verify the identity of a person requesting redaction.

Since October 1, 2002, any person has a right to request a county recorder to remove from a publicly available website, any social security number contained in an Official Record. Such request must be:

- Made in writing;
- Delivered by mail, facsimile, or electronic transmission, or delivered in person, to the county recorder; and
- Specify the identification page number that contains the social security number to be redacted.⁶⁶

A fee may not be charged for the redaction of a social security number pursuant to such a request.

Section 119.0714(3)(e), F.S., specifies that the county recorder is not liable for the inadvertent release of social security numbers, or Card Numbers, filed with the county recorder.

A Request for Maintenance of an Exemption made pursuant to s. 119.071(4)(d) 3., F.S., must specify the document type, name, identification number, and page number of the official record that contains the exempt information.

⁶³ Section 119.0714(3)(a)1., F.S.

⁶⁴ Section 119.0714(3)(b), F.S.

⁶⁵ Section 119.0714(3)(b)1., F.S.

⁶⁶ Section 119.0714(3)(c)2., F.S.

**Clerk Records That May Have Personal Identifying Information
Eligible for Redaction⁶⁷**

Type of Official Record		
<ul style="list-style-type: none"> • Affidavit • Agreement • Assignment • Bond • Certificate • Certified Copy of Judgements • Condominium • Death Certificate • Deed • Easement • Financing Statement 	<ul style="list-style-type: none"> • Government Related • Judgment • Lien • Lis Pendens • Maps • Marriage Record • Mortgage • Military Discharge • Notices • Order 	<ul style="list-style-type: none"> • Plat Related • Plats • Powers of Attorney • Probate Documents • Releases • Restitution Orders • Restrictions • Satisfaction • Termination • Transfers of Security

In December 2020, the Florida Office of Program Policy Analysis and Government Accountability (the OPPAGA Report) issued a report entitled *A Review of Home Address Redaction Processes and Real Property Interests*. The OPPAGA Report states that the Florida Association of Court Clerks & Comptrollers has identified best practices for redaction requests.⁶⁸ Each requestor, even those residing in the same home, are required to complete a request form:

- Identifying themselves;
- Stating what makes them eligible for redaction; and
- Enumerating the specific documents and identifying pieces of information to be redacted (specific instrument number, book, and page of the document).⁶⁹

If an eligible individual seeks additional redactions in the future, they must complete a new redaction request each time.⁷⁰ Most requestors self-attest that they meet the eligibility criteria for redaction.⁷¹ The OPPAGA Report states that several Clerks reported that they require individuals to show identification or have the request form notarized to attest to their identity, most Clerks interviewed by OPPAGA do not further verify eligibility.⁷² “When asked, staff from multiple Clerk’s offices stated that they do not have the authority or the ability to investigate or verify that the requestor meets the statutory criteria for redaction.”⁷³

Electronic Access To Official Records

Since January 1, 2002, under s. 28.2221, F.S., the county recorder or Clerk must provide a current index of documents in the Official Records on a publicly accessible website of instruments recorded on or after January 1, 1990, limited to grantor and grantee names, party

⁶⁷ OPPAGA Report at 6.

⁶⁸ *Id.* at 8.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

names, date, book and page number, comments, and type of record.⁷⁴ Since January 1, 2006, the Clerk has also been required to provide electronic access to images of the indexed documents.

Florida law prohibits a county recorder or a Clerk from placing certain images or copies of public records, including an Official Record, on a publicly available Internet website.⁷⁵ Specifically, no county recorder or Clerk may place an image or copy of a public record, including an Official Record, on a publicly available Internet website if that image or copy is of a military discharge; death certificate; or a court file, record, or paper relating to matters or cases governed by the Florida Rules of Family Law, the Florida Rules of Juvenile Procedure, or the Florida Probate Rules.

Section 28.2221(5)(c), F.S., provides for notice to affected parties of the right to request removal or redaction of any image or copy of a public record, including an Official Record, if that image or copy is of a military discharge; death certificate; or a court file, record, or paper relating to matters or cases governed by the Florida Rules of Family Law, the Florida Rules of Juvenile Procedure, or the Florida Probate Rules. This request must be in writing (via mail, facsimile, or electronic transmission or in person) to the county recorder or Clerk. The request must identify the document identification page number of the document to be removed. No fee is charged for the removal or redaction of a document pursuant to such request. An affected person may petition the circuit court for an order directing compliance with this subsection.⁷⁶

Court Records as Public Records

To implement article 1, section 24(a) of The Florida Constitution, the Florida Supreme Court adopted Florida Rule of Judicial Administration 2.051, which has since been renumbered to rule 2.420. Rule 2.420 governs public access to judicial branch records and provides that “[t]he public shall have access to all records of the judicial branch of government” except in limited circumstances.⁷⁷

County Property Appraisers and County Tax Collectors

A “county property appraiser” is defined to mean “the county officer charged with determining the value of all property within the county, with maintaining certain records connected therewith, and with determining the tax on taxable property after taxes have been levied.”⁷⁸ A “county tax collector” is defined to mean “the county officer charged with the collection of ad valorem taxes levied by the county, the school board, any special taxing districts within the county, and all municipalities within the county.”⁷⁹ The County Officers maintain records, such as property records, that contain information that is exempt under s. 119.071, F.S. For example, a county property appraiser’s website may have a property owner name and a legal description of the

⁷⁴ In 2000, the Legislature passed CS/CS/SB 1334, codified as s. 28.221, F.S.

⁷⁵ Section 28.2221(5)(a), F.S.

⁷⁶ Section 28.2221(5)(d), F.S.

⁷⁷ Fla. R. Jud. Admin. 2.420(a).

⁷⁸ Section 192.001(3), F.S.

⁷⁹ Section 192.001(4), F.S.

property.⁸⁰ A county property appraiser's website can also include courtesy web-links to images of deeds found on Clerks' internet-based index of official records.⁸¹

III. Effect of Proposed Changes:

Section 1 amends s. 28.222(7), F.S., to improve the readability and substitutes the word "copies" for "extracts" in referring to instruments recorded in the Official Records.

Section 2 amends s. 28.2221, F.S., to remove past implementation dates regarding notice and make clarifying changes. The section prohibits a county recorder, unless otherwise required by the court, from removing a grantor name, grantee name, or party name from the index on the publicly available website on the basis of an exemption as defined in s. 119.011(8), F.S., unless the name of the grantor or grantee includes the street address portion of the home address as defined in s. 119.071(4)(d), F.S. Additionally, this section provides that home addresses, as defined in s. 119.071(4)(d), F.S., that are exempt from inspection or copying, must not be included within the index or otherwise displayed on the county recorder's publicly available website on which images or copies of the county's official records are placed.

Section 2 also prohibits a county recorder from placing information made exempt from inspection or copying under s. 119.071, F.S., on a publicly available website for general public display. The section specifies that a request to remove information made exempt from inspection or copying under s. 119.071, F.S., or records must identify the Official Records book and page number, instrument number; or Clerk's file number of such document to be removed. Further, a request for removal from a person claiming a public records exemption under s. 119.071, F.S., must:

- Be made in writing;
- Be notarized;
- State under oath the statutory basis for removal of the information, image, or copy that is restricted from general public display; and
- Confirm the individual's eligibility for exempt status.

A party making a false attestation is subject to the penalty of perjury under s. 837.012, F.S.

Section 2 also provides that any information restricted from public display pursuant to a request for removal must be provided to the individual whose information was removed, at any time. The written request for restricted information must meet the same requirements as the request for removal and a party making a false attestation is subject to the penalty of perjury.

This section permits access to information restricted from public display or copying pursuant to a request for removal made under s. 119.071(4)(d), F.S., for the purpose of conducting a title search,⁸² perfecting or enforcing a lien or other interest in real or personal property, or purchasing, leasing, or lending involving real or personal property to:

⁸⁰ OPPAGA Report at 6.

⁸¹ *Id.*

⁸² As defined in s. 627.7722(4), F.S.

- An authorized title insurer as defined in s. 624.09, F.S., and their affiliates, as defined in s. 624.10, F.S.;
- A title insurance agent, or title insurance agencies, as defined in s. 626.841, F.S.;
- An attorney duly admitted to practice law in this state and in good standing with The Florida Bar; or
- A financial institution as defined in s. 655.005, F.S.

Section 2 also requires that a photo identification be presented and affirmation via sworn affidavit to the county recorder. The photo identification and affirmation via sworn affidavit may be delivered in person, by mail or electronic transmission to the county recorder. The affiant requestor must attest to his or her authority and the authorized purpose to access exempt information pursuant to this section for the property specified within the sworn affidavit.

An affidavit submitted by a financial institution, title insurer, title insurance agent or title insurance agency must include the Florida Company Code or the license number, as applicable, and an attestation to the affiant requestor's authorization to transact business in this state. Affidavits submitted by an attorney authorized under this section must include the affiant requestor's Florida Bar number and a statement that the affiant requestor has an agency agreement with a title insurer, directly, or through his or her law firm.

The county recorder must record the affidavit in the official record but must not place the image or copy of the affidavit on a publicly available website for general public display. Upon receipt of a property address from a county recorder, the affiant requestor must give notice of such disclosure to the affected party by providing a copy of the previously submitted affidavit to each affected party at the disclosed address.

A party making a false attestation under this section is subject to the penalty of perjury under s. 837.012, F.S.

This section also authorizes a county recorder to enter into a limited access license agreement with the above listed entities and for those specified purposes to grant access through electronic means, not subject to general public display, to restricted information pursuant to a request for removal made under s. 119.071(4)(d), F.S.

This section also provides that a person who unlawfully uses any Official Record in a manner not authorized in this subsection commits a misdemeanor of the second degree, punishable as provided in ss. 775.082, or 775.083, F.S. Further, a person who unlawfully uses any Official Record with intent to cause bodily harm or with intent to threaten to cause bodily harm commits a felony of the third degree, punishable as provided in ss. 775.082, 775.083, 775.084, F.S.

Section 3 amends s. 119.071(4)(d), F.S., to require that a request for maintenance of an exemption be notarized and state under oath the statutory basis for the individual's exemption request and confirm the individual's status as a party eligible for exempt status.

Section 3 creates new subparagraph 4.a. to require a county property appraiser or county tax collector, as defined in s. 192.001, who receives a written request for maintenance of an exemption to comply by removing the name of the individual with exempt status and the

instrument number and/or Official Records book and page number identifying the property with the exempt status from all publicly available records maintained by the property appraiser or tax collector. For written requests received prior to July 1, 2021, a county property appraiser or tax collector must comply with this section by October 1, 2021. A county property appraiser or county tax collector must not remove the street address, legal description, or other information identifying real property within the agency's records so long as the name or personal information otherwise exempt from inspection and copying pursuant to this section are not associated with the property or otherwise displayed in the public records of the agency. A new subparagraph 4.b. is created to provide that any information restricted from public display, inspection or copying must be provided to the individual whose information was removed.

This section also provides notice that information made exempt under s. 119.071(4)(d), F.S., may be disclosed pursuant to s. 28.2221, F.S., to an authorized title insurer as defined in s. 624.09, and their affiliates, as defined in s. 624.10; a title insurance agent or title insurance agencies, as defined in s. 626.841, F.S.; an attorney duly admitted to practice law in this state and in good standing with The Florida Bar; or a financial institution as defined in s. 655.005, F.S.

Section 3 also provides that the exempt status of a home address within the Official Records is maintained only during the period which the employee resides at the dwelling location. Upon conveyance of the dwelling location, the employee must submit a written request to release the removed information to the county recorder. The written request to release the removed information must be notarized, confirm the employee's request for release is pursuant to a conveyance of his or her dwelling location, and specify the identification page number of the document containing the information to be released. A fee may not be charged for the release of any document pursuant to such request.

Section 4 amends s. 695.22, F.S., to require the daily schedule of deeds and conveyances include notification of any information therein that is subject to a request for removal on file with the county recorder.

Section 5 provides that the bill takes effect on July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the State Constitution provides, in relevant part, that:

No county or municipality shall be bound by any general law requiring such county or municipality to spend funds...unless the legislature has determined that such law fulfills an important state interest and unless: the law requiring such expenditure is approved by two-thirds vote of the membership of each house of the legislature; [or] . . . the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments....

As drafted the bill does not contain a finding that the bill fulfills an important state interest nor does it apply to all persons similarly situated (records custodians).

Article VII, s. 18(d) of the State Constitution provides “laws having insignificant impact . . . are exempt from the requirements” of s. 18(a). The “insignificant” threshold, for the Fiscal Year 2021-2022, is forecast at approximately \$2.2 million.⁸³ The cumulative cost for counties and municipalities to comply with the provisions of the bill is unknown at this time. If the cumulative costs are less than \$2.2 million, the bill is exempt from the requirements in s. 18(a).

B. Public Records/Open Meetings Issues:

None.

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:

An individual or a business that is currently unauthorized to obtain exempt records under s. 119.071, F.S., will now have access to such information to the extent they comply with the process provided in the bill.

C. Government Sector Impact:

Indeterminate. The bill may have an indeterminate negative fiscal impact for clerks of court as they process requests for access, facilitate limited access license agreements, include notification of removal requests on file within the daily schedule, and process requests to release home address information. County property appraisers and county tax

⁸³ Based on the Florida Demographic Estimating Conference’s Nov. 30, 20120 population forecast for 2021 of 21,893,919. The conference packet is *available at*: <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Feb. 16, 2021).

collectors may see an indeterminate negative fiscal impact in complying with the request for maintenance of exemption provision in removing restricted information from general public display.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 28.222, 28.2221, 119.071 and 695.22 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Governmental Oversight and Accountability on March 3, 2021:

The CS:

- Limits the exempt status of a home address contained in the Official Records to the period during which the employee resides at the dwelling location. Upon conveyance of the dwelling location, the employee must submit to the county recorder a written request to release the removed information.
- Authorizes access of restricted information to specified entities⁸⁴ for defined purposes⁸⁵ upon presentation of identification and affidavit. Upon obtaining the address information, the affiant requestor must provide notice to the affected parties.
- Permits county recorders to enter into limited access license agreements with specified parties for defined purposes.
- Provides that an individual whose information was removed from public display to access his or her restricted information, at any time.
- Provides notice to employees covered by the exemption under s. 119.071(4)(d), F.S., that such exempt information may be disclosed to specified entities pursuant to s. 28.2221, F.S.
- Requires a county property appraiser and county tax collector to comply with a written request for maintenance of exemption.
- Prohibits a county property appraiser or county tax collector from removing a street address, legal description or other information identifying real property within agency

⁸⁴ An authorized title insurer as defined in s. 624.09, F.S., and their affiliates, as defined in s. 624.10, F.S.; A title insurance agent or title insurance agencies, as defined in s. 626.841, F.S.; An attorney duly admitted to practice law in this state and in good standing with The Florida Bar; or A financial institution as defined in s. 655.005, F.S.

⁸⁵ For the purpose of conducting a title search, as defined by s. 627.7722(4), F.S., perfecting or enforcing a lien or other interest in real or personal property, or purchasing, leasing, or lending involving real or personal property.

records, so long as a name or personal information otherwise exempt under s. 119.071(4)(d), F.S., is associated with the property or otherwise displayed in the public records of the agency.

- Prohibits a county recorder from removing a grantor name, grantee name or party name from the index on the publicly available website unless the street address portion of a home address as defined in s. 119.071(4)(d), F.S., is included.
- Expressly provides that a home address as defined in s. 119.071(4)(d), F.S., must not be included within the index or otherwise displayed on the publicly available website.

B. Amendments:

None.

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



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/03/2021	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**

2
3 Delete everything after the enacting clause
4 and insert:

5 Section 1. Subsection (7) of section 28.222, Florida
6 Statutes, is amended to read:

7 28.222 Clerk to be county recorder.—

8 (7) All instruments recorded in the Official Records are
9 ~~shall always be~~ open to the public, under the supervision of the
10 clerk, for the purpose of inspection thereof and of making



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11 copies ~~extracts~~ therefrom; but the clerk is shall not be
12 required to perform any service in connection with such
13 inspection or making of copies ~~extracts~~ without payment of
14 service charges as provided in s. 28.24.

15 Section 2. Subsection (2) and paragraphs (a) and (c) of
16 subsection (5) of section 28.2221, Florida Statutes, are amended
17 and subsections (6) and (7) are added to that section, to read:

18 28.2221 Electronic access to official records.—

19 (2) (a) ~~No later than January 1, 2002,~~ The county recorder
20 in each county must shall provide a current index of documents
21 recorded in the official records of the county for the period
22 beginning no later than January 1, 1990, on a publicly available
23 Internet website which must shall also contain a document
24 requisition point for obtaining images or copies of the
25 documents reflected in the index and which has the capability of
26 electronically providing the index data to a central statewide
27 search site. The index must shall be limited to grantor and
28 grantee names, party names, date, book and page number,
29 comments, and type of record.

30 (b) Unless otherwise required by the court, no county
31 recorder may remove grantor name, grantee name, or party name
32 from the index on the publicly available website on the basis of
33 an exemption as defined in s. 119.011(8), unless the name of the
34 grantor or grantee includes the street address portion of the
35 home address as defined in s. 119.071(4) (d). Home addresses, as
36 defined in s. 119.071(4) (d), that are exempt from inspection or
37 copying under s. 119.071(4) must not be included within the
38 index or otherwise displayed on the county recorder's publicly
39 available website on which images or copies of the county's



40 official records are placed.

41 (5) (a) A ~~No~~ county recorder ~~or clerk of the court~~ may not
42 place on a publicly available website for general public display
43 information made exempt from inspection or copying under s.
44 119.071, or any ~~an~~ image or copy of a public record, including
45 an official record, ~~on a publicly available Internet website for~~
46 ~~general public display~~ if that image or copy is of a military
47 discharge; death certificate; or a court file, record, or paper
48 relating to matters or cases governed by the Florida Rules of
49 Family Law, the Florida Rules of Juvenile Procedure, or the
50 Florida Probate Rules.

51 ~~(c) No later than 30 days after June 5, 2002, Notice of the~~
52 right of any affected party to request removal of information or
53 records pursuant to this subsection must ~~shall~~ be conspicuously
54 and clearly displayed by the county recorder ~~or clerk of the~~
55 ~~court~~ on the publicly available ~~Internet~~ website on which images
56 or copies of the county's public records are placed and in the
57 office of each county recorder ~~or clerk of the court~~. In
58 addition, ~~no later than 30 days after June 5, 2002, the county~~
59 ~~recorder or the clerk of the court must have published, on two~~
60 ~~separate dates, a notice of such right in a newspaper of general~~
61 ~~circulation in the county where the county recorder's office is~~
62 ~~located as provided for in chapter 50.~~ Such notice must contain
63 appropriate instructions for making the removal request in
64 person, by mail, ~~by facsimile~~, or by electronic transmission.
65 The notice must ~~shall~~ state, in substantially similar form, that
66 any person has a right to request that a county recorder ~~or~~
67 ~~clerk of the court remove from a publicly available website~~
68 information made exempt from inspection or copying under s.



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69 119.071 or an image or copy of a public record, including an
70 ~~official record, from a publicly available Internet website if~~
71 that image or copy is of a military discharge; death
72 certificate; or a court file, record, or paper relating to
73 matters or cases governed by the Florida Rules of Family Law,
74 the Florida Rules of Juvenile Procedure, or the Florida Probate
75 Rules. Such request must be made in writing and delivered in
76 person, by mail, facsimile, or electronic transmission, or in
77 ~~person to the county recorder or clerk of the court.~~ The request
78 must identify the Official Records book and page number,
79 instrument number, or clerk's file number for any document
80 ~~identification page number of the information or document to be~~
81 removed. For requests for removal from a person claiming a
82 public records exemption pursuant to s. 119.971, the request
83 must be written, be notarized, and state under oath the basis
84 statutory basis for removal of the information, image, or copy
85 that is restricted from general public display, and confirm the
86 individual's eligibility for exempt status. A party making a
87 false attestation is subject to the penalty of perjury under s.
88 837.012. A No fee may not will be charged for the removal of a
89 document pursuant to such request.

90 (6) (a) Any information restricted from public display,
91 inspection or copying under paragraph (5) (a) pursuant to a
92 request for removal made under s. 119.071 must be provided to
93 the individual whose information was removed, at any time. The
94 written request for the restricted information must be
95 notarized, must state under oath the statutory basis for the
96 individual's claimed exemption and confirm the individual's
97 status as a party eligible for exempt status. A party making a



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98 false attestation is subject to the penalty of perjury under s.
99 837.012. A fee may not be charged for the restoration of any
100 document pursuant to such request.

101 (b)1. For the purpose of conducting a title search, as
102 defined by s. 627.7722(4), perfecting or enforcing a lien or
103 other interest in real or personal property, or purchasing,
104 leasing, or lending involving real or personal property, and
105 upon presentation of photo identification and affirmation via
106 sworn affidavit to the county recorder, information restricted
107 from public display or copying under paragraph (5)(a) pursuant
108 to a request for removal made under s. 119.071(4)(d) may be
109 disclosed to:

110 a. An authorized title insurer as defined in s. 624.09, and
111 their affiliates, as defined in s. 624.10;

112 b. A title insurance agent or title insurance agencies, as
113 defined in s. 626.841;

114 c. An attorney duly admitted to practice law in this state
115 and in good standing with The Florida Bar; or

116 d. A financial institution as defined in s. 655.005.

117 2. The photo identification and affirmation via sworn
118 affidavit may be delivered in person, by mail or electronic
119 transmission to the county recorder.

120 3. The affiant requestor must attest to his or her
121 authority and the authorized purpose to access exempt
122 information pursuant to this section for the property specified
123 within the sworn affidavit.

124 4. Affidavits submitted by a financial institution, title
125 insurer, title insurance agent or title insurance agency must
126 include the Florida Company Code or the license number, as



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127 applicable, and an attestation to the affiant requestor's
128 authorization to transact business in this state. Affidavits
129 submitted by an attorney authorized under this section must
130 include the affiant requestor's Florida Bar number and a
131 statement that the affiant requestor has an agency agreement
132 with a title insurer, directly, or through his or her law firm.

133 5. The county recorder must record such affidavit in the
134 official record but must not place the image or copy of the
135 affidavit on a publicly available website for general public
136 display.

137 6. The affiant requestor, upon receipt of a property
138 address from the county recorder under this section, must
139 provide a copy of the previously submitted affidavit to each
140 affected party at the disclosed address.

141 7. A party making a false attestation under this section is
142 subject to the penalty of perjury under s. 837.012.

143 (c) The county recorder may enter into a limited access
144 license agreement granting access through electronic means, not
145 subject to general public display, to information restricted
146 from public display or copying under paragraph (5) (a) pursuant
147 to a request for removal made under s. 119.071(4) (d) to the
148 entities and for the purposes as specified in subparagraph 1.

149 (7) A person who uses any Official Record in a manner not
150 authorized in this section commits a misdemeanor of the second
151 degree, punishable as provided in s. 775.082 or s. 775.083. A
152 person who unlawfully uses any Official Record with intent to
153 cause bodily harm or with intent to threaten to cause bodily
154 harm commits a felony of the third degree, punishable as
155 provided in s. 775.082, s. 775.083, or s. 775.084.



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156 Section 3. Paragraph (d) of subsection (4) of section
157 119.071, Florida Statutes, is amended to read:
158 119.071 General exemptions from inspection or copying of
159 public records.—
160 (4) AGENCY PERSONNEL INFORMATION.—
161 (d)1. For purposes of this paragraph, the term:
162 a. "Home addresses" means the dwelling location at which an
163 individual resides and includes the physical address, mailing
164 address, street address, parcel identification number, plot
165 identification number, legal property description, neighborhood
166 name and lot number, GPS coordinates, and any other descriptive
167 property information that may reveal the home address.
168 b. "Telephone numbers" includes home telephone numbers,
169 personal cellular telephone numbers, personal pager telephone
170 numbers, and telephone numbers associated with personal
171 communications devices.
172 2.a. The home addresses, telephone numbers, dates of birth,
173 and photographs of active or former sworn law enforcement
174 personnel or of active or former civilian personnel employed by
175 a law enforcement agency, including correctional and
176 correctional probation officers, personnel of the Department of
177 Children and Families whose duties include the investigation of
178 abuse, neglect, exploitation, fraud, theft, or other criminal
179 activities, personnel of the Department of Health whose duties
180 are to support the investigation of child abuse or neglect, and
181 personnel of the Department of Revenue or local governments
182 whose responsibilities include revenue collection and
183 enforcement or child support enforcement; the names, home
184 addresses, telephone numbers, photographs, dates of birth, and



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185 places of employment of the spouses and children of such
186 personnel; and the names and locations of schools and day care
187 facilities attended by the children of such personnel are exempt
188 from s. 119.07(1) and s. 24(a), Art. I of the State
189 Constitution.

190 b. The home addresses, telephone numbers, dates of birth,
191 and photographs of current or former nonsworn investigative
192 personnel of the Department of Financial Services whose duties
193 include the investigation of fraud, theft, workers' compensation
194 coverage requirements and compliance, other related criminal
195 activities, or state regulatory requirement violations; the
196 names, home addresses, telephone numbers, dates of birth, and
197 places of employment of the spouses and children of such
198 personnel; and the names and locations of schools and day care
199 facilities attended by the children of such personnel are exempt
200 from s. 119.07(1) and s. 24(a), Art. I of the State
201 Constitution.

202 c. The home addresses, telephone numbers, dates of birth,
203 and photographs of current or former nonsworn investigative
204 personnel of the Office of Financial Regulation's Bureau of
205 Financial Investigations whose duties include the investigation
206 of fraud, theft, other related criminal activities, or state
207 regulatory requirement violations; the names, home addresses,
208 telephone numbers, dates of birth, and places of employment of
209 the spouses and children of such personnel; and the names and
210 locations of schools and day care facilities attended by the
211 children of such personnel are exempt from s. 119.07(1) and s.
212 24(a), Art. I of the State Constitution.

213 d. The home addresses, telephone numbers, dates of birth,



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214 and photographs of current or former firefighters certified in
215 compliance with s. 633.408; the names, home addresses, telephone
216 numbers, photographs, dates of birth, and places of employment
217 of the spouses and children of such firefighters; and the names
218 and locations of schools and day care facilities attended by the
219 children of such firefighters are exempt from s. 119.07(1) and
220 s. 24(a), Art. I of the State Constitution.

221 e. The home addresses, dates of birth, and telephone
222 numbers of current or former justices of the Supreme Court,
223 district court of appeal judges, circuit court judges, and
224 county court judges; the names, home addresses, telephone
225 numbers, dates of birth, and places of employment of the spouses
226 and children of current or former justices and judges; and the
227 names and locations of schools and day care facilities attended
228 by the children of current or former justices and judges are
229 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
230 Constitution.

231 f. The home addresses, telephone numbers, dates of birth,
232 and photographs of current or former state attorneys, assistant
233 state attorneys, statewide prosecutors, or assistant statewide
234 prosecutors; the names, home addresses, telephone numbers,
235 photographs, dates of birth, and places of employment of the
236 spouses and children of current or former state attorneys,
237 assistant state attorneys, statewide prosecutors, or assistant
238 statewide prosecutors; and the names and locations of schools
239 and day care facilities attended by the children of current or
240 former state attorneys, assistant state attorneys, statewide
241 prosecutors, or assistant statewide prosecutors are exempt from
242 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.



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243 g. The home addresses, dates of birth, and telephone
244 numbers of general magistrates, special magistrates, judges of
245 compensation claims, administrative law judges of the Division
246 of Administrative Hearings, and child support enforcement
247 hearing officers; the names, home addresses, telephone numbers,
248 dates of birth, and places of employment of the spouses and
249 children of general magistrates, special magistrates, judges of
250 compensation claims, administrative law judges of the Division
251 of Administrative Hearings, and child support enforcement
252 hearing officers; and the names and locations of schools and day
253 care facilities attended by the children of general magistrates,
254 special magistrates, judges of compensation claims,
255 administrative law judges of the Division of Administrative
256 Hearings, and child support enforcement hearing officers are
257 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
258 Constitution.

259 h. The home addresses, telephone numbers, dates of birth,
260 and photographs of current or former human resource, labor
261 relations, or employee relations directors, assistant directors,
262 managers, or assistant managers of any local government agency
263 or water management district whose duties include hiring and
264 firing employees, labor contract negotiation, administration, or
265 other personnel-related duties; the names, home addresses,
266 telephone numbers, dates of birth, and places of employment of
267 the spouses and children of such personnel; and the names and
268 locations of schools and day care facilities attended by the
269 children of such personnel are exempt from s. 119.07(1) and s.
270 24(a), Art. I of the State Constitution.

271 i. The home addresses, telephone numbers, dates of birth,



272 and photographs of current or former code enforcement officers;
273 the names, home addresses, telephone numbers, dates of birth,
274 and places of employment of the spouses and children of such
275 personnel; and the names and locations of schools and day care
276 facilities attended by the children of such personnel are exempt
277 from s. 119.07(1) and s. 24(a), Art. I of the State
278 Constitution.

279 j. The home addresses, telephone numbers, places of
280 employment, dates of birth, and photographs of current or former
281 guardians ad litem, as defined in s. 39.820; the names, home
282 addresses, telephone numbers, dates of birth, and places of
283 employment of the spouses and children of such persons; and the
284 names and locations of schools and day care facilities attended
285 by the children of such persons are exempt from s. 119.07(1) and
286 s. 24(a), Art. I of the State Constitution.

287 k. The home addresses, telephone numbers, dates of birth,
288 and photographs of current or former juvenile probation
289 officers, juvenile probation supervisors, detention
290 superintendents, assistant detention superintendents, juvenile
291 justice detention officers I and II, juvenile justice detention
292 officer supervisors, juvenile justice residential officers,
293 juvenile justice residential officer supervisors I and II,
294 juvenile justice counselors, juvenile justice counselor
295 supervisors, human services counselor administrators, senior
296 human services counselor administrators, rehabilitation
297 therapists, and social services counselors of the Department of
298 Juvenile Justice; the names, home addresses, telephone numbers,
299 dates of birth, and places of employment of spouses and children
300 of such personnel; and the names and locations of schools and



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301 day care facilities attended by the children of such personnel
302 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
303 Constitution.

304 1. The home addresses, telephone numbers, dates of birth,
305 and photographs of current or former public defenders, assistant
306 public defenders, criminal conflict and civil regional counsel,
307 and assistant criminal conflict and civil regional counsel; the
308 names, home addresses, telephone numbers, dates of birth, and
309 places of employment of the spouses and children of current or
310 former public defenders, assistant public defenders, criminal
311 conflict and civil regional counsel, and assistant criminal
312 conflict and civil regional counsel; and the names and locations
313 of schools and day care facilities attended by the children of
314 current or former public defenders, assistant public defenders,
315 criminal conflict and civil regional counsel, and assistant
316 criminal conflict and civil regional counsel are exempt from s.
317 119.07(1) and s. 24(a), Art. I of the State Constitution.

318 m. The home addresses, telephone numbers, dates of birth,
319 and photographs of current or former investigators or inspectors
320 of the Department of Business and Professional Regulation; the
321 names, home addresses, telephone numbers, dates of birth, and
322 places of employment of the spouses and children of such current
323 or former investigators and inspectors; and the names and
324 locations of schools and day care facilities attended by the
325 children of such current or former investigators and inspectors
326 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
327 Constitution.

328 n. The home addresses, telephone numbers, and dates of
329 birth of county tax collectors; the names, home addresses,



330 telephone numbers, dates of birth, and places of employment of
331 the spouses and children of such tax collectors; and the names
332 and locations of schools and day care facilities attended by the
333 children of such tax collectors are exempt from s. 119.07(1) and
334 s. 24(a), Art. I of the State Constitution.

335 o. The home addresses, telephone numbers, dates of birth,
336 and photographs of current or former personnel of the Department
337 of Health whose duties include, or result in, the determination
338 or adjudication of eligibility for social security disability
339 benefits, the investigation or prosecution of complaints filed
340 against health care practitioners, or the inspection of health
341 care practitioners or health care facilities licensed by the
342 Department of Health; the names, home addresses, telephone
343 numbers, dates of birth, and places of employment of the spouses
344 and children of such personnel; and the names and locations of
345 schools and day care facilities attended by the children of such
346 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
347 the State Constitution.

348 p. The home addresses, telephone numbers, dates of birth,
349 and photographs of current or former impaired practitioner
350 consultants who are retained by an agency or current or former
351 employees of an impaired practitioner consultant whose duties
352 result in a determination of a person's skill and safety to
353 practice a licensed profession; the names, home addresses,
354 telephone numbers, dates of birth, and places of employment of
355 the spouses and children of such consultants or their employees;
356 and the names and locations of schools and day care facilities
357 attended by the children of such consultants or employees are
358 exempt from s. 119.07(1) and s. 24(a), Art. I of the State



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359 Constitution.

360 q. The home addresses, telephone numbers, dates of birth,
361 and photographs of current or former emergency medical
362 technicians or paramedics certified under chapter 401; the
363 names, home addresses, telephone numbers, dates of birth, and
364 places of employment of the spouses and children of such
365 emergency medical technicians or paramedics; and the names and
366 locations of schools and day care facilities attended by the
367 children of such emergency medical technicians or paramedics are
368 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
369 Constitution.

370 r. The home addresses, telephone numbers, dates of birth,
371 and photographs of current or former personnel employed in an
372 agency's office of inspector general or internal audit
373 department whose duties include auditing or investigating waste,
374 fraud, abuse, theft, exploitation, or other activities that
375 could lead to criminal prosecution or administrative discipline;
376 the names, home addresses, telephone numbers, dates of birth,
377 and places of employment of spouses and children of such
378 personnel; and the names and locations of schools and day care
379 facilities attended by the children of such personnel are exempt
380 from s. 119.07(1) and s. 24(a), Art. I of the State
381 Constitution.

382 s. The home addresses, telephone numbers, dates of birth,
383 and photographs of current or former directors, managers,
384 supervisors, nurses, and clinical employees of an addiction
385 treatment facility; the home addresses, telephone numbers,
386 photographs, dates of birth, and places of employment of the
387 spouses and children of such personnel; and the names and



388 locations of schools and day care facilities attended by the
389 children of such personnel are exempt from s. 119.07(1) and s.
390 24(a), Art. I of the State Constitution. For purposes of this
391 sub subparagraph, the term "addiction treatment facility" means
392 a county government, or agency thereof, that is licensed
393 pursuant to s. 397.401 and provides substance abuse prevention,
394 intervention, or clinical treatment, including any licensed
395 service component described in s. 397.311(26).

396 t. The home addresses, telephone numbers, dates of birth,
397 and photographs of current or former directors, managers,
398 supervisors, and clinical employees of a child advocacy center
399 that meets the standards of s. 39.3035(1) and fulfills the
400 screening requirement of s. 39.3035(2), and the members of a
401 Child Protection Team as described in s. 39.303 whose duties
402 include supporting the investigation of child abuse or sexual
403 abuse, child abandonment, child neglect, and child exploitation
404 or to provide services as part of a multidisciplinary case
405 review team; the names, home addresses, telephone numbers,
406 photographs, dates of birth, and places of employment of the
407 spouses and children of such personnel and members; and the
408 names and locations of schools and day care facilities attended
409 by the children of such personnel and members are exempt from s.
410 119.07(1) and s. 24(a), Art. I of the State Constitution.

411 3. An agency that is the custodian of the information
412 specified in subparagraph 2. and that is not the employer of the
413 officer, employee, justice, judge, or other person specified in
414 subparagraph 2. must shall maintain the exempt status of that
415 information only if the officer, employee, justice, judge, other
416 person, or employing agency of the designated employee submits a



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417 written and notarized request for maintenance of the exemption
418 to the custodial agency. The request must state under oath the
419 statutory basis for the individual's exemption request and
420 confirm the individual's status as a party eligible for exempt
421 status.

422 4.a. A county property appraiser or county tax collector,
423 as defined in s. 192.001, who receives a written request for
424 maintenance of the exemption pursuant to s. 119.071(4)(d)3.,
425 must comply by removing the name of the individual with exempt
426 status and the instrument number and/or Official Records book
427 and page number identifying the property with the exempt status
428 from all publicly available records maintained by the property
429 appraiser or tax collector. For written requests received prior
430 to July 1, 2021, a county property appraiser or county tax
431 collector must comply with this section by October 1, 2021. A
432 county property appraiser or county tax collector must not
433 remove the street address, legal description, or other
434 information identifying real property within the agency's
435 records so long as name or personal information otherwise exempt
436 from inspection and copying pursuant to this section are not
437 associated with the property or otherwise displayed in the
438 public records of the agency.

439 b. Any information restricted from public display,
440 inspection or copying under subparagraph a. must be provided to
441 the individual the individual whose information was removed.

442 5. 4. An officer, an employee, a justice, a judge, or other
443 person specified in subparagraph 2. may submit a written request
444 for the release of his or her exempt information to the
445 custodial agency. The written request must be notarized and must



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446 specify the information to be released and the party that is
447 authorized to receive the information. Upon receipt of the
448 written request, the custodial agency must shall release the
449 specified information to the party authorized to receive such
450 information.

451 6. 5. The exemptions in this paragraph apply to information
452 held by an agency before, on, or after the effective date of the
453 exemption.

454 7. 6. Information made exempt under this paragraph may be
455 disclosed pursuant to s. 28.2221 to an authorized title insurer
456 as defined in s. 624.09, and their affiliates, as defined in s.
457 624.10; a title insurance agent or title insurance agencies, as
458 defined in s. 626.841; an attorney duly admitted to practice law
459 in this state and in good standing with The Florida Bar; or a
460 financial institution as defined in s. 655.005.

461 8. The exempt status of a home address contained in the
462 Official Records is maintained only during the period which the
463 employee resides at the dwelling location. Upon conveyance of
464 the dwelling location, the employee must submit a written
465 request to release the removed information to the county
466 recorder. The written request to release the removed information
467 must be notarized, confirm the employee's request for release is
468 pursuant to a conveyance of his or her dwelling location, and
469 specify the identification page number of the document
470 containing the information to be released. A fee may not be
471 charged for the release of any document pursuant to such
472 request.

473 9. This paragraph is subject to the Open Government Sunset
474 Review Act in accordance with s. 119.15 and shall stand repealed



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475 on October 2, 2024, unless reviewed and saved from repeal
476 through reenactment by the Legislature.

477 Section 4. Section 695.22, Florida Statutes, is amended to
478 read:

479 695.22 Daily schedule of deeds and conveyances filed for
480 record to be furnished property appraiser.—After October 1,
481 1945, the several county recorders ~~clerks of the circuit courts~~
482 must ~~shall~~ keep and furnish to the respective county property
483 appraisers in the counties where such instruments are recorded a
484 daily schedule of the aforesaid deeds and conveyances so filed
485 for recordation, in which schedule must ~~shall~~ be set forth the
486 name of the grantor or grantors, the names and addresses of each
487 grantee and a description of the land as specified in each
488 instrument so filed. Said schedule must include notification of
489 any information therein that is subject to a request for removal
490 on file with the county recorder.

491 Section 5. This act shall take effect July 1, 2021.

492

493

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

495 And the title is amended as follows:

496 Delete everything before the enacting clause
497 and insert:

498 A bill to be entitled

499 An act relating to public records; amending s. 28.222,
500 F.S.; deleting obsolete language; amending s. 28.2221,
501 F.S.; deleting obsolete language; prohibiting a county
502 recorder from removing a grantor name, grantee name,
503 or party name from the index on the publicly available



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504 website unless the information is subject to a
505 specified public records exemption; prescribing
506 requirements for a person claiming a public records
507 exemption to request removal of information from a
508 publicly available website; prescribing for the
509 release of restricted information to the individual
510 whose information was removed, subject to penalty of
511 perjury; authorizing specified parties to access
512 information recorded in the Official Records of a
513 county which is otherwise exempt pursuant to a
514 specified public records exemption, for a specific
515 purpose, if specified conditions are met; Requiring
516 sworn affidavit; subject to the penalty of perjury;
517 authorizing the county recorder to enter into a
518 limited access license agreement to allow electronic
519 access to official records for specified parties and
520 limited purposes; providing criminal penalties for the
521 unlawful use of any official record; amending s.
522 119.071, F.S.; requiring a request for maintenance of
523 an exemption be notarized and confirm the individual's
524 status; prescribing procedures for the removal of
525 exempt information for a county property appraiser and
526 county tax collector; authorizing the release of
527 information restricted from public display to the
528 individual whose information was removed; providing
529 notice of disclosure of exempt information under
530 specified circumstances to specified entities;
531 providing that the exempt status of a home address
532 contained in the Official Records is maintained only



533 during a certain period; requiring the employee to
534 submit a written request to release removed
535 information upon the conveyance of his or her dwelling
536 location; subject to the penalty of perjury; amending
537 s. 695.22, F.S.; deleting obsolete language; requiring
538 the daily schedule of deeds and conveyances to include
539 notification of any information therein that is
540 subject to a request for removal; providing an
541 effective date.

By Senator Hooper

16-00848-21

2021844

A bill to be entitled
 An act relating to public records; amending s. 28.222, F.S.; authorizing certain persons to access information recorded in the Official Records of a county which is otherwise exempt from public records requirements, if specified conditions are met; prescribing requirements for a person to request access to such information; authorizing clerks of the circuit court to enter into limited access licensing agreements to allow electronic access to official records for specified parties; providing criminal penalties for the unlawful use of any official record; amending s. 28.2221, F.S.; deleting obsolete language; prohibiting a county recorder or a clerk of the court from placing information subject to specified public records exemptions on a publicly available website; requiring a person claiming a public records exemption to request removal of information from a website in a specified manner, subject to penalty of perjury; prescribing procedures for restoring public access to exempt information; amending s. 119.071, F.S.,; specifying applicability of specified public records exemptions to county recorders, clerks of the court, county tax collectors, and county property appraisers; providing procedures for the restoration of previously redacted information; providing an effective date.

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

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Section 1. Subsection (7) of section 28.222, Florida Statutes, is amended to read:
 28.222 Clerk to be county recorder.
 (7) (a) All instruments recorded in the Official Records are ~~shall always~~ be open to the public, under the supervision of the clerk, for the purpose of inspection thereof and of making copies ~~extracts~~ therefrom; but the clerk is ~~shall~~ not be required to perform any service in connection with such inspection or making of copies ~~extracts~~ without payment of service charges as provided in s. 28.24.
 (b) A person who seeks access, whether in person or by electronic means, to information contained in instruments recorded in the Official Records which is exempt from public records requirements pursuant to s. 119.071 may access such information upon presenting a government-issued photo identification credential to the county recorder or clerk of the court and a notarized written request for access. The request should identify the filing number of the instrument, the name of a party to the instrument or instruments, or the description of real or personal property associated with the instruments to be inspected and attest to a specific lawful purpose for requesting access, which includes, but is not limited to, determining marketability of title; perfecting or enforcing a lien or other interest in real or personal property; and purchasing, leasing, or lending involving real or personal property. The copy of the government-issued photo identification credential and written request may be delivered in person or by mail, facsimile, or electronic transmission to the county recorder or clerk of the court.

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59 (c) The clerk may enter into limited access licensing
60 agreements that grant users access to the Official Records
61 through electronic means that are not subject to general public
62 display. Limited access licensing agreements may be made with
63 attorneys who are admitted to The Florida Bar and members in
64 good standing; authorized title insurers, as defined in s.
65 624.09, and their affiliates, as defined in s. 624.10; title
66 insurance agents or title insurance agencies, as defined in s.
67 626.841; financial institutions and their affiliates, as defined
68 in s. 655.005; and entities that provide access to title
69 information, tax information, and document images for insurance
70 companies, real estate and mortgage investors, attorneys, and
71 governmental agencies.

72 (d) A person who unlawfully uses any Official Record in a
73 manner not authorized in this subsection commits a misdemeanor
74 of the second degree, punishable as provided in s. 775.082 or s.
75 775.083. A person who unlawfully uses any Official Record with
76 intent to cause bodily harm or with intent to threaten to cause
77 bodily harm commits a felony of the third degree, punishable as
78 provided in s. 775.082, s. 775.083, or s. 775.084.

79 Section 2. Subsection (2) and paragraphs (a) and (c) of
80 subsection (5) of section 28.2221, Florida Statutes, are
81 amended, and subsection (6) is added to that section, to read:

82 28.2221 Electronic access to official records.—
83 (2) ~~No later than January 1, 2002,~~ The county recorder in
84 each county shall provide a current index of documents recorded
85 in the official records of the county for the period beginning
86 no later than January 1, 1990, on a publicly available ~~Internet~~
87 website which shall also contain a document requisition point

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88 for obtaining images or copies of the documents reflected in the
89 index and which has the capability of electronically providing
90 the index data to a central statewide search site. The index
91 must include the ~~shall be limited to~~ grantor and grantee names,
92 party names, date, book and page number, comments, and type of
93 record.

(5) (a) A ~~or~~ county recorder or clerk of the court may not place information made exempt from inspection or copying under s. 119.071, or any an image or copy of a public record, including an official record, on a publicly available ~~Internet~~ website for general public display if that image or copy is of a military discharge; death certificate; or a court file, record, or paper relating to matters or cases governed by the Florida Rules of Family Law, the Florida Rules of Juvenile Procedure, or the Florida Probate Rules.

103 (c) ~~No later than 30 days after June 5, 2002, Notice of the~~
104 right of any affected party to request removal of information or
105 records pursuant to this subsection shall be conspicuously and
106 clearly displayed by the county recorder or clerk of the court
107 on the publicly available Internet website on which images or
108 copies of the county's public records are placed and in the
109 office of each county recorder or clerk of the court. ~~In~~
110 ~~addition, no later than 30 days after June 5, 2002, the county~~
111 ~~recorder or the clerk of the court must have published, on two~~
112 ~~separate dates, a notice of such right in a newspaper of general~~
113 ~~circulation in the county where the county recorder's office is~~
114 ~~located as provided for in chapter 50. Such notice must contain~~
115 appropriate instructions for making the removal request in
116 person, by mail, by facsimile, or by electronic transmission.

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117 The notice must shall state, in substantially similar form, that
 118 any person has a right to request that a county recorder or
 119 clerk of the court remove information or an image or copy of a
 120 public record, including an official record, from a publicly
 121 available Internet website if that information, image, or copy
 122 is of a military discharge; death certificate; or a court file,
 123 record, or paper relating to matters or cases governed by the
 124 Florida Rules of Family Law, the Florida Rules of Juvenile
 125 Procedure, or the Florida Probate Rules. Such request must be
 126 made in writing and delivered in person or by mail, facsimile,
 127 or electronic transmission, or in person to the county recorder
 128 or clerk of the court. The request must identify the Official
 129 Records book and page number, instrument number, or clerk's file
 130 number for any document identification page number of the
 131 document to be removed. For requests from a person claiming a
 132 public records exemption pursuant to s. 119.071, the request
 133 must be written, be notarized, and state under oath the
 134 statutory basis for removal of the information, image, or copy
 135 that is restricted from general public display, and confirm the
 136 individual's eligibility for exempt status. A party making a
 137 false attestation is subject to the penalty of perjury under s.
 138 837.012. A ~~No~~ fee may not will be charged for the removal of a
 139 document pursuant to such request.

140 (6) Any information restricted from public display under
 141 paragraph (5)(a) pursuant to a request made under s. 119.071
 142 shall be restored for general public display to the publicly
 143 available website at the request of any affected party at any
 144 time, or at the request of any person after the passage of 5
 145 years through July 1, 2026, or the date of the most recent

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146 request for the exemption, whichever is later, unless any
 147 affected party makes an additional request under paragraph
 148 (5)(c). The request must be made in writing and delivered in
 149 person or by mail, facsimile, or electronic transmission to the
 150 county recorder or clerk of the court. The request must identify
 151 the Official Records book and page number or instrument number
 152 for any document to be restored. A fee may not be charged for
 153 the restoration of any document pursuant to such request.

154 Section 3. Subsection (6) is added to section 119.071,
 155 Florida Statutes, to read:

156 119.071 General exemptions from inspection or copying of
 157 public records.—

158 (6) APPLICABILITY.—

159 (a) The application of subsections (2), (4), and (5) to
 160 official records under s. 28.222, the register of the Official
 161 Records under s. 28.222(2), and the current index of documents
 162 on a publicly available website under s. 28.2221(2) is limited
 163 to restricting a county recorder or clerk of the court from
 164 placing information that is restricted from general public
 165 display on a publicly available website. Subsections (2), (4),
 166 and (5) do not limit the inspection and copying of exempt
 167 information at the office of the county recorder or clerk of the
 168 court or by electronic means through a limited access licensing
 169 agreement in accordance with s. 28.222(7)(b) and (c). By October
 170 1, 2021, a county recorder or clerk of the court shall restore
 171 any previously redacted names of parties to an instrument and
 172 not redact the names of parties to an instrument in the register
 173 under s. 28.222(2) and the current index of documents under s.
 174 28.2221(2).

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175 (b) The application of this paragraph to a county property
176 appraiser or county tax collector as defined in s. 192.001 is
177 limited to restricting the county property appraiser or county
178 tax collector from placing the names of any individual entitled
179 to exemption in all publicly available records maintained by the
180 property appraiser or tax collector. A county property appraiser
181 or county tax collector shall restore any previously redacted
182 street address, legal description, or other information
183 identifying real property within the agency's records and not
184 redact the street address, legal description, or other
185 information identifying real property within the agency's
186 records as long as the name of any individual entitled to
187 exemption is not associated with the property or otherwise
188 displayed in the public records of the agency.

189 (c) Any information redacted or removed from general public
190 display pursuant to subsection (2), subsection (4), or
191 subsection (5) shall be restored to the publicly available
192 records maintained by the county property appraiser or county
193 tax collector at the request of any affected party at any time,
194 or at the request of any person after the passage of 5 years
195 through July 1, 2026, or the date of the most recent request for
196 the exemption, whichever is later. The request must be made in
197 writing and delivered in person or by mail, facsimile, or
198 electronic transmission to the property appraiser or tax
199 collector.

200 Section 4. This act shall take effect July 1, 2021.

THE FLORIDA SENATE

APPEARANCE RECORD

3-3-2021

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

Meeting Date

SB 844

Bill Number (if applicable)

Topic PUBLIC RECORDS - REDACTION

968192

Amendment Barcode (if applicable)

Name KARI HEBRANK

Job Title

Address 215 S. MONROE STREET, #500

Phone 850-516-1824

Street

TALLAHASSEE

State

FL

Zip

32301

Email Khebrank@Culhanefields.

.com

Speaking: For Against Information

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

Representing SOUTHERN TITLE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 60

INTRODUCER: Community Affairs Committee and Senator Bradley

SUBJECT: County and Municipal Code Enforcement

DATE: March 2, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Hackett	Ryon	CA	Fav/CS
2. Ponder	McVaney	GO	Favorable
3. _____	_____	RC	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 60 prohibits county and municipal code inspectors from initiating an investigation into violations of city or county codes or ordinances based upon an anonymous complaint. It also requires that an individual making a complaint of a potential violation provide his or her name and address to the local government body before an investigation may occur.

The prohibition does not apply if the code inspector has reason to believe the alleged violation presents an imminent threat to public health, safety, or welfare or imminent destruction of habitat or sensitive resources.

The bill takes effect July 1, 2021.

II. Present Situation:

County and Municipal Code Enforcement

Code enforcement is a function of local government and affects people's daily lives. Its purpose is to enhance the quality of life and economy of local government by protecting the health, safety, and welfare of the community.¹ Local governments possess a constitutional right to self-

¹ Section 162.02, F.S.

government.² Local codes and ordinances allow local governments to enforce regulations on a variety of matters ranging from zoning, tree cutting, nuisances, and excessive noise.³

Chapters 125, 162, and 166 of the Florida Statutes⁴ provide counties and municipalities with a mechanism to enforce its codes and ordinances. These statutes are offered as permissible code enforcement mechanisms, but are not binding to local governments, which may use any enforcement mechanism they choose, or combination thereof.⁵

In each statutory mechanism, a local government designates code inspectors or code enforcement officers, tasked with investigating potential code violations, providing notice of violations, and issuing citations for noncompliance. Beyond these specified duties, the statutory scheme makes clear that code inspectors lack the authority to perform the functions or duties of a law enforcement officer.⁶

Code Enforcement Boards Act (Part I, Ch. 162, F.S.)

The Local Government Code Enforcement Boards Act (Act), located in Part I of ch. 162, F.S., allows each county and municipality to create by ordinance one or more local government code enforcement board. A code enforcement board is an administrative board made up of members appointed by the governing body of a county or municipality with the authority to hold hearings and impose administrative fines and other noncriminal penalties for violations of county or municipal codes or ordinances. Members of the enforcement boards⁷ must be residents of the respective municipality or county and, whenever possible, must include an architect, a businessperson, an engineer, a general contractor, a subcontractor, and a realtor.⁸

Code enforcement boards have the power to:

- Adopt rules for the conduct of its hearings;
- Subpoena alleged violators, witnesses, and evidence to its hearings;
- Take testimony under oath; and
- Issue orders that have the force of law to command steps necessary to bring a violation into compliance.⁹

Section 162.06, F.S., establishes the procedures for local governments to address violations of various codes using a code enforcement board. It begins with the county or municipal code inspector¹⁰ who initiates code enforcement procedures by notifying the violator and giving him

² Art. VIII, Fla. Const.

³ Violations of the Florida Building Code, however, are enforced pursuant to ss. 553.79 and 553.80, F.S., and not within the scope of this bill or the sections of law analyzed herein. *See* s. 125.69(g), F.S.

⁴ Chapter 125 Part II (county self-government), Chapter 162 Part 1 (the Code Enforcement Boards Act), Chapter 162 Part 2 (supplemental procedures), and s. 166.0415, F.S. (city ordinance enforcement).

⁵ Sections 125.69(4)(i), 162.13, 162.21(8), and 166.0415(7), F.S.

⁶ Section 125.69(4)(f), F.S.;

⁷ Code enforcement boards are either five-member or seven-member boards. If a local government has a population over 5,000 persons, the board must be a seven-member board.

⁸ Section 162.05(2), F.S.

⁹ Section 162.08, F.S.

¹⁰ Section 162.04(2), F.S., defines the term “code inspector” to mean “any authorized agent or employee of the county or municipality whose duty it is to assure code compliance.”

or her reasonable time to correct the violation. If the violation continues to exist after such time period as specified by the code inspector,¹¹ then the inspector will notify the code enforcement board and request a hearing.¹²

In each case heard before a code enforcement board, the case is presented, and testimony is taken from both the code inspector and alleged violator.¹³ At the conclusion of the hearing, the board issues findings of fact and provides an order stating the proper relief granted.¹⁴ If a violator fails to abide by an order of the code enforcement board, the board may order the violator to pay a fine for each day that the repeat violation occurs.¹⁵ All final administrative orders of the code enforcement board may be appealed to the circuit court 30 days after execution of the order.¹⁶

As an alternative to a code enforcement board, the Act allows counties and municipalities to adopt an alternate code enforcement system that gives code enforcement officials or special magistrates the authority to hold hearings and assess fines against violators of respective codes or ordinances.¹⁷ Each of these methods are offered by statute as devices to be used at the local governments' discretion, but a local government may use any method they choose to enforce codes and ordinances.¹⁸

Supplemental Code Enforcement Procedures (Part II, Ch. 162, F.S.)

Part II of ch. 162, F.S., presents local governments with supplemental methods for enforcing codes and ordinances without establishing a code enforcement board. The statutes allow counties and municipalities to designate some of its employees or agents as code enforcement officers¹⁹ authorized to enforce county or municipal codes or ordinances.

A code enforcement officer may issue a citation to a person when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of a duly enacted code or ordinance and that the county court will hear the charge.²⁰ However, prior to issuing a citation, a code enforcement officer must provide notice to the person that the person has committed a violation of a code or ordinance and provide a

¹¹ The code inspector does not need to provide the violator reasonable time to remedy the violation if it is a repeat violation; the violation presents a serious threat to the public health, safety, and welfare; or the violation is irreparable or irreversible in nature.

¹² A hearing may also be called by written notice signed by at least three members of a seven-member enforcement board or signed by at least two members of a five-member enforcement board.

¹³ Section 162.07(2)-(3), F.S.

¹⁴ Section 162.07(4), F.S.

¹⁵ Section 162.09(1), F.S. Such fines may not exceed \$250 per day for a first violation and may not exceed \$500 per day for a repeat violation. However, a county or municipality may pass an ordinance to increase the fine thresholds if approved by a majority plus one vote.

¹⁶ Section 162.11, F.S.

¹⁷ Section 162.03, F.S.

¹⁸ The Attorney General has opined that "once a municipality has adopted the procedures of ch. 162, F.S., to enforce its municipal codes and ordinances, it may not alter or amend those statutorily prescribed procedures but must utilize them as they are set forth in the statutes." Opp. Atty Gen. 2000-53. A local government may, however, maintain a chapter 162 code enforcement board and still decide to enforce a particular violation by bringing a charge in county court, or any other means provided by law. *Goodman v. County Court in Broward County, Fla.* 711 So.2d 587 (Fla 4th DCA 1998).

¹⁹ Section 162.21(1), F.S., defines the term "code enforcement officer" to mean "any designated employee or agent of a county or municipality whose duty it is to enforce codes and ordinances enacted by the county or municipality."

²⁰ Section 162.21(3)(a), F.S.

reasonable time period, no more than 30 days, within which the person must correct the violation. If, upon personal investigation, a code enforcement officer finds that the person has not corrected the violation within the time period, the officer may issue a citation.²¹

Counties and municipalities that choose to enforce codes or ordinances under the provisions of Part II must enact an ordinance establishing the code enforcement procedures. The ordinance, among other requirements, must provide procedures for the issuance of a citation by a code enforcement officer. A violation of a code or an ordinance enforced under Part II is a civil infraction and carries a maximum civil penalty of \$500.²²

Part II further allows counties and municipalities to enforce code violations by filing a civil action in the county or circuit court, in the absence of a magistrate or code enforcement board.

Enforcement of County Ordinance Violations (s. 125.69, F.S.)

Section 125.69, F.S., sets forth a process counties may use to enforce county ordinances. Under this statute, violations of ordinances shall be prosecuted in the same manner as misdemeanors: in county court, punishable by a fine up to \$500, imprisonment up to 60 days, or both. The statute also allows counties to designate code enforcement officers, who may investigate violations and issue citations in a manner similar to s. 162.21, F.S., discussed above.

Enforcement of City Ordinance Violations (s. 166.0415, F.S.)

Section 166.0415, F.S. provides a mechanism specific to municipalities wishing to enforce their ordinances and codes using code inspectors. This statute is functionally identical to s. 162.21, F.S., discussed above. The statute allows municipalities to designate code enforcement officers authorized to enforce municipal codes or ordinances, following the investigation, notice, and citation scheme set out in s. 162.21, F.S.

Anonymous and Identified Complaints

Investigations usually begin with a complaint or tip from the public - typically by phone or online form - or a code enforcement officer personally observing an alleged violation while performing his or her duties. As code enforcement is inherently an exercise in home rule by local governments, procedures for collecting complaints vary throughout the state. In most areas, complaints may be made anonymously, while in some jurisdictions, a complainant must identify themselves.²³ Code inspectors accept any information given to them in the complaints and, generally using their own judgment, may investigate the allegations made.

²¹ Section 162.21(3)(b), F.S.

²² Section 162.21(5), F.S.

²³ For one such example, Collier County changed their code enforcement regulations to require that a name and phone number must be provided along with a complaint “unless the concern is an emergency that immediately threatens the public health and safety or could cause catastrophic consequences.” Collier County, Report a Code Violation

<https://www.colliercountyfl.gov/your-government/divisions-a-e/code-enforcement/report-a-code-violation> (accessed December 28, 2020).

Florida has extensive public records laws, known as Sunshine Laws.²⁴ Any document held by an agency, including local governments, is public record and therefore must be produced for inspection upon request by anyone. Any information given by a complainant to the local government, including their name, address, and contact information, is public record barring an individual's exercise of an exemption that applies to them, such as those for state attorneys, judges, and guardians ad litem.²⁵

III. Effect of Proposed Changes:

The bill amends the county and municipal code enforcement statutes to address the transparency of complaints made to code inspectors working for local governments and local code enforcement boards alleging violations of city and county codes and ordinances. Specifically, the bill prohibits code inspectors and code enforcement officers from initiating a code enforcement investigation based upon an anonymous complaint. Additionally, an individual making a complaint of a potential violation must provide his or her name and address to the local government body before an investigation may occur.

The prohibition in the bill does not apply if the code inspector has reason to believe the alleged violation presents an imminent threat to public health, safety, or welfare or imminent destruction of habitat or sensitive resources.

The bill provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

²⁴ See, generally, s. 119.01(1), F.S., the Public Records Act. “[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.”

²⁵ See ss. 119.071(4) and (5), F.S.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Local governments may experience a minor cost in updating codes and ordinance enforcement mechanisms to comply with this bill, but this cost will in most cases be absorbed by current operations.

Local governments may experience a reduction in complaints filed due to individuals not wanting to provide personal identifying information. Thus, this may lead to less resources being utilized by local code enforcement.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Chapter 119 prohibits the public disclosure of certain personal identifying information relating to code enforcement officers including. Specifically, the following information related to current or former code enforcement officers is exempt:

- Home addresses;
- Telephone numbers;
- Social Security numbers; and
- Photographs.²⁶

In the statement of public necessity for this exemption the Legislature found that:

The responsibilities of these employees regularly take them into areas of neglect, abuse, and personal danger. Citations issued in response to

²⁶ Section 119.071(4)(d)1.i, F.S. The exemption also extends to the In addition, the exemption extends to the names, home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of such personnel. Finally, the names and locations of schools and day care facilities attended by the children of such personnel are also included within the scope of the exemption exempts the home addresses, telephone numbers, dates of birth, and photographs of current or former code enforcement officers.

violations that they encounter often lead to retribution by the offenders. Their personal files are reviewed on numerous occasions by code violators seeking information relating to code enforcement officers and their families. The disclosure of this personal information has led to threats, acts of violence, and unwarranted risk to the officers and their families.

VIII. Statutes Affected:

This bill substantially amends sections 125.69, 162.06, 162.13, 162.21, and 166.0415 of the Florida Statutes.

IX. Additional Information:

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

CS by Community Affairs on February 2, 2021:

The amendment provides that the prohibition does not apply if the code inspector has reason to believe the alleged violation presents an imminent threat to public health, safety, or welfare or imminent destruction of habitat or sensitive resources.

B. Amendments:

None.

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

By the Committee on Community Affairs; and Senator Bradley

578-01964-21

A bill to be entitled

202160c1

2 An act relating to county and municipal code
3 enforcement; amending s. 125.69, F.S.; prohibiting
4 code inspectors designated by boards of county
5 commissioners from initiating investigations of
6 potential violations of codes and ordinances by way of
7 anonymous complaints; requiring persons who report
8 potential violations of codes and ordinances to
9 provide specified information to the board before an
10 investigation occurs; providing applicability;
11 providing construction; amending s. 162.06, F.S.;
12 prohibiting code inspectors from initiating
13 enforcement proceedings for potential violations of
14 codes and ordinances by way of anonymous complaints;
15 requiring persons who report potential violations of
16 codes and ordinances to provide specified information
17 to the respective local government before an
18 investigation occurs; providing applicability;
19 amending s. 162.13, F.S.; providing construction;
20 amending s. 162.21, F.S.; prohibiting code enforcement
21 officers from initiating investigations of potential
22 violations of codes and ordinances by way of anonymous
23 complaints; requiring persons who report potential
24 violations of codes and ordinances to provide
25 specified information to the respective local
26 government before an investigation occurs; providing
27 applicability; providing construction; amending s.
28 166.0415, F.S.; prohibiting code inspectors designated
29 by governing bodies of municipalities from initiating

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30 investigations of potential violations of codes and
31 ordinances by way of anonymous complaints; requiring
32 persons who report potential violations of codes and
33 ordinances to provide specified information to the
34 governing body before an investigation occurs;
35 providing applicability; providing construction;
36 providing an effective date.

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

Section 1. Subsection (4) of section 125.69, Florida Statutes, is amended to read:

125.69 Penalties; enforcement by code inspectors.—

(4)(a) The board of county commissioners of each county may designate its agents or employees as code inspectors whose duty it is to assure code compliance. Any person designated as a code inspector may issue citations for violations of county codes and ordinances, respectively, or subsequent amendments thereto, when such code inspector has actual knowledge that a violation has been committed.

(b) A person designated as a code inspector may not initiate an investigation of a potential violation of a duly enacted code or ordinance by way of an anonymous complaint. A person who reports a potential violation of a code or an ordinance must provide his or her name and address to the governing body of the respective board of county commissioners before an investigation occurs. This paragraph does not apply if the person designated as a code inspector has reason to believe that the violation presents an imminent threat to public health.

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59 ~~safety, or welfare or imminent destruction of habitat or~~
 60 ~~sensitive resources.~~

61 ~~(c) (a)~~ Prior to issuing a citation, a code inspector shall
 62 provide notice to the violator that the violator has committed a
 63 violation of a code or ordinance and shall establish a
 64 reasonable time period within which the violator must correct
 65 the violation. Such time period shall be no more than 30 days.
 66 If, upon personal investigation, a code inspector finds that the
 67 violator has not corrected the violation within the time period,
 68 a code inspector may issue a citation to the violator. A code
 69 inspector does not have to provide the violator with a
 70 reasonable time period to correct the violation prior to issuing
 71 a citation and may immediately issue a citation if the code
 72 inspector has reason to believe that the violation presents a
 73 serious threat to the public health, safety, or welfare, or if
 74 the violation is irreparable or irreversible.

75 ~~(d) (b)~~ A citation issued by a code inspector shall state
 76 the date and time of issuance, name and address of the person in
 77 violation, date of the violation, section of the codes or
 78 ordinances, or subsequent amendments thereto, violated, name of
 79 the code inspector, and date and time when the violator shall
 80 appear in county court.

81 ~~(e) (e)~~ If a repeat violation is found subsequent to the
 82 issuance of a citation, the code inspector is not required to
 83 give the violator a reasonable time to correct the violation and
 84 may immediately issue a citation. For purposes of this
 85 subsection, the term "repeat violation" means a violation of a
 86 provision of a code or ordinance by a person who has previously
 87 been found to have violated the same provision within 5 years

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88 ~~prior to the violation, notwithstanding the violations occurred~~
 89 ~~at different locations.~~

90 ~~(f) (d)~~ If the owner of property which is subject to an
 91 enforcement proceeding before county court transfers ownership
 92 of such property between the time the initial citation or
 93 citations are issued and the date the violator has been summoned
 94 to appear in county court, such owner shall:

95 1. Disclose, in writing, the existence and the nature of
 96 the proceeding to the prospective transferee.
 97 2. Deliver to the prospective transferee a copy of the
 98 pleadings, notices, and other materials relating to the county
 99 court proceeding received by the transferor.
 100 3. Disclose, in writing, to the prospective transferee that
 101 the new owner will be responsible for compliance with the
 102 applicable code and with orders issued in the county court
 103 proceeding.

104 4. File a notice with the code enforcement official of the
 105 transfer of the property, with the identity and address of the
 106 new owner and copies of the disclosures made to the new owner,
 107 within 5 days after the date of the transfer.

108
 109 A failure to make the disclosure described in subparagraphs 1.,
 110 2., and 3. before the transfer creates a rebuttable presumption
 111 of fraud. If the property is transferred before the date the
 112 violator has been summoned to appear in county court, the
 113 proceeding shall not be dismissed but the new owner will be
 114 substituted as the party of record and thereafter provided a
 115 reasonable period of time to correct the violation before the
 116 continuation of proceedings in county court.

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117 (g) (e) If the code inspector has reason to believe a
 118 violation or the condition causing the violation presents a
 119 serious threat to the public health, safety, and welfare or if
 120 the violation is irreparable or irreversible in nature, or if
 121 after attempts under this section to bring a repeat violation
 122 into compliance with a provision of a code or ordinance prove
 123 unsuccessful, the local governing body may make all reasonable
 124 repairs which are required to bring the property into compliance
 125 and charge the owner with the reasonable cost of the repairs
 126 along with the fine imposed pursuant to this section. Making
 127 such repairs does not create a continuing obligation on the part
 128 of the local governing body to make further repairs or to
 129 maintain the property and does not create any liability against
 130 the local governing body for any damages to the property if such
 131 repairs were completed in good faith.

132 (h) (f) Nothing in this subsection shall be construed to
 133 authorize any person designated as a code inspector to perform
 134 any function or duties of a law enforcement officer other than
 135 as specified in this subsection. A code inspector shall not make
 136 physical arrests or take any person into custody and shall be
 137 exempt from requirements relating to the Special Risk Class of
 138 the Florida Retirement System, bonding, and the Criminal Justice
 139 Standards and Training Commission, as defined and provided by
 140 general law.

141 (i) (g) The provisions of this subsection shall not apply to
 142 the enforcement pursuant to ss. 553.79 and 553.80 of the Florida
 143 Building Code adopted pursuant to s. 553.73 as applied to
 144 construction, provided that a building permit is either not
 145 required or has been issued by the county.

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146 (j) (h) The provisions of this subsection may be used by a
 147 county in lieu of the provisions of part II of chapter 162.
 148 (k) (i) The provisions of this subsection are additional or
 149 supplemental means of enforcing county codes and ordinances.
 150 Except as provided in paragraphs (b) and (j) paragraph (h),
 151 nothing in this subsection shall prohibit a county from
 152 enforcing its codes or ordinances by any other means.

153 Section 2. Subsection (1) of section 162.06, Florida
 154 Statutes, is amended to read:

155 162.06 Enforcement procedure.—

156 (1) (a) It shall be the duty of the code inspector to
 157 initiate enforcement proceedings of the various codes; however,
 158 no member of a board shall have the power to initiate such
 159 enforcement proceedings.

160 (b) A code inspector may not initiate enforcement
 161 proceedings for a potential violation of a duly enacted code or
 162 ordinance by way of an anonymous complaint. A person who reports
 163 a potential violation of a code or an ordinance must provide his
 164 or her name and address to the respective local government
 165 before an enforcement proceeding may occur. This paragraph does
 166 not apply if the code inspector has reason to believe that the
 167 violation presents an imminent threat to public health, safety,
 168 or welfare or imminent destruction of habitat or sensitive
 169 resources.

170 Section 3. Section 162.13, Florida Statutes, is amended to
 171 read:

172 162.13 Provisions of act supplemental.—It is the
 173 legislative intent of ss. 162.01-162.12 to provide an additional
 174 or supplemental means of obtaining compliance with local codes.

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175 Except as provided in s. 162.06(1)(b), nothing contained in ss. 162.01-162.12 shall prohibit a local governing body from enforcing its codes by any other means.

176 Section 4. Present paragraphs (b) and (c) of subsection (3) of section 162.21, Florida Statutes, are redesignated as paragraphs (c) and (d), respectively, a new paragraph (b) is added to that subsection, and subsection (8) of that section is amended, to read:

177 162.21 Enforcement of county or municipal codes or ordinances; penalties.—

178 (3)

179 (b) A code enforcement officer may not initiate an investigation of a potential violation of a duly enacted code or ordinance by way of an anonymous complaint. A person who reports a potential violation of a code or an ordinance must provide his or her name and address to the respective local government before an investigation may occur. This paragraph does not apply if the code enforcement officer has reason to believe that the violation presents an imminent threat to public health, safety, or welfare or imminent destruction of habitat or sensitive resources.

180 (8) The provisions of this section are additional and supplemental means of enforcing county or municipal codes or ordinances and may be used for the enforcement of any code or ordinance, or for the enforcement of all codes and ordinances.

181 Except as provided in paragraph (3)(b), nothing contained in this section shall prohibit a county or municipality from enforcing its codes or ordinances by any other means.

182 Section 5. Subsections (1) and (7) of section 166.0415,

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578-01964-21 202160c1

204 Florida Statutes, are amended to read:

205 166.0415 Enforcement by code inspectors; citations.—

206 (1) (a) The governing body of each municipality may designate its agents or employees as code inspectors whose duty it is to assure code compliance. Any person designated as a code inspector may issue citations for violations of municipal codes and ordinances, respectively, or subsequent amendments thereto, when such code inspector has actual knowledge that a violation has been committed.

207 (b) A person designated as a code inspector may not initiate an investigation of a potential violation of a duly enacted code or ordinance by way of an anonymous complaint. A person who reports a potential violation of a code or an ordinance must provide his or her name and address to the governing body of the municipality before an investigation occurs. This paragraph does not apply if the person designated as a code inspector has reason to believe that the violation presents an imminent threat to public health, safety, or welfare or imminent destruction of habitat or sensitive resources.

208 (7) The provisions of this section are additional or supplemental means of enforcing municipal codes and ordinances.

209 Except as provided in paragraph (1)(b) and subsection (6), nothing in this section shall prohibit a municipality from enforcing its codes or ordinances by any other means.

210 Section 6. This act shall take effect July 1, 2021.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JENNIFER BRADLEY

5th District

COMMITTEES:
Community Affairs, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Education
Ethics and Elections
Judiciary

SELECT COMMITTEE:
Select Committee on Pandemic
Preparedness and Response

JOINT COMMITTEES:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

January 27, 2021

Senator Senator Ray Wesley Rodrigues, Chairman
Committee on Governmental Oversight and Accountability
330 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Mr. Chairman:

I respectfully request that CS/SB 60 be placed on the agenda of the Committee on Governmental Oversight and Accountability at your earliest convenience. The bill prohibits the initiation of code enforcement investigations in cases of an anonymous complaint unless the possible violation presents an imminent threat.

Thank you for your consideration and please let me know if I can be of any assistance.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Bradley".

Jennifer Bradley

cc: John McVaney
Tamra Redig

REPLY TO:

- 1279 Kingsley Avenue, Kingsley Center, Suite 117, Orange Park, Florida 32073 (904) 278-2085
- 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JENNIFER BRADLEY
5th District

COMMITTEES:
Community Affairs, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Education
Ethics and Elections
Judiciary

SELECT COMMITTEE:
Select Committee on Pandemic
Preparedness and Response

JOINT COMMITTEES:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

March 2, 2021

Senator Ray Rodrigues, Chairman
Senate Committee on Governmental Oversight & Accountability
330 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Dear Mr. Chairman:

While I intend to make every effort to present CS/SB 60 to the Committee on Governmental Oversight and Accountability tomorrow, I wanted to let you know that Senator Gruters has agreed to present the bill in my absence should I not make it to the meeting before you adjourn. I will be chairing the Senate Agriculture Committee, but will come to present my bill as soon as possible.

Please accept this letter as authorization for Senator Gruters to present on my behalf if necessary.

Sincerely,

Jennifer Bradley

REPLY TO:

- 1279 Kingsley Avenue, Kingsley Center, Suite 117, Orange Park, Florida 32073 (904) 278-2085
- 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: **SB 758**

INTRODUCER: Senator Diaz

SUBJECT: Fiduciary Duty of Care for Appointed Public Officials and Executive Officers

DATE: March 2, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Ponder	McVaney	GO	Favorable
2.		CA	
3.		AP	

I. Summary:

SB 758 creates part IX of chapter 112, F.S., to establish an express fiduciary duty of care for appointed public officials and executive officers acting on behalf of governmental entities.

The bill makes a statement of legislative findings providing that:

- Appointed public officials and executive officers acting on behalf of governmental entities owe a fiduciary duty to the entities they serve; and
- Codifying a fiduciary duty of care will require that appointed public officials and executive officers stay adequately informed of affairs, perform due diligence, perform reasonable oversight, and practice fiscal responsibility regarding decisions involving corporate and proprietary commitments on behalf of a governmental entity.

The bill provides definitions for relevant terms including, but not limited to, “appointed public official,” “executive officer,” “general counsel” and “governmental entity.”

The bill establishes training requirements for each appointed public official and executive officer to begin on January 1, 2022. The bill specifies that a minimum of five hours of board governance training must be completed for each term served. The bill requires the Department of Business and Professional Regulation (DBPR), by January 1, 2022, to either (1) contract for or approve a board governance training program that includes an affordable web-based electronic media option; or (2) publish a list of approved training providers. The bill grants rulemaking authority to the DBPR.

The bill allows governmental entities with annual revenues of less than \$300,000 to use in-house counsel or the in-house counsel for the unit of government that created the entity, to provide the training as long as it comports with the minimum course content established by DBPR rule. The bill provides three exceptions to the training requirement for (1) appointed public officials and executive officers of governmental entities whose annual revenues are less than \$100,000; (2)

appointed officials who hold elected office in another capacity; or (3) appointed public officials or executive officers who complete board governance training involving fiduciary duties or responsibilities which is required under any other state law. The bill requires appointed public officials and executive officers to provide written certification of compliance with the board governance training.

The bill requires the appointment of an executive officer or general counsel to be subject to approval by a majority vote of the governing body of the governmental entity. The bill specifies that all legal counsel employed by a governmental entity must represent the legal interests and positions of the governmental entity and not the interest of any individual or employee of the governmental entity, unless such representation is directed by the governmental entity.

The bill will have an indeterminate fiscal impact on the private sector to the extent entities are selected by DBPR to provide training. The bill will have an indeterminate fiscal impact on the local and state government. The DPBR may experience a slightly negative impact in complying with the bill's board governance training program requirements. Additionally, local governments will experience an indeterminate negative impact to the extent its appointed public officials and executive officers are subject to the training requirement.

The bill takes effect on July 1, 2021.

II. Present Situation:

Chapter 112, F.S.

Chapter 112, F.S., contains general provisions governing public officers and employees. Part III of ch. 112, F.S., establishes a Code of Ethics for Public Officers and Employees that sets forth standards of conduct required for public officers and employees in the performance of their official duties.¹ To enforce the Code of Ethics, the legislature created the Commission on Ethics (Commission).²

Section 112.3145, F.S., requires state and local officers and specified state employees to file a statement of financial interest with the Commission. This section defines a “local officer” to include persons elected to office in any political subdivision of the state and every person who is appointed to fill a vacancy for an unexpired term in such an elective office.³

Additionally, the term includes *appointed* members of specified boards. Specifically, s. 112.3145(1)(a)2., F.S., provides that “public officer” means:

Any appointed member of any of the following boards, councils, commissions, authorities, or other bodies of any county, municipality, school district, independent special district, or other political subdivision of the state:
a. The governing body of the political subdivision, if appointed;
b. A community college or junior college district board of trustees;

¹ Sections 112.311-112.3261, F.S.

² Section 112.320, F.S.

³ Section 112.3145(1)(a)1., F.S.

- c. A board having the power to enforce local code provisions;
- d. A planning or zoning board, board of adjustment, board of appeals, community redevelopment agency board, or other board having the power to recommend, create, or modify land planning or zoning within the political subdivision, except for citizen advisory committees, technical coordinating committees, and such other groups who only have the power to make recommendations to planning or zoning boards;
- e. A pension board or retirement board having the power to invest pension or retirement funds or the power to make a binding determination of one's entitlement to or amount of a pension or other retirement benefit; or
- f. Any other appointed member of a local government board who is required to file a statement of financial interests by the appointing authority or the enabling legislation, ordinance, or resolution creating the board.

A “state officer” is defined to mean:

- Any elected public officer, excluding those elected to the U.S. Senate and House of Representatives, not covered elsewhere in this part and any person who is appointed to fill a vacancy for an unexpired term in such an elective office;
- An *appointed* member of each board, commission, authority, or council having statewide jurisdiction, excluding a member of an advisory body;
- A member of the Board of Governors of the State University System or a state university board of trustees, in Chancellor and Vice Chancellors of the State University System, and the president of a state university; or
- A member of the judicial nominating commission for any district court of appeal or any judicial circuit.⁴

Fiduciary Duty of Care

A Fiduciary Relationship and Breach of Fiduciary Duty

Black’s Law Dictionary defines “fiduciary relationship” as:

A relationship in which one person is under a duty to act for the benefit of another on matters within the scope of the relationship. Fiduciary relationships—*such as...principal-agent...*—require an unusually high degree of care. Fiduciary relationships usu[ally] arise in one of four situations: (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) *when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship*, or (4) *when there is a specific relationship that has traditionally been recognized as involving fiduciary duties*, as with a lawyer and a client or a stockbroker and a customer.⁵

⁴ Section 112.3145(1)(c), F.S.

⁵ BLACK’S LAW DICTIONARY, 744 (10th ed. 2014).

As explained by the Florida Supreme Court, a fiduciary relationship exists “where confidence is reposed by one party and trust is accepted by the other, or where confidence has been acquired or abused.”⁶ In Florida, a breach of fiduciary duty is considered a tort.⁷ To state a claim for breach of fiduciary duty, a plaintiff must show three elements: (1) the existence of a fiduciary duty, (2) the breach of that duty, and (3) damages resulting from the breach.⁸

A fiduciary relationship may be either express or implied.⁹ “Express fiduciary relationships are created by contract, such as principal/agent or can be created by legal proceedings, as in the case of a guardian/ward.”¹⁰ On the other hand, an implied in law fiduciary relationship may be found based on the “specific factual situation surrounding the transaction and the relationship of the parties.”¹¹ Under Florida law, for an implied fiduciary relationship to exist, “there must be substantial evidence showing some dependency by one party and some undertaking by the other party to advise, counsel, and protect the weaker party.”¹²

The most basic duty of a fiduciary is the duty of loyalty, which obligates the fiduciary to put the interests of the beneficiary first, ahead of the fiduciary’s self-interest, and to refrain from exploiting the relationship for the fiduciary’s personal benefit.¹³ In addition to a duty of loyalty, a fiduciary also owes a duty of care to carry out responsibilities in an informed and considered manner and to act as an ordinary prudent person would act in the management of his own affairs. For example, under s. 518.11(1)(a), F.S., a trustee has the duty to invest or manage assets of an estate prudently – “as a prudent investor would considering the purposes, terms, distribution requirements, and other circumstances of the trust.”¹⁴

Fiduciary Obligations owed by Public Officials

The origins of fiduciary duty for public or political officials dates back to English common law. At first, common law did not distinguish among associations; English common law did not treat the City of London different from the East India Company.¹⁵ Both were considered creatures of

⁶ *Doe v. Evans*, 814 So. 2d 370 (Fla. 2002).

⁷ *Doe v. Evans*, 814 So.2d 370, 374 (Fla. 2002)(“ ‘[a] fiduciary who commits a breach of his duty as a fiduciary is guilty of tortious conduct to the person for whom he should act. . . [t]he liability is not dependent solely upon an agreement or contractual relation between the fiduciary and the beneficiary but results from the relation.’ ”) (quoting Restatement (Second)of Torts § 874 cmt. B(1979)).

⁸ *Gracey v. Eaker*, 837 So.2d 348, 353 (Fla.2002).

⁹ *Capital Bank v. MVB, Inc.*, 644 So.2d 515, 518 (Fla. 3d DCA 1994).

¹⁰ *MediaXposure Ltd. v. Harrington*, No. 8:11-CV-410-T-TGW, 2012 WL 1805493, at *6 (M.D.Fla.2012)

¹¹ *Id. See e.g., Fla. Software Sys., Inc. v. Columbia/HCA Healthcare Corp.*, 46 F.Supp.2d 1276, 1286

(M.D.Fla.1999) (stating that “Florida law recognizes fiduciary relationships arising out of joint ventures.”); *Askew v. Allstate Title & Abstract Co., Inc.*, 603 So.2d 29, 31 (Fla. 2d DCA 1992) (stating that “the title agent has a fiduciary duty to both the buyer and the seller”); *Cohen v. Hattaway*, 595 So.2d 105, 107 (Fla. 5th DCA 1992) (stating that “[c]orporate directors and officers owe a fiduciary obligation to the corporation and its shareholders and must act in good faith and in the best interest of the corporation.”).

¹² *Lanz v. Resolution Trust Corp.*, 764 F.Supp. 176, 179 (S.D.Fla.1991); *See Masztal v. City of Miami*, 971 So.2d 803, 809 (Fla. 3d DCA 2007).

¹³ See Restatement (Third) of Agency [§8.01 \(2006\)](#); see also *Capital Bank*, 644 So. 2d at 520.

¹⁴ See *United States v. White Mountain Apache Tribe*, 537 U.S. 465, 475 (2003) (a fiduciary administering trust property owes a fundamental common law duty as trustee to preserve and maintain trust assets; “the standard of responsibility is ‘such care and skill as a man of ordinary prudence would exercise in dealing with his own property’”) (citations omitted).

¹⁵ William Blackstone famously grouped together as “lay corporations” towns, the “trading companies of London,” and colleges and universities. *See 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND* *470-71.

associational or corporate law, and were referred to as bodies politic, bodies corporate, or corporations.¹⁶ This English common law viewpoint was brought to the New World, and cities, like the Virginia Company of London, were established with this concept in mind.¹⁷ Since these English common law origins, U.S. association law has increasingly divided private and public associations and the concept of fiduciary duty, where the corporation is now deemed private (having more fiduciary duties) and the governmental entity public (having less fiduciary duty).¹⁸

Today, “[p]ublic officials inherently owe a fiduciary duty to the public to make governmental decisions in the public’s best interest.”¹⁹ Accordingly, a public official’s fiduciary duty is a general one rather than a specific one.²⁰ Stated differently, a public official owes a fiduciary duty to the constituents he or she serves generally, but not to each individual constituents he or she serves.²¹ Additionally, Florida recognizes that public officials occupy a fiduciary relationship with respect to public property in that such property is held in trust.²²

Proprietary/Corporate Functions vs. Governmental/Policy Functions

Public officials acting on behalf of governmental entities have two distinct categories of functions when serving residents in their official capacity. Proprietary functions encompass actions when a governmental entity is behaving as a property owner or conducting commercial transactions. For example, Florida courts hold that the construction, maintenance, and repair of streets in a municipality is a corporate or proprietary function because the governmental entity is operating as a property owner.²³

Alternatively, when a governmental entity exercises powers regarding the location and installation of traffic control devices such as stop signs, automatic traffic lights, etc., courts hold that public officials are performing a governmental function by making a particular decision on traffic policy.²⁴ The difference between proprietary and governmental functions is important because the common law fiduciary duty of care does not arise from governmental functions. Policy decisions by public officials are largely shielded from judicial review through sovereign immunity.²⁵ Whereas, proprietary decisions in governmental entity management have historically been subject to due care considerations²⁶ and requirements that officials act “as prudent persons ought to allow themselves in the management of their own affairs.”²⁷

¹⁶ *Id.* at 467.

¹⁷ See Judith M. Diamondstone, Philadelphia’s Municipal Corporation, 1701-1776, 90 PA. MAG. HIST. & BIOGRAPHY 183, 183 (1966).

¹⁸ See *People v. Morris*, 13 Wend. 325, 337 (N.Y. Sup. Ct. 1835) (“The distinction between public and private corporations is strongly marked, and, as to all essential purposes, they correspond only in name.”).

¹⁹ *U.S. v. deVegter*, 198 F.3d 1324, 1328 (11th Cir. 1999).

²⁰ *Id.*

²¹ See *Maryelin Albertov v. Housing Authority of the City of Fort Lauderdale et al.*, 2018 WL 7108227 (Fla.Cir.Ct.) See also *Nussbaum v. Weeks*, 214 Cal. App. 3d 1580, 1598-99 (1990) (holding that the general manager of a water district, as a public official, owed a fiduciary duty to the residents of the water district generally, but not to each resident specifically).

²² See, e.g., *City of Coral Gables v. Hepkins*, 144 So. 385(Fla. 1932).

²³ See *Gordon v. City of West Palm Beach*, 321 So.2d 78 (Fla. 4th DCA 1975).

²⁴ *Id.*

²⁵ See OSBORNE M. REYNOLDS, JR., LOCAL GOVERNMENT LAW 815-16 (3d ed. 2009); *id.* at 816 n.11 (collecting cases).

²⁶ See 2 RESTATEMENT (THIRD) OF AGENCY § 8.08 (AM. LAW INST. 2006).

²⁷ *Tuggle v. Mayor of Atlanta*, 57 Ga. 114, 117 (1876).

Taxpayer Standing to Bring a Claim against a Governmental Entity

It is well settled in Florida that – absent a constitutional challenge – a taxpayer may bring suit against a governmental entity only upon a showing of special injury,²⁸ which is distinct from that suffered by other taxpayers.²⁹ Thus, a private citizen is precluded from filing a taxpayer complaint to challenge government action unless the private citizen alleges and proves a “special injury,” which is an injury that is different from that of the general public.³⁰ Thus, Florida law permits a very limited – if nonexistent – remedy for a breach of a duty of care in the public official context as opposed to private law. Even if a plaintiff could establish that a public official owed them a special fiduciary duty, they would still have to prove that the official caused them to suffer a special injury – that is the essence of the current breach of fiduciary duty claims for public officials.

Fiduciary Obligations owed by Private Trustees and Corporate Officials

The Uniform Trust Code stipulates that trustees must “administer the trust as a prudent person would.”³¹ Trust law defines prudence as “reasonable care, skill, and caution.”³² This requirement has been interpreted as a traditional negligence standard in tort law.³³ While reviewing the actions of a trustee, the prudence analysis prioritizes whether the decision-making processes used by a trustee are reasonable and whether the overall substance of the decision is reasonable as a whole.³⁴

Corporations and other business entities utilize a lower fiduciary duty of care than trust law. In the corporate context, as prescribed by the Model Business Corporation Act (MBCA)³⁵ (which Florida’s Business Corporation Act³⁶ mirrors), a breach of the fiduciary duty of care occurs when a corporate official acts with bad-faith, gross negligence, or recklessness.³⁷ This relaxed standard of care is largely due to the application of the business judgment rule. Under this doctrine, courts will not review decisions of corporate officials as being right or wrong, good or bad, because business operations and market transactions are inherently risky, and corporate officials are obligated to engage in this risk on behalf of a corporation to provide benefits to stakeholders.³⁸

²⁸ This has been termed the “Special injury rule” or “Rickman rule.”

²⁹ *Dep’t of Rev. v. Markham*, 396 So. 2d 1120, 1121 (Fla. 1981); *see also Rickman v. Whitehurst*, 74 So. 205, 207 (Fla. 1917) (Generally, for a taxpayer to have standing to challenge a government’s compliance with the law, the taxpayer must establish a “special damage to his individual interests, distinct from that of every other inhabitant”); *School Bd. of Volusia Co. v. Clayton*, 691 So. 2d 1066, 1068 (Fla. 1997) (requirement of special injury for taxpayer standing is “consistent with long established precedent”).

³⁰ *N. Broward Hosp. Dist. v. Fornes*, 476 So.2d 154 (Fla.1985); *Rickman v. Whitehurst*, 73 Fla. 152, 74 So. 205 (1917).

³¹ UNIF.TR.CODE § 804 (UNIF. LAW COMM’N 2000).

³² *Id.*

³³ See John H. Langbein, *The Contractarian Basis of the Law of Trusts*, 105 YALE L.J. 625, 656 (1995)

³⁴ 3 RESTATEMENT (THIRD) OF TRS. § 87 cmt. c (AM. LAW INST. 2007).

³⁵ MODEL BUS. CORP. ACT (AM. BAR ASS’N 2016); *see also Corp. Laws Comm., Am. Bar Ass’n Bus. Law Section, Model Business Corporation Act* (2016 Revision), 72 BUS. LAW. 421, 421 (2017) (reporting that the model act has been “substantially adopted by a majority of the states”).

³⁶ Chapter 607, F.S.

³⁷ *See, e.g., AmeriFirst Bank v. Bomar*, 757 F. Supp. 1365, 1376 (S.D. Fla. 1991) (requiring a showing of “abuse of discretion, fraud, bad faith or illegality” to rebut the presumption of good faith).

³⁸ WILLIAM T. ALLEN ET AL., *COMMENTARIES AND CASES ON THE LAW OF BUSINES ORGANIZATION* 263 (2d ed. 2007).

Instead, the fiduciary duty of care in the corporate decision-making context is reviewed for the processes utilized, and the degree of diligence exercised by officials in coming to and effectuating a decision.³⁹

The Department of Business and Professional Regulation

The DBPR, through various divisions, regulates and licenses businesses and professionals in Florida. The divisions established under DBPR include:

- The Division of Administration;
- The Division of Alcoholic Beverages and Tobacco;
- The Division of Certified Public Accounting;
- The Division of Drugs, Devices, and Cosmetics;
- The Division of Florida Condominiums, Timeshares, and Mobile Homes;
- The Division of Hotels and Restaurants;
- The Division of Pari-mutuel Wagering;
- The Division of Professions;
- The Division of Real Estate;
- The Division of Regulation;
- The Division of Technology; and
- The Division of Service Operations.⁴⁰

The Department, through its various divisions, oversees and administers certain training programs related to the professions it regulates. Additionally, under the Condominium Act, Chapter 718, and the Cooperative Act, Chapter 719, F.S., require the Division of Florida Condominiums, Timeshares and Mobile Homes (Division) to provide training and educational programs for condominium and cooperative association board members and unit owners.⁴¹ The training may include web-based electronic media and live training seminars in various locations throughout the state. The Division is permitted to review and approve education and training programs for board members and unit owners offered by providers and must maintain and make available a current list of approved programs and providers.⁴²

Elected and appointed members and directors of the board of a residential condominium association must certify in writing, within 90 days after being elected or appointed, to the secretary of the association that he or she:

- Has read the association's declaration of condominium, articles of incorporation, bylaws and current written policies;
- Will work to uphold such documents and policies to the best of his or ability; and

³⁹ See *Smith v. Van Gorkom*, 488 A.2d 858 (Del. Supr. 2009); “[i]n the famous case *Smith v. Van Gorkom*, a corporate board approved a sale of the corporation after a two-hour meeting, relying “solely upon” the oral presentations of three board members, an internal study of the merger, a legal opinion, and the board’s own experience. The Supreme Court of Delaware held that by not considering all material information reasonably available, the board had violated its fiduciary duty of care in that ‘specific context of a proposed merger.’” Max Schanzenbach and Nadav Shoked, *Reclaiming Fiduciary Law for the City*, 70 Stan. L. Rev. 565, 615, 616 (February 2018).

⁴⁰ Section 20.165, F.S.

⁴¹ See Sections 718.501 and 719.501, F.S.

⁴² Section 718.501(1)(j), F.S.

- Will faithfully discharge his or her fiduciary responsibility to the association's members.⁴³

To meet the requirements of an educational curriculum for a condominium education program under s. 718.112(2)(d)4.b., F.S., the program must cover at least four of the following topics:

- Budgets and reserves.
- Elections.
- Financial reporting.
- Condominium operations.
- Records maintenance, including unit owner access to records.
- Dispute resolution.
- Bids and contracts.⁴⁴

Each condominium association which operates more than two units must pay the Division an annual fee of \$4 for each residential unit in the condominiums operated by the association.⁴⁵ The association is assessed a penalty of 10 percent of the amount due, if the fee is not paid by March 1.⁴⁶ Additionally, until the amount due, plus any penalty, is paid, the association will not have legal standing to maintain or defend any action in the courts.⁴⁷

III. Effect of Proposed Changes:

Section 1 creates part IX of chapter 112, F.S., consisting of s. 112.89, F.S., to be entitled "Fiduciary Duty of Care for Appointed Public Officials and Executive Officers."

Section 2 creates s. 112.89, F.S., to establish a fiduciary duty of care for appointed public officials and executive officers acting to the applicable entity in accordance with law he or she serves. The bill makes a statement of legislative findings providing that:

- Appointed public officials and executive officers acting on behalf of governmental entities owe a fiduciary duty to the entities they serve; and
- Codifying a fiduciary duty of care will require that appointed public officials and executive officers stay adequately informed of affairs, perform due diligence, perform reasonable oversight, and practice fiscal responsibility regarding decisions involving corporate and proprietary commitments on behalf of a governmental entity.

The bill includes the following definitions:

- "Appointed public official" means either a "local officer" as defined in s. 112.3145(1)(a)2., F.S., or a "state officer" as defined in ss. 112.3145(1)(c)2. and 3., F.S.;⁴⁸
- "Department" means the DBPR;

⁴³ Section 718.112(2)(d)4.b., F.S.

⁴⁴ Rule 61B-19.001, F.A.C.

⁴⁵ Section 718.501(2)(a), F.S.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Approximately 16,602 individuals report under these provisions (approximately 15,250 reporting under subsection (1)(a)2.; approximately 1,139 reporting under subsection (1)(c)2., and approximately 213 under subsection (1)(c)3.) Email from Kerrie Stillman, Deputy Executive Director, Florida Commission on Ethics (February 26, 2021)(on file with the Senate Governmental Oversight and Accountability Committee).

- “Executive officer” means the chief executive officer of a governmental entity to which an appointed public official is appointed;
- “General counsel” means the chief legal counsel of a governmental entity to which an appointed public official or an executive officer is appointed or hired.
- “Governmental entity” means the entity, or a board, a council, a commission, an authority, or other body thereof, to which an appointed public official or an executive officer is appointed or hired.

The bill establishes an express fiduciary duty of care for each appointed public official and executive officer to the applicable entity he or she serves in accordance with law. The bill specifies that each appointed public official and executive officer has the duty to:

- Act in accordance with the laws, ordinances, rules, policies, and terms governing his or her office or employment;
- Act with the care, competence, and diligence normally exercised by reasonably prudent persons in similar corporate and proprietary circumstances;
- Act only within the scope of his or her authority;
- Refrain from conduct that is likely to damage the financial or economic interests of the governmental entity;
- Use reasonable efforts to maintain documentation in accordance with applicable laws; and
- Maintain reasonable oversight of any delegated authority and discharge his or her duties with the care that a reasonably prudent person in a like business position would believe appropriate under the circumstances.

The bill provides that the duty to maintain reasonable oversight includes (1) becoming reasonably informed in connection with any decision-making function; (2) becoming reasonably informed when devoting attention to any oversight function; (3) keeping reasonably informed concerning the affairs of the governmental entity; and (4) keeping reasonably informed concerning the performance of the governmental entity’s executive officers or other officers, agents, or employees. While this provision creates express fiduciary duties for appointed public officials and state officers, it does not create a private cause of action or enforcement mechanism.

This section also establishes training requirements. Each appointed public official and executive officer, beginning January 1, 2022, must complete a minimum of 5 hours of board governance training (Governance Training) for each term served. For those holding office or employed by a governmental entity on January 1, 2022, he or she is required to complete 5 hours of Governance Training before the expiration of his or her term of service. If the appointed public official or appointed executive officer is employed under a contract that does not specify a termination date for employment, the he or she must complete the 5 hours of Governance Training by January 1, 2023, and once every 4 years thereafter for the duration of their employment. An appointed public official or executive officer who is appointed, reappointed, or hired after January 1, 2022, must complete the 5 hours of Governance Training within 180 days after date of his or her appointment, reappointment or hire.

The bill requires the DBPR, by January 1, 2022, to either (1) contract for or approve a Governance Training program that includes an affordable web-based electronic media option; or

(2) publish a list of approved training providers. A provider may include (1) a Florida College System institution; (2) a state university; (3) a nationally recognized entity deemed qualified by the department as capable of providing the specified minimum Governance Training requirements.

The bill provides that the Governance Training programs, at a minimum, must include education materials and instruction related to:

- Generally accepted corporate board governance principles and best practices;
- Corporate board fiduciary duty of care legal analyses;
- Corporate board oversight and evaluation procedures;
- Governmental entity responsibilities;
- Executive officer responsibilities;
- Executive officer performance evaluations;
- Selecting, monitoring, and evaluating an executive management team;
- Reviewing and approving proposed investments, expenditures, and budget plans;
- Financial accounting and capital allocation principles and practices;
- New governmental entity member orientation; and
- The fiduciary duty of care and obligations imposed upon appointed public officials and executive officers pursuant to this section.

A governmental entity complies with the Governance Training by providing a DBPR-approved program or contracting with a provider listed by DBPR. The bill allows governmental entities with annual revenues of less than \$300,000 to use in-house counsel or the in-house counsel for the unit of government that created the entity, to provide Governance Training as long as it comports with the minimum course content established by DBPR rule.

The bill sets forth Governance Training compliance requirements. Each appointed public official and the executive officer must certify, in writing or electronic form and under oath to DBPR that she or he:

- Has completed the Governance Training;
- Has read the laws and relevant policies applicable to his or her position;
- Will work to uphold such laws and policies to the best of his or her ability; and
- Will faithfully discharge his or her fiduciary responsibility.

This certification must be submitted within 30 days of completing the Governance Training.

The bill provides three exceptions to the Governance Training requirement for (1) appointed public officials and executive officers of governmental entities whose annual revenues are less than \$100,000; (2) appointed officials who hold elected office in another capacity; or (3) appointed public officials or executive officers who complete board governance training involving fiduciary duties or responsibilities which is required under any other state law.

The bill grants rulemaking authority to the DBPR.

The bill requires approval by a majority vote of the governing body of the governmental entity for the appointment of any executive officer or general counsel.

The bill provides standards for legal counsel requiring all legal counsel employed by a governmental entity must represent the legal interests and positions of the governmental entity and not the interest of any individual or employee of the governmental entity, unless such representation is directed by the governmental entity.

Section 3 provides that the bill will take effect on July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, subsection (a) of section 18 of the State Constitution provides that cities and counties are not bound by general laws requiring them to spend funds or take action that requires the expenditure of funds unless certain specified exemptions or exceptions are met.

Under this bill, there is a possibility cities and counties may incur costs relating to the board governance training. However, to the extent the bill applies to counties and municipalities, the mandate requirements do not apply to laws having an insignificant impact which, for Fiscal Year 2020-2021, is forecast at \$2.2 million.^{49,50,51} The fiscal impact of this bill on cities and counties is indeterminate. The bill's impact is largely dependent on the affordability of the DBPR training programs⁵² and the number of individuals within county and municipal governments that fit within the scope of the bill.

If costs imposed by the bill are determined to exceed \$2.2 million in the aggregate, the bill may be binding on cities and counties if the bill contains a finding of important state interest and meets one of the exceptions specified in State Constitution (e.g., applies to all persons similarly situated (i.e., cities, counties, and all other state and local governing entities with appointed officials) or enactment by vote of two-thirds of the membership of each house).

B. Public Records/Open Meetings Issues:

None.

⁴⁹ FLA. CONST. art. VII, s. 18(d).

⁵⁰ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, Interim Report 2012-115: Insignificant Impact, (Sept. 2011), available at: <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited February 25, 2021).

⁵¹ Based on the Florida Demographic Estimating Conference's November 3, 2020, population forecast for 2021 of 21,830,364. The conference packet is available at:

<http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited February 25, 2021).

⁵² The majority of the approved providers for the DBPR condominium board member training courses are provided at no fee. See DBPR website, *Approved Providers*, available at:

<http://www.myfloridalicense.com/dbpr/lsc/documents/CondoCOOPListofApprovedProviders2015.pdf> (last visited February 25, 2021).

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:

The private sector will experience an indeterminate positive fiscal impact to the extent of DBPR contracts with private entities for the required Governance Training.

C. Government Sector Impact:

The DBPR will experience a negative fiscal impact as it uses resources to implement the provisions of the bill related to training and processes the certification of completed training. Also, governmental entities meeting the bill's criteria may be required to expend funds in providing the training to its appointed public officials or executive officers.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 112.89 of the Florida Statutes:

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Diaz

36-00774-21

A bill to be entitled

2021758

2 An act relating to the fiduciary duty of care for
3 appointed public officials and executive officers;
4 providing a directive to the Division of Law Revision
5 to create part IX of ch. 112, F.S.; creating s.
6 112.89, F.S.; providing legislative findings and
7 purpose; defining terms; establishing standards for
8 the fiduciary duty of care for appointed public
9 officials and executive officers of specified
10 governmental entities; requiring training on board
11 governance beginning on a specified date; requiring
12 the Department of Business and Professional Regulation
13 to contract for or approve a training program or
14 publish a list of approved training providers;
15 specifying requirements for such training; authorizing
16 training to be provided by in-house counsel for
17 certain governmental entities; requiring appointed
18 public officials and executive officers to certify
19 their completion of the annual training; requiring the
20 department to adopt rules; providing exceptions to the
21 training requirement; specifying requirements for the
22 appointment of executive officers and general counsels
23 of governmental entities; specifying standards for
24 legal counsel; providing an effective date.

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

28 Section 1. The Division of Law Revision is directed to
29 create part IX of chapter 112, Florida Statutes, consisting of

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

36-00774-21

2021758

s. 112.89, Florida Statutes, to be entitled "Fiduciary Duty of Care for Appointed Public Officials and Executive Officers."

Section 2. Section 112.89, Florida Statutes, is created to read:

112.89 Fiduciary duty of care.—

(1) LEGISLATIVE FINDINGS AND PURPOSE.—The Legislature finds that appointed public officials and executive officers acting on behalf of governmental entities owe a fiduciary duty to the entities they serve. The Legislature finds that codifying a fiduciary duty of care will require that appointed public officials and executive officers stay adequately informed of affairs, perform due diligence, perform reasonable oversight, and practice fiscal responsibility regarding decisions involving corporate and proprietary commitments on behalf of the entity they serve.

(2) DEFINITIONS.-

(a) "Appointed public official" means either a "local officer" as defined in s. 112.3145(1)(a)2. or a "state officer" as defined in s. 112.3145(1)(c)2. and 3.

(b) "Department" means the Department of Business and Professional Regulation.

(c) "Executive officer" means the chief executive officer of a governmental entity to which an appointed public official is appointed.

(d) "General counsel" means the chief legal counsel of a governmental entity to which an appointed public official or an executive officer is appointed or hired.

(e) "Governmental entity" means the entity, or a board, a council, a commission, an authority, or other body thereof, to

Page 2 of 6

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36-00774-21

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59 which an appointed public official or an executive officer is
 60 appointed or hired.

61 (3) FIDUCIARY DUTY OF CARE.—Each appointed public official
 62 and executive officer owes a fiduciary duty of care to the
 63 applicable entity he or she serves in accordance with law and
 64 has a duty to:

65 (a) Act in accordance with the laws, ordinances, rules,
 66 policies, and terms governing his or her office or employment.

67 (b) Act with the care, competence, and diligence normally
 68 exercised by a reasonably prudent person in similar corporate
 69 and proprietary circumstances.

70 (c) Act only within the scope of his or her authority.

71 (d) Refrain from conduct that is likely to damage the
 72 financial or economic interests of the governmental entity.

73 (e) Use reasonable efforts to maintain documentation in
 74 accordance with applicable laws.

75 (f) Maintain reasonable oversight of any delegated
 76 authority and discharge his or her duties with the care that a
 77 reasonably prudent person in a like business position would
 78 believe appropriate under the circumstances, and must:

79 1. Become reasonably informed in connection with any
 80 decisionmaking function;

81 2. Become reasonably informed when devoting attention to
 82 any oversight function;

83 3. Keep reasonably informed concerning the affairs of the
 84 governmental entity; and

85 4. Keep reasonably informed concerning the performance of
 86 the governmental entity's executive officers or other officers,
 87 agents, or employees.

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88 (4) TRAINING REQUIREMENT.—

89 (a) Beginning January 1, 2022, each appointed public
 90 official and executive officer shall complete a minimum of 5
 91 hours of board governance training for each term served.

92 1. An appointed public official or executive officer
 93 holding office or employed by a governmental entity on January
 94 1, 2022, shall complete the 5 hours of board governance training
 95 before the expiration of his or her term of service. If an
 96 appointed public official or executive officer is employed under
 97 a contract that does not specify a termination date for
 98 employment, the public official or executive officer shall
 99 complete the 5 hours of training by January 1, 2023, and once
 100 every 4 years thereafter for the duration of their employment.

101 2. An appointed public official or executive officer who is
 102 appointed, reappointed, or hired after January 1, 2022, shall
 103 complete the 5 hours of board governance training within 180
 104 days after the date of his or her appointment, reappointment, or
 105 hire.

106 (b) By January 1, 2022, the department shall:

107 1. Contract for or approve a board governance training
 108 program that includes an affordable web-based electronic media
 109 option; or

110 2. Publish a list of approved board governance training
 111 providers on its website. A provider may include a Florida
 112 College System institution, a state university, a nationally
 113 recognized entity specializing in board governance education, or
 114 any other entity deemed qualified by the department as capable
 115 of providing the minimum training requirements specified in this
 116 subsection.

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117 (c) The board governance training programs must provide, at
 118 a minimum, educational materials and instruction on the
 119 following:
 120 1. Generally accepted corporate board governance principles
 121 and best practices; corporate board fiduciary duty of care legal
 122 analyses; corporate board oversight and evaluation procedures;
 123 governmental entity responsibilities; executive officer
 124 responsibilities; executive officer performance evaluations;
 125 selecting, monitoring, and evaluating an executive management
 126 team; reviewing and approving proposed investments,
 127 expenditures, and budget plans; financial accounting and capital
 128 allocation principles and practices; and new governmental entity
 129 member orientation.
 130 2. The fiduciary duty of care and obligations imposed upon
 131 appointed public officials and executive officers pursuant to
 132 this section.
 133 (d) A governmental entity complies with the training
 134 requirement under this subsection by providing a department-
 135 approved program or contracting with a provider listed by the
 136 department under subparagraph (b)2. However, for governmental
 137 entities with annual revenues of less than \$300,000, board
 138 governance training may be provided by in-house counsel of the
 139 governmental entity or the unit of government that created the
 140 governmental entity, if applicable, so long as the training
 141 complies with the minimum course content established by
 142 department rule.
 143 (e) Within 30 days after completion of the board governance
 144 training, each appointed public official and executive officer
 145 shall certify, in writing or electronic form and under oath, to

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146 the department that he or she:
 147 1. Has completed the training required by this subsection;
 148 2. Has read the laws and relevant policies applicable to
 149 his or her position;
 150 3. Will work to uphold such laws and policies to the best
 151 of his or her ability; and
 152 4. Will faithfully discharge his or her fiduciary
 153 responsibility, as imposed by this section.
 154 (f) The department shall adopt rules to implement this
 155 subsection.
 156 (g) This subsection does not apply to appointed public
 157 officials and executive officers who:
 158 1. Serve governmental entities whose annual revenues are
 159 less than \$100,000;
 160 2. Hold elected office in another capacity; or
 161 3. Complete board governance training involving fiduciary
 162 duties or responsibilities which is required under any other
 163 state law.
 164 (5) APPOINTMENT OF EXECUTIVE OFFICERS AND GENERAL
 165 COUNSELS.—The appointment of any executive officer or general
 166 counsel is subject to approval by a majority vote of the
 167 governmental entity.
 168 (6) STANDARDS FOR LEGAL COUNSEL.—All legal counsel employed
 169 by a governmental entity must represent the legal interests and
 170 positions of the governmental entity and not the interest of any
 171 individual or employee of the governmental entity, unless such
 172 representation is directed by the governmental entity.
 173 Section 3. This act shall take effect July 1, 2021.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR MANNY DIAZ, JR.
36th District

COMMITTEES:
Health Policy Chair
Appropriations Subcommittee on
Education Vice Chair
Appropriations
Appropriations Subcommittee on Health
and Human Services
Education
Commerce and Tourism
Rules

January 29, 2021

Honorable Senator Ray Wesley Rodrigues
Chair
Committee on Governmental Oversight and Accountability

Honorable Chair Rodrigues,

I respectfully request Senate Bill Number 758 Fiduciary of Care for Appointed Public Officials & Executive Officers be placed on the next committee agenda.

Sincerely appreciate your support.

A handwritten signature in blue ink that reads "Manny Diaz" followed by a stylized "JR".

Senator Manny Diaz, Jr.
Florida Senate, District 36

CC: Joe McVaney, Staff Director
Tamra Redig, Committee Administrative Assistant
Joshua Georgen, Legislative Assistant to Senator Rodrigues

REPLY TO:

10001 Northwest 87th Avenue, Hialeah Gardens, Florida 33016 (305) 364-3073
 306 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5036

Senate's Website: www.flsenate.gov

**Wilton Simpson
President of the Senate**

**Aaron Bean
President Pro Tempore**

Redig, Tamra

From: Ruiz, Judith
Sent: Monday, March 1, 2021 6:05 PM
To: McVaney, Joe; Redig, Tamra; Brill, Victoria; Phillips, Trent
Subject: SB 758 Fiduciary Duty

Good Afternoon Mr. McVaney,

Via this correspondence please be advised that Senator Gruters will be presenting SB 758 Fiduciary Duty for Senator Diaz this coming Wednesday, March 3rd at 9:30 am. I have included Senator Gruters Legislative Assistant Vickie Brill as confirmation of shared information.

Any questions please do not hesitate to ask.

Judith Ruiz

Legislative Assistant/Chief of Staff
District 36
Senator Manny Diaz Jr.
10001 NW 87 Avenue
Hialeah, Florida 33016
305-364-3073

306 Senate Building
404 South Monroe Street
Tallahassee, Fl 32399-1100
850-487-5036

THE FLORIDA SENATE
APPEARANCE RECORD

3 March 2021

Meeting Date

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

SB 758

Bill Number (if applicable)

Topic Fiduciary Duty of Care

Amendment Barcode (if applicable)

Name Diego Echeverri

Job Title Legislative liaison

Address 200 W College Ave
Street

Phone

TLH
City State Zip

Email decheverri@afphq.org

Speaking: For Against Information

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

Representing Americans For Prosperity

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

March 3 2021

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

SB 758

Meeting Date

Bill Number (if applicable)

Topic

Fiduciary Duty Care of Appointed Pups

Amendment Barcode (if applicable)

Name

David S. Serrano

Job Title

Senior Retired Candidate Certified by CWA by Politics

Address

66 Wintersgreen Dr

Phone

NOT QUALIFIED

Street

Fruitland Park34731

Zip

352803659 Paper

City

State

Email

goldendoweworkSpeaking: For Against InformationWaive Speaking: In Support Against
(The Chair will read this information into the record.)Representing SelfAppearing at request of Chair: Yes NoLobbyist registered with Legislature: Yes No*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.**This form is part of the public record for this meeting.*

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: **SB 788**

INTRODUCER: Senator Cruz

SUBJECT: State Contracting

DATE: March 2, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Candelaria</u>	<u>McVaney</u>	<u>GO</u>	<u>Favorable</u>
2. _____	_____	<u>AEG</u>	_____
3. _____	_____	<u>AP</u>	_____

I. Summary:

SB 788 prohibits a vendor that defaults or fails to fulfill terms and conditions of a state contract from submitting a bid, proposal, or entering into or renewing a contract to provide any goods or services to an agency after placement on the suspended vendor list.

The bill requires an agency to notify and provide supporting documentation to the Department of Management Services (DMS) of any vendor that has failed to fulfill the terms and conditions of a state contract. DMS must determine whether good cause exists to place any such vendor on the suspended vendor list. DMS is required to notify a vendor in writing upon its determination of good cause and intent to remove the vendor from the vendor list. The vendor may file a petition for a formal hearing to challenge the DMS's decision to remove the vendor from the vendor list. Vendors who are placed on the suspended vendor list may petition for removal from the list after a period of one year after entry of the final order of its suspension. A vendor may be removed from the suspended vendor list upon a determination by the administrative law judge that removal would be in the public interest. The bill specifies that if a petition for removal is denied, the vendor is prohibited from filing another petition for removal for at least 9 months after the date of the denial. The bill permits the DMS to petition for the vendor's removal prior to the expiration of the 9 month period if it determines removal from the suspended vendor list would be in the public interest.

The DMS may incur additional workload and costs associated with maintaining the suspended vendor list and providing due process to vendors petitioning to be removed from the list.

The bill takes effect July 1, 2021.

II. Present Situation:

Agency Process for Procurement of Contractual Services

State agencies who wish to procure contractual services in excess of \$35,000¹ must go through a competitive solicitation process. All competitive solicitations are required to be made available simultaneously to all vendors, and must include the time and date for the receipt of bids, proposals or replies, along with the contractual terms and conditions applicable to the procurement.² An agency has three methods of procurement. These include an invitation to bid, a request for proposals, and an invitation to negotiate.³

Invitation to Bid

Once an agency is capable of defining the scope of work for which is a contractual service is required, the agency may solicit an invitation to bid (ITB). Each ITB must include a detailed description of the commodities or contractual services sought and whether the agency contemplates renewal of the contract.⁴ If the agency contemplates renewal of the contract, each bid submitted in response to an ITB must include the price for each year for which the contract may be renewed.

Request for Proposals

An agency uses a request for proposals (RFP) when the purposes and uses for the contractual service or commodity being sought can be specifically defined and the agency can identify deliverables. A vendor may respond with various versions of services or commodities to meet the specification of the solicitation document. Each RFP must include a statement describing the commodities or contractual services sought, the relative importance of price, and whether the agency contemplates renewal of contract.⁵ The contract is awarded by written notice to the responsible and responsive vendor whose proposal is the most advantageous to the state.

Invitation to Negotiate

The invitation to negotiate (ITN) is a solicitation used by an agency intended to determine the best method for achieving a specific goal or solving a particular problem. The ITN process identifies one or more responsive vendors with which an agency may negotiate in order to receive the best value. In order to issue an ITN, the head of the agency must determine in writing the reasons that procurement by an ITB or an RFP is not practicable. The ITN must include questions being explored, the facts being sought, and the specific goals of the solicitation. The agency may select one or more vendors to begin negotiations, and then award the contract to the responsible and responsive vendor that the agency deems will provide the best value to the state.⁶

¹ Section 287.017, F.S.

² Section 287.057(1), F.S.

³ Section 287.057(1)(a-c), F.S.

⁴ Section 287.057(1)(a), F.S.

⁵ Section 287.057(1)(b), F.S.

⁶ Section 287.057(1)(c) , F.S.

Doing Business with the State of Florida

Requirements for Vendor Registration

Any vendor that wishes to provide goods or services to the state must register in the Vendor Registration System. In order to register, a vendor must provide the following information:

- Company Name;
- Federal Tax ID;
- Tax Filing Name;
- Business Location;
- Commodities and Services Offered; and
- Certified Business and Enterprise Status.⁷

Vendor Information Portal

Once registered, vendors are able to do business with the State of Florida executive branch agencies through the Vendor Information Portal (VIP).⁸ The VIP system is designed to streamline interactions with vendors and the state government entities that purchase goods and services. The system provides a portal where vendors can finish registering, receive information on upcoming bids, post information on products and services, receive purchase orders electronically, view payment information, and review their performance.⁹

Vendor Bid System

The Vendor Bid System (VBS), allows for agencies to post competitive solicitations of \$35,000 or more. These solicitations include ITBs, RFPs, and ITNs for all vendors to review. Vendors can then bid, submit proposals, or submit a request to negotiate with the state agency through the VBS. A vendor will be notified through the VBS if its bid has been chosen and proceed by following bid specifications, timelines, and budgets.¹⁰

Vendor Lists and the Process for Vendors in Default

The DMS maintains a vendor list based on the vendor registration process in s. 287.042, F.S., and Rule 60A-1.006, F.A.C. Pursuant to s. 287.042(1)(b), F.S., the DMS has been granted authority to remove from its vendor list any source of supply which fails to fulfill any of its duties specified in a contract. The DMS maintains the following lists of vendors who have been removed for cause:

- Suspended Vendor List;¹¹
- Convicted Vendor List;¹²
- Discriminatory Vendor List;¹³

⁷ The Department of Management Services, *Vendor Resources*, available at https://www.dms.myflorida.com/business_operations/state_purchasing/vendor_resources (last visited, February 23, 2021)

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Rule 60A-1.006(2), F.A.C. (vendors that have been removed for failing to fulfill any of its duties specified in a State contract)

¹² Section 287.133, F.S.

¹³ Section 287.134(1)(b), F.S.

- Scrutinized List of Prohibited Companies;¹⁴ and
- Vendor Complaint List.

Suspended Vendor List

The DMS maintains a suspended vendor list¹⁵ in accordance with the vendor registration process provided in s. 287.042, F.S., and Rule 60A-10.006, F.A.C. If a vendor fails to perform the duties provided in the contract, the agency will notify the vendor, in writing, the nature of the failure to perform and provide a timeframe for correcting the failure. Reasonable time should not generally be less than 10 days after receipt of notice. The notification will provide that, should the vendor fail to perform within the time provided, the vendor will be removed from the agency's approved list. The agency will find the vendor in default and shall issue a second notice stating the reason the vendor is considered at fault, that the agency will reprocure or has reprocured the commodities, and the amount of the reprocurement if known.

The vendor will not be eligible for award of a contact by the agency until the vendor has reimbursed the agency for the reprocurement costs. Reprocurement costs may include both administrative costs and costs or price increases incurred or to be incurred as a result of the reprocurement. Pursuant to s. 120.57, F.S., the defaulting vendor will be advised of the right to petition for an administrative hearing on the intended decision to remove the vendor from the list and shall be given a time certain within which to submit the petition. Until such time as the vendor reimburses the agency for all reprocurement costs and the agency is satisfied that further instances of default will not occur, the defaulting vendor cannot be eligible for award of a contract by the agency. To satisfy the agency that further instances will not occur, the defaulting vendor shall provide a written corrective action plan addressing the original grounds for default.

Currently, the DMS has five vendors on the suspended vendor list:

- Building Maintenance of America, LLC d/b/a Florida Building Maintenance 333 North Falkenburg Road #A117, Tampa, FL 33619;
- Club Tex, Inc., 2025 Broadway, Suite #15G, New York, NY 10023;
- Correctional Consultants, LLC, P.O. Box 515, Chattahoochee, FL 32324;
- iColor Printing and Mailing, Inc., 22873 Lockness Avenue, Torrance, CA 90501; and
- Visual Image Design Firm, LLC, 6845 Narcoossee Road, Suite 59, Orlando, FL 32822.¹⁶

Convicted Vendor List

The DMS has a list of names and addresses of those who have been disqualified from the public contracting and purchasing process due to the conviction of a public entity crime.¹⁷ A vendor

¹⁴ Section 287.135, F.S.

¹⁵ *Vendor Registration and Vendor Lists*,

https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists (last visited February 23, 2021).

¹⁶ *Suspended Vendor List*,

https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists/suspended_vendor_list (last visited February 23, 2021).

¹⁷ Section 287.133, F.S.; Section 287.133(1)(f), F.S., defines the term "public entity" to mean the State of Florida, any of its departments or agencies, or any political subdivision. Section 287.133(1)(g) defines "public entity crime" to mean a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity

who has been placed on the convicted vendor list following a conviction may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity. A public entity may not accept any bid, proposal, or award any contract with a vendor on the convicted vendor list.

After receiving information that a vendor has been convicted of a public entity crime, the DMS must investigate and determine whether good cause exists to place the vendor on the convicted vendor list. If good cause exists, the DMS must provide written notification to the vendor of its intent to place that vendor on the convicted vendor list, and of the vendors' legal rights. If the vendor does not request an administrative hearing, the DMS must enter a final order placing the vendor on the convicted vendor list.

The vendor may file a petition for a formal hearing pursuant to ss. 120.569 and 120.57(1), F.S., to determine whether it is in the public interest¹⁸ for that vendor to be placed on the convicted vendor list. If the administrative law judge determines that the vendor was not convicted or is not an affiliate of such vendor, that vendor or affiliate shall not be placed on the convicted vendor list.¹⁹

A vendor placed on the convicted vendor list may petition for removal from the list no sooner than six months from the date of the final order placing the vendor on that list. A vendor's removal is subject to such conditions as may be prescribed by the administrative law judge upon a determination that removal is in the public interest. If a petition for removal is denied, the vendor may not petition for another hearing on removal for a period of nine months after such denial, unless the petition is based upon a reversal of the conviction on appellate review or a pardon. The DMS may petition for removal prior to the expiration of such period if, in its discretion, it determines that removal would be in the public interest.²⁰

Since 2016, five vendors have petitioned not to be placed on the convicted vendor list. Currently, there is one vendor on the convicted vendor list, Calixte, Jacques A. (Haitian American Association Against Cancer, Inc.).

Discriminatory Vendor List

The DMS maintains a list of the names and addresses of any entity which has been disqualified from the public contracting and purchasing powers due to a violation of any state or federal law prohibiting discrimination on the basis of race, gender, national origin, disability, or religion by an entity under s. 287.134, F.S. A vendor who has been placed on the discriminatory vendor list

or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid, proposal, reply, or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

¹⁸ Section 287.133(3)(e)(2-3), F.S., provides that in determining whether it is in the public interest to place a vendor or affiliate on the convicted vendor list, the administrative law judge shall consider whether the vendor committed a public entity crime, the nature and details of the crime, and the degree of culpability of the vendor

¹⁹ Section 287.133(3)(e)(4), F.S.

²⁰ *Id.*

may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity.²¹

The investigative and administrative process for discriminatory vendors is the same as that described above for the convicted vendor list. Additionally, the removal process and specified timelines are identical.

Currently, there are no vendors on the discriminatory vendor list.

Scrutinized List of Prohibited Companies

Companies on the scrutinized companies with activities in Sudan list or on the scrutinized companies with activities in the Iran petroleum energy sector list are prohibited from bidding on, submitting a proposal or, or entering into or renewing a contract with an agency or local government entity for goods and services of \$1 million or more.²² The State Board of Administration (the board) is charged with maintaining a complete list of scrutinized companies who are judged if they meet the criteria outlined in s. 215.473, F.S.

If the board identifies a company which has active business operations that meet the criteria for scrutiny, the board shall send a written notice informing the company of its scrutinized status and that it may become subject to divestment by the public fund. The notice must inform the company of the opportunity to clarify its business activities and encourage the company to cease its activities within 90 days in order to avoid divestment by the public fund. If the company ceases activities within the provided timeframe, they will be removed from the scrutinized list.

If after 90 days following the written notice the company continues to have scrutinized activities, the board shall sell, redeem, divest, or withdraw all publicly traded securities of the company within 12 months of the company's appearance on the list. A company that the United States government affirmatively declares to be excluded from its present or any future federal sanctions regime relating to Iran or Sudan is not subject to divestment.

There are currently 78 companies on the scrutinized list of prohibited companies. No companies were added to the scrutinized list in the fourth quarter of 2020.

Vendor Complaint List

The DMS tracks formal complaints issued to vendors by state agencies. The complaints, and information associated with them, are provided to agencies to assist in determining vendor responsibility²³. There are no vendors on the vendor complaint list at this time.²⁴

²¹ Section 287.134, F.S.

²² Section 287.135, F.S.

²³ Section 287.012(25), F.S. defines the term “responsible vendor” as a vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance.

²⁴ The Department of Management Services, *Vendor Complaint List*, available at

https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists/vendor_complaint_list (last visited February 24, 2021)

III. Effect of Proposed Changes:

Section 1 creates s. 287.1351, F.S., to prohibit a vendor that is in default on any contract with an agency or has otherwise repeatedly demonstrated an inability to fulfill the terms and conditions of previous state contracts from submitting a bid, or proposal to an agency after its placement on the suspended vendor list. The bill defines “vendor” as a person or entity that provides goods and services to an agency under a contract or submits a bid, proposal, to an agency. An agency may not accept a bid, or enter into or renew any contract with a vendor that is on the suspended vendor list until the vendor has been removed from the suspended vendor list and returned to the vendor list by the DMS.

An agency is required to notify the DMS of any vendor that has met grounds for suspension as specified by the bill. The DMS will review submitted evidence by the agency, and decide whether good cause exists to remove the company from the vendor list and to place it on the suspended vendor list. A vendor may not be removed from the vendor list without receiving an individual notice of intent from the department. Within 21 days after receipt of the notice of intent, a vendor may file a petition for a formal hearing pursuant to ss. 120.569 and 120.57, F.S. If a vendor does not file a petition in a timely matter, it is deemed to have waived its right to a hearing, and the DMS’s decision to remove the vendor from the list becomes final agency action.

If placed on the suspended vendor list, a vendor may file a petition with the DMS one year or more after entry of the final order of its suspension. The proceeding of the petition must be conducted in accordance with Chapter 120. If a petition for removal from the suspended vendor list is denied, the vendor may not petition for another hearing for at least nine months after date of denial. The DMS may petition for the suspended vendor’s removal if in the department’s discretion, the removal of the vendor from the suspended list would be in the public’s interest.

Section 2 provides that the bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

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:

Vendors may incur costs associated with petitioning for removal from the suspended vendors list.

C. Government Sector Impact:

The DMS may incur additional workload and costs associated with maintaining the suspended vendor list and providing due process to vendors petitioning to be removed from the list.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. None. Statutes Affected:

This bill creates section 287.1351 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Cruz

18-00195-21

2021788

1 A bill to be entitled
 2 An act relating to state contracting; creating s.
 3 287.1351, F.S.; defining the term "vendor";
 4 prohibiting vendors that default or otherwise fail to
 5 fulfill terms and conditions of a state contract from
 6 submitting a bid, proposal, or reply, or entering into
 7 or renewing a contract, to provide any goods or
 8 services to an agency after placement on the suspended
 9 vendor list; prohibiting an agency from accepting any
 10 bids, proposals, or replies from, or entering into or
 11 renewing any contract with, any suspended vendor until
 12 certain conditions are met; requiring an agency to
 13 notify the Department of Management Services of, and
 14 provide certain information regarding, any such
 15 vendors; requiring the department to review any vendor
 16 reported by an agency; requiring the department to
 17 notify any vendor of any intended removal from the
 18 vendor list; specifying administrative remedies, and
 19 applicable procedures, for an affected vendor;
 20 requiring the department to place any such vendor on
 21 the suspended vendor list; authorizing a suspended
 22 vendor's removal from the suspended vendor list in
 23 accordance with specified procedures; specifying
 24 requirements and limitations; providing an effective
 25 date.

26
 27 Be It Enacted by the Legislature of the State of Florida:

28
 29 Section 1. Section 287.1351, Florida Statutes, is created

Page 1 of 4

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

18-00195-21

2021788

30 to read:
 31 287.1351 Suspended vendors; state contracts.-
 32 (1) As used in this section, the term "vendor" means a
 33 person or an entity that provides goods or services to an agency
 34 under a contract or submits a bid, proposal, or reply to provide
 35 goods or services to an agency.
 36 (2) (a) A vendor that is in default on any contract with an
 37 agency or has otherwise repeatedly demonstrated a recent
 38 inability to fulfill the terms and conditions of previous state
 39 contracts or to adequately perform its duties under those
 40 contracts may not submit a bid, proposal, or reply to an agency
 41 or enter into or renew a contract to provide any goods or
 42 services to an agency after its placement, pursuant to this
 43 section, on the suspended vendor list.
 44 (b) An agency may not accept a bid, proposal, or reply
 45 from, or enter into or renew any contract with, a vendor on the
 46 suspended vendor list until such vendor has been removed from
 47 the suspended vendor list and returned to the vendor list
 48 maintained by the department pursuant to s. 287.042(1)(a) and
 49 (b) and the vendor has reimbursed the agency for any
 50 reprocurement costs.
 51 (3) An agency shall notify the department of any vendor
 52 that has met the grounds for suspension described in paragraph
 53 (2)(a). The agency must provide documentation to the department
 54 evidencing the vendor's default or other grounds for suspension.
 55 The department shall review the documentation provided and
 56 determine whether good cause exists to remove the company from
 57 the vendor list and to place it on the suspended vendor list. If
 58 good cause exists, the department must notify the vendor in

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

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59 writing of its intent to remove the vendor from the vendor list
 60 and of the vendor's right to an administrative hearing and the
 61 applicable procedures and time requirements for any such
 62 hearing. If the vendor does not request an administrative
 63 hearing, the department must enter a final order removing the
 64 vendor from the vendor list. A vendor may not be removed from
 65 the vendor list without receiving an individual notice of intent
 66 from the department.

67 (4) Within 21 days after receipt of the notice of intent,
 68 the vendor may file with the department a petition for a formal
 69 hearing pursuant to ss. 120.569 and 120.57 to challenge the
 70 department's decision to remove the vendor from the vendor list.
 71 A vendor that fails to timely file a petition in accordance with
 72 this subsection is deemed to have waived its right to a hearing,
 73 and the department's decision to remove the vendor from the
 74 vendor list becomes final agency action.

75 (5) (a) The department shall place any vendor removed from
 76 the vendor list pursuant to this section on the suspended vendor
 77 list. One year or more after entry of the final order of its
 78 suspension, a suspended vendor may file a petition with the
 79 department for removal from the suspended vendor list. The
 80 proceeding on the petition must be conducted in accordance with
 81 chapter 120. The vendor may be removed from the suspended vendor
 82 list if the administrative law judge determines that removal
 83 from the list would be in the public interest. In determining
 84 whether removal from the list would be in the public interest,
 85 the administrative law judge may consider, but is not limited
 86 to, whether the suspended vendor has prepared a corrective
 87 action plan that addresses the original grounds for default or

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 88 failure to fulfill the terms and conditions of the contract,
 89 reimbursed the agency for any reprocurement costs, or provided
 90 additional evidence that the vendor has taken other remedial
 91 action.

92 (b) If a petition for removal from the suspended vendor
 93 list is denied, the vendor may not petition for another hearing
 94 on removal for a period of at least 9 months after the date of
 95 the denial. The department may petition for the suspended
 96 vendor's removal before the expiration of such period if, in the
 97 department's discretion, the department determines that removal
 98 from the suspended vendor list would be in the public interest.

99 Section 2. This act shall take effect July 1, 2021.

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



The Florida Senate

Committee Agenda Request

To: Senator Ray Wesley Rodrigues, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: February 5, 2021

I respectfully request that **Senate Bill #788**, relating to State Contracting, be placed on the:

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

A handwritten signature in blue ink, appearing to read "Janet Cruz".

Senator Janet Cruz
Florida Senate, District 18

CC: Joe McVaney, Staff Director
Tamra Redig, Administrative Assistant

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: **SB 952**

INTRODUCER: Senator Burgess

SUBJECT: Water Management Districts

DATE: March 2, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Schreiber	Rogers	EN	Favorable
2. Ponder	McVaney	GO	Favorable
3. _____	_____	RC	_____

I. Summary:

SB 952 authorizes a water management district to purchase commodities and services from the contracts of other specified entities, when such contracts have been procured pursuant to certain processes and otherwise meet the procurement requirements of the water management district. The bill authorizes a water management district to purchase from the contracts of: special districts, municipalities, counties, or other political subdivisions; educational institutions; other states; the Federal Government; nonprofit entities; or purchasing cooperatives. The authorization does not apply to purchasing services in the fields of architecture, professional engineering, landscape architecture, or registered surveying and mapping.

A water management district may avoid costs associated with competitive procurement process if the district uses other contracts to purchase commodities and services.

The bill takes effect July 1, 2021.

II. Present Situation:

Procurement of Commodities and Services

Chapter 287, F.S., regulates state agency procurement of personal property and services. The Department of Management Services (DMS) is responsible for overseeing state purchasing activity, including professional and contractual services, as well as commodities needed to support agency activities.¹ DMS establishes purchasing agreements and procures state term contracts for commodities and contractual services, and establishes uniform procurement policies, rules, and procedures.² DMS negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.

¹ See ss. 287.032 and 287.042, F.S.

² *Id.*; see Fla. Admin. Code ch. 60A-1.

Agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These methods include the following:

- Single source contracts,³ used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid,⁴ used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposals,⁵ which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate,⁶ which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services, by an agency dealing with a limited number of vendors.

For procurement of commodities or contractual services in excess of \$35,000, agencies must use a competitive solicitation process.⁷ However, specified contractual services and commodities are not subject to competitive solicitation requirements.⁸

Chapter 287 defines "agency" to mean any unit of the executive branch of state government.⁹ This definition does not apply to water management districts or local governments, so generally these entities are not subject to the requirements of the chapter. In general, each water management district¹⁰ maintains its own processes and requirements for procurement.¹¹

Consultants' Competitive Negotiation Act

While the requirements of ch. 287, F.S., apply generally to state agencies only, s. 287.055, F.S., known as the Consultants' Competitive Negotiation Act, applies to state agencies as well as local

³ Section 287.057(3)(c), F.S.

⁴ Section 287.057(1)(a), F.S.

⁵ Section 287.057(1)(b), F.S.

⁶ Section 287.057(1)(c), F.S.

⁷ Section 287.057(1), F.S.

⁸ Section 287.057(3)(e), F.S.

⁹ Section 287.012(1), F.S. The term "agency" is defined as "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."

¹⁰ See 373.019(23), F.S. "Water management districts" are defined as "any flood control, resource management, or water management district operating under the authority of this chapter."

¹¹ See SFWMD, *Procurement*, <https://www.sfwmd.gov/doing-business-with-us/procurement> (last visited Feb. 9, 2021); see NWFWM, *District Procurement*, <https://www.nwfwater.com/Business-Finance/District-Procurement> (last visited Feb. 9, 2021); see SJRWMD, *Procurement*, <https://www.sjrwm.com/finance/procurement/> (last visited Feb. 9, 2021); see SRWMD, *Bids & Contracts*, <https://www.mysuwanneeriver.com/26/Bids-Contracts> (last visited Feb. 9, 2021); see SWFWMD, *Procurement and Contracts Administration*, <https://www.swfwmd.state.fl.us/business/finance/procurement-and-contracts-administration> (last visited Feb. 9, 2021).

governments and water management districts.¹² The Act requires these entities to follow specified procedures when purchasing professional services involving the following fields:

- Architecture;
- Professional Engineering;
- Landscape Architecture; or
- Registered Surveying and Mapping.¹³

Purchasing from Other Entities' Contracts

Chapter 287, F.S., and rules pursuant thereto, authorize state agencies to purchase commodities and services from the contracts of other entities, such as the federal government and other states.¹⁴ Section 287.056, F.S., provides that state agencies must, and “eligible users” may, purchase commodities and contractual services from purchasing agreements established and state term contracts procured by DMS.¹⁵ The definition of eligible user includes water management districts.¹⁶ Thus, a water management district is authorized to purchase commodities and services from state agency contracts.

In 2009, the Legislature created s. 189.053, F.S., to authorize special districts to purchase commodities and contractual services, other than services the acquisition of which is governed by 287.055, F.S., from the purchasing agreements of other special districts, municipalities, or counties which have been procured pursuant to competitive bid, requests for proposals, requests for qualifications, competitive selection, or competitive negotiations, and which are otherwise in compliance with general law if the purchasing agreement of the other special district, municipality, or county was procured by a process that would have met the procurement requirements of the purchasing special district.¹⁷ The definition of “special districts” includes water management districts for these purposes.¹⁸ Thus, a water management district is authorized

¹² Section 287.055(2)(b), F.S. The term “agency” is defined as “the state, a state agency, a municipality, a political subdivision, a school district, or a school board.”

¹³ Section 287.055, F.S.

¹⁴ See s. 287.042(16), F.S.; see Fla. Admin. Code R. 60A-1.045(5). Alternative purchasing methods require approval from DMS.

¹⁵ See DMS, *State Contracts and Agreements*,

https://www.dms.myflorida.com/business_operations/state_purchasing/state_contracts_and_agreements (last visited Feb. 10, 2021).

¹⁶ Section 287.012(11), F.S. “Eligible user” is defined in statute as “any person or entity authorized by the department pursuant to rule to purchase from state term contracts or to use the online procurement system”; Fla. Admin. Code R. 60A-1.001(2). “Eligible user” is defined in rule to include “(e) Political subdivisions, including counties, cities, towns, villages and districts, as described by Section 1.01(8), F.S., and instrumentalities thereof”; see s. 1.01(8), F.S. Providing that, in construing the statutes, the words “political subdivision” include “counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state.”

¹⁷ Section 189.053, F.S. This process is referred to as “piggybacking.” The National Institute of Government Purchasing defines “piggybacking” as “a form of intergovernmental cooperative purchasing in which an entity will be extended the same pricing and terms of a contract entered into by another entity. Generally the originating entity will competitively award a contract that will include language allowing for other entities to utilize the contract, which may be to their advantage in terms of pricing, thereby gaining economies of scale that they would otherwise not receive if they competed on their own.” See *Public Procurement Practice, Use of Cooperative Contracts for Public Procurement*, <https://www.nigp.org/resource/global-best-practices/Use%2520of%2520Cooperative%2520Contracts%2520for%2520Public%2520Procurement%2520Best%2520Practice.pdf?dl=true> (last visited February 24, 2022).

¹⁸ Section 189.012(6), (7), F.S.

to purchase commodities and services from the contracts of other special districts, municipalities, and counties, pursuant to the specified standards.

III. Effect of Proposed Changes:

Section 1 creates s. 373.6075, F.S., to authorize a water management district to purchase commodities and contractual services from the contracts that have been procured by other entities pursuant to competitive bids, requests for proposals, requests for qualifications, competitive selection, or competitive negotiations, and that are otherwise in compliance with general law if the contract of the procuring entity was procured by a process that would have met the procurement requirements of the purchasing water management district. The bill authorizes water management districts, for contracts procured in the manner specified in the bill, to purchase from the contracts of the following entities:

- Special districts, municipalities, counties, or other political subdivisions;
- Educational institutions;
- Other states;
- The Federal Government;
- Nonprofit entities; or
- Purchasing cooperatives.

The grant of authority to water management districts to purchase from the contracts of other entities does not apply to professional services within the scope of practice of, or performed in connection with the professional employment or practice of, the following fields:

- Architecture;
- Professional Engineering;
- Landscape Architecture; or
- Registered Surveying and Mapping.

According to email correspondence from January 2021, the Southwest Florida Water Management District believes that the general language of the bill clarifies purchasing language for water management districts and puts them on equal footing with other public entities such as state agencies, counties, and municipalities that have broader “piggyback” authority.¹⁹

Section 2 provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁹ Email from Cara Martin, Southwest Florida Water Management District Government and Community Affairs Office Chief (Jan. 14, 2021)(on file with the Florida Senate Environment and Natural Resources Committee). The email is referring to HB 169, which contains essentially the same substantive language as SB 952.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The bill may have an indeterminate, positive fiscal impact on water management districts by permitting the districts to purchase commodities and services from the contracts of other entities, potentially resulting in avoiding costs associated with the procurement process and potentially lower prices or better purchasing options. The Southwest Florida Water Management District has stated that the bill will result in efficiencies both in terms of the procurement process and cost savings.²⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 373.6075 of the Florida Statutes.

²⁰ *Id.*

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Burgess

20-00706-21

2021952

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

Section 1. Section 373.6075, Florida Statutes, is created to read:

373.6075 Water management district purchases from contracts of other entities.—A water management district may purchase commodities and contractual services, other than services the acquisition of which is governed by s. 287.055, from the contracts of special districts, municipalities, counties, or other political subdivisions; educational institutions; other states; the Federal Government; nonprofit entities; or purchasing cooperatives, which have been procured pursuant to competitive bids, requests for proposals, requests for qualifications, competitive selection, or competitive negotiations, and which are otherwise in compliance with general law if the contract of the procuring entity was procured by a process that would have met the procurement requirements of the purchasing water management district.

Section 2. This act shall take effect July 1, 2021.



The Florida Senate

Committee Agenda Request

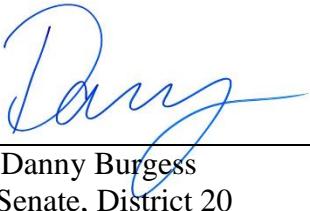
To: Senator Ray Wesley Rodrigues, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: February 22, 2021

I respectfully request that **Senate Bill #952**, relating to Water Management Districts, be placed on the:

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



Senator Danny Burgess
Florida Senate, District 20

THE FLORIDA SENATE

APPEARANCE RECORD

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

March 3 2021

Meeting Date

SB 952

Bill Number (if applicable)

Topic

Water Management Dist Authorization H26 to

Amendment Barcode (if applicable)

Name

David, Sender

Job Title

Refined Business Owner/Primary Wrote

Address

16 Watergreen Dr

Phone

352 865 6507

Street

Front Land Park Rd 34731

Email

Golfendove1955@gmail.com

City

State

Zip

Speaking: For Against InformationWaive Speaking: In Support Against

Representing

Self Public Commented 4 timesAppearing at request of Chair: Yes NoLobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: **SB 1104**

INTRODUCER: Senator Rodriguez

SUBJECT: Division of Library and Information Services

DATE: **March 2, 2021**

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Candelaria</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2. _____	_____	<u>ATD</u>	_____
3. _____	_____	<u>AP</u>	_____

I. Summary:

SB 1104 consolidates and clarifies the responsibilities and duties of the Division of Library and Information Services (division) within the Department of State, in part to better reflect current practices.

The bill requires the certification of funds provided to libraries to be given to the Chief Financial Officer annually – as opposed to by December 1 of each year, as provided under current law. The bill repeals responsibilities and duties that the division does not currently undertake, including efforts to preserve, collect, process, transcribe, index, and research the oral history of Florida government and the preservation of duplicate records. The bill also repeals s. 257.34, F.S., relating to the creation, duties and responsibilities of the Florida International Archive and Repository. The division has adequate authority pursuant to section 257.35, Florida Statutes, relating to the Florida State Archives, to continue to perform this function.

The bill specifies that the division is responsible for setting standards and guidelines for the retention, storage, security, and disposal of records and clarifies the division's specific responsibilities when records are stored by other agencies in a record center it operates. The bill also specifies the role and responsibility of an agency's records management liaison officer.

Related to library cooperative grants, the bill removes the cap of \$400,000 on an annual grant from the state available to the administrative unit of a library cooperative for the purpose of sharing library resources. With the removal of the statutory cap of \$400,000, the bill will have an indeterminate impact for multitype library cooperatives who seek funds under the library cooperative grant program.

The bill will take effect on July 1, 2021.

II. Present Situation:

The Division of Library and Information Services – Allocation of State Funds

State funds allocated to libraries must be expended only for library purposes in the manner prescribed by the division. Such funds may not be expended for the purchase or construction of a library building or library quarters except such funds specifically appropriated for construction purposes.¹

The division must establish operating standards under which libraries and library cooperatives will be eligible to receive state funds² The division is required to certify to the Chief Financial Officer the amount of funds paid to each county, municipality, special district, or special tax district on or before December 1 of each year.³

The Florida International Archive and Repository and The Florida State Archives

Section 257.34, F.S., establishes the Florida International Archive and Repository within the division for the preservation of public records,⁴ including manuscripts, international judgements involving disputes between domestic and foreign business, and all other public matters that the Department of State or the Florida Council of International Relations deems relevant to international issues. The division is charged with:

- Organizing and administering the Florida International Archive and Repository;
- Preserving and administering records that are transferred to its custody;⁵
- Permitting records to be inspected and copied at reasonable times and under the supervision of the division;⁶
- Assisting the records and information management program in the determination of retention values for records;
- Cooperating with and assisting state institutions, departments, agencies, counties, municipalities, and individuals engaged in internationally related activities;
- Providing a public research room where, under rules established by the division, the materials in the international archive and repository may be studied;
- Conducting, promoting, and encouraging research in international trade, government, and culture and maintaining a program of information, assistance, coordination, and guidance for public officials, educational institutions, libraries, the scholarly community, and the general public engaged in such research;
- Cooperating with and assisting agencies, libraries, institutions, and individuals in projects concerned with internationally related issues;
- Preserving original materials relating to internationally related issues; and

¹ Section 257.24, F.S.

² Sections 257.15 and 257.41(2), F.S. Section 257.41(2), F.S., further providing that the division must issue a certificate to each library cooperative that meets the standards and rules established.

³ Section 257.22, F.S.

⁴ Public records as defined in s. 119.011, F.S.

⁵ This includes accepting, arranging, and preserving the records according to approved archival and repository practices.

⁶ All public records transferred to the custody of the division are subject to the provisions of s. 119.07(1), F.S.

- Assisting and cooperating with the records and information management program in the training and information program described in s. 257.36(1)(g), F.S.⁷

Section 257.35, F.S., creates the Florida State Archives within the division for the preservation of public records,⁸ manuscripts, and other archival material that have been determined by the division to have sufficient historical or other value to warrant continued preservation and have been accepted by the division for deposit in its custody. The division performs similar duties for the Florida State Archives as it does for the Florida International Archive, including:

- Organizing and administering the Florida State Archives;
- Preserving and administering such records transferred to its custody;⁹
- Permitting records to be inspected and copied at reasonable times and under the supervision of the division;
- Assisting the records and information management program in the determination of retention values for records;
- Cooperating with and assisting state institutions, departments, agencies, counties, municipalities, and individuals engaged in activities in the field of state archives, manuscripts, and history;
- Accepting from any person any paper, book, record, or similar material which in the judgment of the division warrants preservation in the state archives;
- Providing a public research room where, under rules established by the division, the materials in the state archives may be studied;
- Conducting, promoting, and encouraging research in Florida history, government, and culture and maintaining a program of information, assistance, coordination, and guidance for public officials, educational institutions, libraries, the scholarly community, and the general public engaged in such research;
- Cooperating with and assisting agencies, libraries, institutions, and individuals in projects designed to preserve original source materials relating to Florida history, government, and culture;
- Preparing and publishing handbooks, guides, indexes, and other literature directed toward encouraging the preservation and use of the state's documentary resources;
- Encouraging and initiating efforts to preserve, collect, process, transcribe, index, and research the oral history of Florida government; and
- Assisting and cooperating with the records and information management program in the training and information program described in s. 257.36(1)(g), F.S.¹⁰

Records and Information Management

Section 257.36(1), F.S., creates a records management program within the division. The program's purpose is directed to the application of efficient and economical management methods relating to the creation, utilization, maintenance, retention, preservation, and disposal of records.¹¹ The division must establish and operate a records center or centers primarily for the

⁷ Section 257.34(1), F.S.

⁸ Public records as defined in s. 119.011, F.S.

⁹ This includes accepting, arranging, and preserving the records according to approved archival practices.

¹⁰ Section 257.35(1), F.S.

¹¹ Section 257.36(1)(a), F.S.

storage, processing, servicing, and security of public records that must be retained for varying periods of time but that are not required to be retained in an agency's office equipment or space.¹²

The division must create retention schedules which govern when public records may be destroyed or otherwise disposed of.¹³

Section 257.36(1)(g), F.S., requires the division to institute and maintain a training program in (i) all phases of records and information management to bring approved practices to the attention of all agencies and (ii) the requirements relating to access to public records under ch. 119, F.S.

Each agency¹⁴ has the duty to cooperate with the division in complying with the provisions of ch. 257, F.S., and must designate a records management liaison officer. Further, each agency must establish and maintain an active and continuing program for the economical and efficient management of records.¹⁵

Library Cooperatives and Library Cooperative Grants

The Legislature intended that library cooperative programs be established to augment the local library resources with regional and statewide services.¹⁶ A multitype library cooperative (MLC) is a not-for-profit corporation, qualified or registered pursuant to ch. 617, F.S., and in good standing, consisting of two or more libraries under separate governance and of more than one type, including any combination of academic, school, special, state institution, and public libraries as required by s. 257.41(1), F.S.¹⁷

The administrative unit of a library cooperative is eligible to receive an annual grant (library cooperative grant) from the state of not more than \$400,000 for the purpose of sharing library resources. Grant funds may not be used to supplant local funds or other funds. Additionally, a library cooperative must provide from local sources matching cash funds equal to 10 percent of the grant award.¹⁸ Florida's priority for use of the library cooperative grants and matching funds is for the purpose of sharing library resources between members of the Florida Library Information Network.¹⁹ Library cooperative grants and local matching funds must be expended on resource sharing activities and related training, provided services to all Florida Information Network member libraries.

¹² Section 257.36(b), F.S.

¹³ Section 257.36(6), F.S.

¹⁴ Section 257.36(5), F.S., defines "agency", for purposes of this section, to mean any state, county, district, or municipal officer, department, division, bureau, board, commission, or other separate unit of government created or established by law.

¹⁵ See s. 257.36(5), F.S.

¹⁶ Section 257.40, F.S.

¹⁷ Department of State, *Library Cooperative Grant Guidelines*, 2020-2021, at p. 5,

<https://dos.myflorida.com/media/702617/cooperativegrantguidelines2020-2021.pdf> (last visited February 5, 2020).

¹⁸ Section 257.42, F.S.

¹⁹ See *supra* note 18 at p. 1.

Florida's five MLCs and their service areas for purpose of the Library Cooperative Grant Program are as follows:

- NEFLIN - Northeast Florida Library Information Network service area includes: Alachua, Baker, Bradford, Brevard, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist, Hamilton, Lafayette, Levy, Madison, Marion, Nassau, Putnam, Seminole, St. Johns, Sumter, Suwannee, Taylor, Union, and Volusia counties.
- PLAN - Panhandle Library Access Network service area includes: Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Okaloosa, Santa Rosa, Wakulla, Walton, and Washington counties.
- SEFLIN - Southeast Florida Library Information Network service area includes: Broward, Martin, Miami-Dade, and Palm Beach counties.
- SWFLN - Southwest Florida Library Network service area includes: Charlotte, Collier, Hendry, Lee, and Monroe counties.
- TBLC - Tampa Bay Library Consortium service area includes: Citrus, DeSoto, Glades, Hardee, Hernando, Highlands, Hillsborough, Indian River, Lake, Manatee, Okeechobee, Orange, Osceola, Pasco, Pinellas, Polk, Sarasota, and St. Lucie counties.²⁰

III. Effect of Proposed Changes:

Section 1 amends s. 257.22, F.S., to provide that the certification of funds by the division to the Chief Financial Officer be made *annually* – as opposed to by December 1 of each year.²¹ The Department of State indicates the division currently must provide two certifications to the Chief Financial Officer. The first is submitted by the statutory deadline of December 1 and contains estimated grant amounts. The second certification is submitted later and reflects the actual final grant amounts. Thus, the bill will allow the division to make one certification of funds.

Section 2 repeals s. 257.34, F.S., relating to the creation, duties, and responsibilities of the Florida International Archive and Repository. The division has adequate authority pursuant to s. 257.35, F.S., relating to the Florida State Archives, to continue to perform this function.

Section 3 amends s. 257.35, F.S., relating to the Florida State Archives, to eliminate the requirement that the division encourage and initiate efforts to preserve, collect, process, transcribe, index, and research the oral history of Florida government. According to the Department of State, these activities have not been undertaken by the department in the past.²²

Section 4 amends s. 257.36, F.S., relating to the records and information management program. The bill specifies that the requirement related to analyzing, developing, establishing, and coordinating standard, procedures, and techniques of record-making and recordkeeping, includes, but is not limited to, standards and guidelines for retention, storage, security, and disposal of records.

²⁰ *Id.* at p. 2.

²¹ See Department of State, *Senate Bill 1570 Agency Legislative Analysis* (January 22, 2020) (on file with the Senate Committee on Governmental Oversight and Accountability).

²² *Id.*

This section requires an agency's records management liaison officer to serve as the primary point of contact between the agency and the division for records management purposes and to conduct any records management functions assigned by the agency.

This section also clarifies, in certain instances, the division's specific responsibilities when records are stored by other agencies in a storage center operated by the division. This section repeals provisions related to preservation duplicates; the division will no longer be responsible for making and storing preservation duplicates of records. The Department of State indicates that the preservation of duplicates is no longer a function of the division.²³

Finally, this section amends provisions related to the destruction of records. Under current law, the division must notify, by certified mail, the agency that transferred the record to the division when the record is eligible for destruction. The agency has 90 days to respond to request continued retention of the record or authorize its destruction or disposal. Nonresponse passes the title of the record to the division. The bill repeals the requirement that the notice be sent by certified mail and the time period by which the agency must respond.

Section 5 amends s. 257.42, F.S., to remove the cap of \$400,000 on an annual library cooperative grant. Thus, the Legislature will have more discretion in making appropriations for library cooperative grants.

Section 6 amends s. 120.54, F.S., to correct a cross-reference.

Section 7 provides that the act takes effect on July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

²³ *Id. See also* s. 92.29, F.S., which provides that photographic reproductions or reproductions through electronic recordkeeping systems made by an agency in the regular course of business shall be admitted and received as evidence similar to the original record.

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 alter existing, recurring appropriations for library cooperative grants. However, the bill changes how those appropriations may be used. A library cooperative may receive a grant in excess of \$400,000 annually if the bill is enacted.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 257.22, 257.35, 257.36, 257.42 and 120.54.

The bill repeals section 257.34 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

By Senator Rodriguez

39-01534-21 2021

A bill to be entitled

An act relating to the Division of Library and Information Services; amending s. 257.22, F.S.; removing the date by which the division must submit an annual report regarding the allocation of library funding to the Chief Financial Officer; repealing s. 257.34, F.S., relating to the Florida International Archive and Repository; amending s. 257.35, F.S.; revising the duties and responsibilities of the division in the administration of the Florida State Archives; conforming a cross-reference; amending s. 257.36, F.S.; revising the duties and responsibilities of the division in the administration of the records and information management program; clarifying provisions governing the storage of records transferred to the division for storage; removing the requirement that the division notify an agency by certified mail of a record's eligibility for destruction; deleting a provision that provides for the title of a record to pass to the division under specified circumstances; deleting a provision specifying the effect of a preservation duplicate of a record; specifying the role and duties of records management liaison officers; amending s. 257.42, F.S.; removing a limitation on the annual grant amount that the administrative unit of a library cooperative may receive from the state for purposes of sharing library resources; amending s. 120.54, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Section 257.22, Florida Statutes, is amended to read:

257.22 Division of Library and Information Services; allocation of funds.—Any moneys that may be appropriated for use by a county, a municipality, a special district, or a special tax district for the maintenance of a library or library service shall be administered and allocated by the division ~~of Library and Information Services~~ in the manner prescribed by law. ~~on or before December 1 of each year, The division shall annually~~ certify to the Chief Financial Officer the amount to be paid to each county, municipality, special district, or special tax district.

Section 2. Section 257.34, Florida Statutes, is repealed.

Section 3. Paragraphs (h) and (i) of subsection (1) of section 257.35, Florida Statutes, are amended to read:

257.35 Florida State Archives.—

(1) There is created within the Division of Library and Information Services of the Department of State the Florida State Archives for the preservation of those public records, as defined in s. 119.011(12), manuscripts, and other archival material that have been determined by the division to have sufficient historical or other value to warrant their continued preservation and have been accepted by the division for deposit in its custody. It is the duty and responsibility of the division to:

(h) Encourage and initiate efforts to preserve, collect,

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59 ~~process, transcribe, index, and research the oral history of~~
 60 ~~Florida government.~~

61 (i) Assist and cooperate with the records and information
 62 management program in the training and information program
 63 described in s. 257.36(1)(d) ~~257.36(1)(g)~~.

64 Section 4. Section 257.36, Florida Statutes, is amended to
 65 read:

66 257.36 Records and information management.—

67 (1) There is created within the Division of Library and
 68 Information Services of the Department of State a records and
 69 information management program. It is the duty and
 70 responsibility of the division to:

71 (a) Establish and administer a records management program
 72 directed to the application of efficient and economical
 73 management methods relating to the creation, utilization,
 74 maintenance, retention, preservation, and disposal of records.

75 (b) Analyze, develop, establish, and coordinate standards,
 76 procedures, and techniques of recordmaking and recordkeeping,
 77 including, but not limited to, standards and guidelines for
 78 retention, storage, security, and disposal of records.

79 (c) Establish and operate a records center or centers
 80 primarily for the storage, processing, servicing, and security
 81 of public records that must be retained for varying periods of
 82 time but need not be retained in an agency's office equipment or
 83 space. To this end, the records center shall:

84 (e) ~~Analyze, develop, establish, and coordinate standards,~~
 85 ~~procedures, and techniques of recordmaking and recordkeeping.~~

86 1.(d) Ensure the maintenance and security of stored records
 87 which are deemed appropriate for preservation.

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88 2.(e) Establish safeguards against unauthorized or unlawful
 89 removal or loss of stored records.

90 3.(f) Initiate appropriate action to recover stored records
 91 removed unlawfully or without authorization.

92 (d)(g) Institute and maintain a training and information
 93 program in:

94 1. All phases of records and information management to
 95 bring approved and current practices, methods, procedures, and
 96 devices for the efficient and economical management of records
 97 to the attention of all agencies.

98 2. The requirements relating to access to public records
 99 under chapter 119.

100 (e)(h) Make continuous surveys of recordkeeping operations.

101 (f)(i) Recommend improvements in current records management
 102 practices, including the use of space, equipment, supplies, and
 103 personnel in creating, maintaining, and servicing records.

104 (g)(j) Establish and maintain a program in cooperation with
 105 each agency for the selection and preservation of records
 106 considered essential to the operation of government and to the
 107 protection of the rights and privileges of citizens.

108 (k) ~~Make, or have made, preservation duplicates, or~~
 109 ~~designate existing copies as preservation duplicates, to be~~
 110 ~~preserved in the place and manner of safekeeping as prescribed~~
 111 ~~by the division.~~

112 (2)(a) All records transferred to the division for storage
 113 may be held ~~by it in its~~ a records center or centers, to be
 114 designated by the division ~~it~~, for such time as in its judgment
 115 retention therein is deemed necessary. At such time as it is
 116 established by the division, such records as are determined by

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117 it as having historical or other value warranting continued
 118 preservation shall be transferred to the Florida State Archives.

119 (b) Title to any record stored detained in any records
 120 center operated by the division remains shall remain in the
 121 agency transferring such record to the division. When the
 122 Legislature transfers any duty or responsibility of an agency to
 123 another agency, the receiving agency shall be the custodian of
 124 public records with regard to the public records associated with
 125 that transferred duty or responsibility, and shall be
 126 responsible for the records storage service charges of the
 127 division. If an agency is dissolved and the legislation
 128 dissolving that agency does not assign an existing agency as the
 129 custodian of public records for the dissolved agency's records,
 130 then the Cabinet is the custodian of public records for the
 131 dissolved agency, unless the Cabinet otherwise designates a
 132 custodian. The Cabinet or the agency designated by the Cabinet
 133 shall be responsible for the records storage service charges of
 134 the division.

135 (c) When a record held in a records center is eligible for
 136 destruction, the division shall notify, in writing, by certified
 137 mail, the agency that which transferred the record. The agency
 138 shall have 90 days from receipt of that notice to respond by
 139 requesting continued retention of the record or authorizing
 140 destruction or disposal of the record. If the agency does not
 141 respond within that time, title to the record shall pass to the
 142 division.

143 (3) The division may charge fees for supplies and services,
 144 including, but not limited to, shipping containers, pickup,
 145 delivery, reference, and storage. Fees shall be based upon the

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146 actual cost of the supplies and services and shall be deposited
 147 in the Records Management Trust Fund.

148 (4) (a) Any preservation duplicate of any record made
 149 pursuant to this chapter shall have the same force and effect
 150 for all purposes as the original record. A transcript,
 151 exemplification, or certified copy of such preservation
 152 duplicate shall be deemed, for all purposes, to be a transcript,
 153 exemplification, or certified copy of the original record.

154 (5) For the purposes of this section, the term "agency"
 155 means shall mean any state, county, district, or municipal
 156 officer, department, division, bureau, board, commission, or
 157 other separate unit of government created or established by law.

158 (b) It is the duty of each agency to:
 159 1. (a) Cooperate with the division in complying with the
 160 provisions of this chapter.

161 2. and Designate a records management liaison officer to
 162 serve as the primary point of contact between the agency and the
 163 division for records management purposes and to conduct any
 164 records management functions assigned by the agency.

165 3. (b) Establish and maintain an active and continuing
 166 program for the economical and efficient management of records.

167 (5) A public record may be destroyed or otherwise
 168 disposed of only in accordance with retention schedules
 169 established by the division. The division shall adopt reasonable
 170 rules not inconsistent with this chapter which shall be binding
 171 on all agencies relating to the destruction and disposition of
 172 records. Such rules must shall provide, but are not be limited
 173 to:

174 (a) Procedures for complying and submitting to the division

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175 records-retention schedules.

176 (b) Procedures for the physical destruction or other

177 disposal of records.

178 (c) Standards for the reproduction of records for security

179 or with a view to the disposal of the original record.

180 Section 5. Section 257.42, Florida Statutes, is amended to

181 read:

182 257.42 Library cooperative grants.—The administrative unit

183 of a library cooperative is eligible to receive an annual grant

184 from the state ~~of not more than \$400,000~~ for the purpose of

185 sharing library resources based upon an annual plan of service

186 and expenditure and an annually updated 5-year, long-range plan

187 of cooperative library resource sharing. Those plans, which must

188 include a component describing how the cooperative will share

189 technology and the use of technology, must be submitted to the

190 division ~~of Library and Information Services of the Department~~

191 ~~of State~~ for evaluation and possible recommendation for funding

192 in the division's legislative budget request. Grant funds may

193 not be used to supplant local funds or other funds. A library

194 cooperative must provide from local sources matching cash funds

195 equal to 10 percent of the grant award.

196 Section 6. Subsection (8) of section 120.54, Florida

197 Statutes, is amended to read:

198 120.54 Rulemaking.—

199 (8) RULEMAKING RECORD.—In all rulemaking proceedings the

200 agency shall compile a rulemaking record. The record shall

201 include, if applicable, copies of:

202 (a) All notices given for the proposed rule.

203 (b) Any statement of estimated regulatory costs for the

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204 rule.

205 (c) A written summary of hearings on the proposed rule.

206 (d) The written comments and responses to written comments

207 as required by this section and s. 120.541.

208 (e) All notices and findings made under subsection (4).

209 (f) All materials filed by the agency with the committee

210 under subsection (3).

211 (g) All materials filed with the Department of State under

212 subsection (3).

213 (h) All written inquiries from standing committees of the

214 Legislature concerning the rule.

215

216 Each state agency shall retain the record of rulemaking as long

217 as the rule is in effect. When a rule is no longer in effect,

218 the record may be destroyed pursuant to the records-retention

219 schedule developed under s. 257.36(5) ~~257.36(6)~~.

220 Section 7. This act shall take effect July 1, 2021.

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The Florida Senate

Committee Agenda Request

To: Senator Ray Wesley Rodrigues, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: February 22, 2021

I respectfully request that **Senate Bill #1104**, relating to Division od Library and Information Services, be placed on the:

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

A handwritten signature in black ink, appearing to read "Ana Rodriguez".

Senator Ana Maria Rodriguez
Florida Senate, District 39



2020 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of State

<u>BILL INFORMATION</u>	
BILL NUMBER:	SB 1570
BILL TITLE:	Division of Library and Informational Services
BILL SPONSOR:	Senator Perry
EFFECTIVE DATE:	July 1, 2020

<u>COMMITTEES OF REFERENCE</u>	<u>CURRENT COMMITTEE</u>
1) Governmental Oversight and Accountability	Governmental Oversight and Accountability
2) Appropriations Subcommittee on Transportation, Tourism, and Economic Development	
3) Appropriations	
4) Click or tap here to enter text.	
5) Click or tap here to enter text.	

<u>PREVIOUS LEGISLATION</u>	<u>IDENTICAL BILLS</u>
BILL NUMBER: N/A	BILL NUMBER: N/A
SPONSOR: N/A	SPONSOR: N/A
YEAR: N/A	
LAST ACTION: N/A	

<u>BILL ANALYSIS INFORMATION</u>	
DATE OF ANALYSIS:	Click or tap here to enter text.
LEAD AGENCY ANALYST:	Brittany Dover
ADDITIONAL ANALYST(S):	Click or tap here to enter text.
LEGAL ANALYST:	Carlos Rey
FISCAL ANALYST:	Click or tap here to enter text.

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Division of Library and Information Services; Removing the date by which the division must submit an annual report regarding the allocation of library funding to the Chief Financial Officer; revising the duties and responsibilities of the division in the administration of the Florida State Archives; revising the duties and responsibilities of the division in the administration of the records and information management program; removing a limitation on the annual grant amount that the administrative unit of a library cooperative may receive from the state for purposes of sharing library resources, etc. Effective Date: 7/1/2020

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Chapter 257 contains some agency direction which is no longer required. In addition, there are some parts of the chapter that are duplicative in nature

2. EFFECT OF THE BILL:

Florida Statutes 257.22 – eliminates the December 1 deadline. Currently, the Division supplies two versions of the same report to the Chief Financial Officer (CFO). The first version, because it is submitted by December 1, includes estimated grant amounts. The second version of the report, submitted later, reflects the actual final grant amounts. The requested change would allow the Division to submit one report to the CFO with the actual grant amounts.

Florida Statutes 257.34 – repeals 257.34 Florida International Archive and Repository, this function is provided within Ch. 257.35.

Florida Statutes 257.35 – eliminates language requiring the Division to encourage and imitate efforts to preserve, collect, process, transcribe, index, and research the oral history of Florida government. The division has never performed these activities and has neither the resources nor the staff expertise to carry out the duties.

Florida Statutes 257.36 –

- (1)(a) through (f) clarifies distinction between division's general responsibilities for public records and division's specific responsibilities for records stored by other agencies in a records center operated by the division.
- (1)(k) eliminates language regarding a responsibility that is no longer a function of the division.
- (2)(a) clarifies that records are being stored by the division but are not being transferred to the legal custody of the division, making consistent with (2)(b).
- (2)(b) clarifies that records center referenced are operated by the division.
- (2)(c) safeguards public records from premature destruction and protects the division from engaging in premature destruction of public records.
- (4) eliminates language already provided for in Section 92.29 Florida Statutes.
- (5) clarifies agencies' responsibility to designate a records management liaison officer and to assign them duties.

Florida Statutes 257.42 – eliminates a specific maximum award amount.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y N

If yes, explain:	.
Is the change consistent with the agency's core mission?	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N
Rule(s) impacted (provide references to F.A.C., etc.):	

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	F.S. Ch. 257.42 - Grant applicant stakeholder group is supportive of the change to eliminate the cap on the state funding in the Library Cooperative
-------------------------------------	--

	Grant program. In 2019-20 this group successfully received additional funding (above the capped amount) through proviso language. F.S. Ch. 257.22, 257.35, and 257.36 not applicable.
Opponents and summary of position:	Not applicable.

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?

If yes, provide a description:	Click or tap here to enter text.
Date Due:	Click or tap here to enter text.
Bill Section Number(s):	Click or tap here to enter text.

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL?

Board:	Click or tap here to enter text.
Board Purpose:	Click or tap here to enter text.
Who Appoints:	Click or tap here to enter text.
Changes:	Click or tap here to enter text.
Bill Section Number(s):	Click or tap here to enter text.

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?

Revenues:	Click or tap here to enter text.
Expenditures:	Click or tap here to enter text.
Does the legislation increase local taxes or fees? If yes, explain.	Click or tap here to enter text.
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	Click or tap here to enter text.

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?

Revenues:	Click or tap here to enter text.
Expenditures:	Click or tap here to enter text.
Does the legislation contain a State Government appropriation?	Click or tap here to enter text.
If yes, was this appropriated last year?	Click or tap here to enter text.

3. **DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?**Y N

Revenues:	Click or tap here to enter text.
Expenditures:	Click or tap here to enter text.
Other:	Click or tap here to enter text.

4. **DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?**Y N

If yes, explain impact.	Click or tap here to enter text.
Bill Section Number:	Click or tap here to enter text.

TECHNOLOGY IMPACT

1. **DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?** N

If yes, describe the anticipated impact to the agency including any fiscal impact.

Click or tap here to enter text.

FEDERAL IMPACT

1. **DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?** N

If yes, describe the anticipated impact including any fiscal impact.

Click or tap here to enter text.

ADDITIONAL COMMENTS**LEGAL - GENERAL COUNSEL'S OFFICE REVIEW**

Issues/concerns/comments:

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

3/3/21

APPEARANCE RECORD

1104

Meeting Date

Bill Number (if applicable)

Topic Division of Library & Information Services

Amendment Barcode (if applicable)

Name Brittany Dover

Job Title Legislative Affairs Director

Address 500 South Bronough Street

Phone 850-245-6509

Street

Tallahassee

FL

32399

Email Brittany.Dover@DOS.myflorida.

City

State

Zip

Speaking: For Against Information

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

Representing Department of State

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

CourtSmart Tag Report

Room: SB 37

Case No.:

Type:

Caption: Senate Governmental Oversight and Accountability Committee

Judge:

Started: 3/3/2021 12:00:03 PM

Ended: 3/3/2021 12:29:32 PM

Length: 00:29:30

12:00:22 PM Meeting called to order by Chair Rodrigues
12:00:28 PM Roll call by Committee Administrative Assistant
12:00:30 PM Quorum is present
12:00:36 PM Chair comments
12:01:10 PM TAB 1 - SB 844 on Public Records by Senator Hooper
12:01:26 PM Sen Hooper explains bill
12:02:24 PM Sen Hooper explains Delete-all amendment 768192
12:04:44 PM No questions on the amendment
12:04:56 PM Speaker Kari Hebrank, Southern Title, in support of the amendment
12:05:51 PM No debate on the amendment
12:05:57 PM Sen Hooper waives close on amendment
12:06:09 PM Amendment is adopted
12:06:17 PM Back on the bill as amended
12:06:27 PM No questions on bill
12:06:36 PM Speaker Kari Hebrank, Southern Title, in support of the bill
12:06:49 PM No debate on bill
12:06:54 PM Sen Hooper waives close on bill
12:07:03 PM CS/SB 844 reported favorably
12:07:16 PM TAB 4 - SB 788 on State Contracting by Senator Cruz
12:07:32 PM Sen Cruz explains the bill
12:12:41 PM No questions on bill
12:12:54 PM No appearance cards on bill
12:12:58 PM No debate
12:13:00 PM Sen Cruz waives close
12:13:09 PM SB 788 is reported favorably
12:13:22 PM TAB 3 - SB 758 on Fiduciary Duty of Care for Appointed Public Officials by Senator Diaz
12:13:42 PM Sen Gruters explains bill on behalf of Senator Diaz
12:14:32 PM No questions on bill
12:14:39 PM Speaker Diego Echeverri waives in support
12:15:22 PM Speaker David Serdar not present
12:15:49 PM No debate on bill
12:15:53 PM Sen Gruters closes on bill
12:16:09 PM SB 758 reported favorably
12:16:42 PM TAB 2 - CS/SB 60 on County and Municipal Code Enforcement by Sen Bradley
12:16:54 PM Sen Gruters explain bill on behalf of Senator Bradley
12:17:48 PM Question from Sen Torres
12:18:11 PM Sen Gruters responds
12:18:24 PM Follow up from Sen Torres
12:18:41 PM Sen Gruters responds
12:19:21 PM No appearance cards on bill
12:19:37 PM Sen Torres in debate
12:21:34 PM Sen Stewart in debate
12:23:43 PM Sen Gruters closes on bill
12:24:09 PM CS/SB 60 reported favorably
12:24:33 PM TAB 5 - SB 952 on Water Management Districts by Sen Burgess
12:24:45 PM Sen Burgess explains bill
12:25:53 PM No questions on bill
12:26:09 PM Speaker David Serdar not present
12:26:23 PM No debate on bill
12:26:36 PM Sen Burgess closes on bill
12:26:45 PM SB 952 reported favorably
12:26:59 PM TAB 6 - SB 1104 on Division of Library and Information Services by Sen Rodriguez

12:27:11 PM Sen Rodriguez explains the bill
12:27:38 PM No questions on bill
12:27:49 PM Brittany Dover, Legislative Affairs Director for the Department of State, waives in support
12:28:20 PM No debate on bill
12:28:24 PM Sen Rodriguez waives close on bill
12:28:35 PM SB 1104 reported favorably
12:29:13 PM Vice Chair moves to adjourn
12:29:21 PM The meeting is adjourned