

Tab 1	CS/SB 666 by CM, Mayfield; (Compare to CS/H 01271) Florida Development Finance Corporation					
393200	A	S	RCS	GO, Mayfield	Delete L.38 - 39:	02/10 07:30 PM
864692	A	S	RCS	GO, Mayfield	Delete L.148 - 154.	02/10 07:30 PM
Tab 2	SB 858 by Gruters (CO-INTRODUCERS) Hooper; (Similar to H 00425) Cost-of-living Adjustment for Special Risk Class Retirees					
873758	A	S	RCS	GO, Gruters	btw L.33 - 34:	02/10 07:30 PM
Tab 3	CS/SB 928 by HP, Harrell; (Similar to H 01269) Public Records and Meetings/Interstate Medical Licensure Compact					
Tab 4	SB 966 by Gainer; (Compare to CS/H 01035) Public Records/Disaster Recovery Assistance					
424964	D	S	RCS	GO, Gainer	Delete everything after	02/10 07:30 PM
Tab 5	CS/SB 1024 by CJ, Bean; (Compare to CS/H 00931) Public Records/Postconviction Reinvestigative Information					
216858	D	S	RCS	GO, Bean	Delete everything after	02/10 07:30 PM
Tab 6	CS/SB 1030 by IS, Stargel; (Similar to H 01007) Public Records/Vessel Title or Registration/Department of Highway Safety and Motor Vehicles					
843232	A	S		GO, Stargel	Delete L.117 - 124:	02/07 12:22 PM
Tab 7	SB 1260 by Albritton; (Similar to H 00981) Florida Space Exploration Monument					
503060	A	S	RCS	GO, Albritton	btw L.74 - 75:	02/10 07:30 PM
Tab 8	SB 1270 by Lee; (Identical to H 01113) Fiduciary Duty of Care for Appointed Public Officials and Executive Officers					
116502	D	S	RCS	GO, Lee	Delete everything after	02/10 07:30 PM
Tab 9	SB 1312 by Montford (CO-INTRODUCERS) Gainer; (Similar to H 01005) Voting Systems					
Tab 10	SB 1466 by Baxley (CO-INTRODUCERS) Broxson; (Similar to H 00855) Special Districts					
642110	D	S	RCS	GO, Baxley	Delete everything after	02/10 07:30 PM
Tab 11	SB 1632 by Rouson; (Similar to CS/H 00757) Cultural Affairs					
211178	A	S	RCS	GO, Rouson	Delete L.137 - 138:	02/10 07:30 PM
Tab 12	SB 1636 by Baxley; (Similar to H 07039) Repeal of Advisory Bodies and Councils					
842778	A	S	RCS	GO, Baxley	Delete L.103 - 420:	02/10 07:30 PM
Tab 13	CS/SB 1718 by CJ, Brandes; Public Meetings and Records/Conditional Aging Inmate Release Program					
607638	D	S	RCS	GO, Brandes	Delete everything after	02/10 07:30 PM
Tab 14	CS/SB 1728 by CJ, Brandes; (Compare to H 00837) Public Meetings and Records/Conditional Medical Release Program					
222838	D	S	RCS	GO, Brandes	Delete everything after	02/10 07:30 PM
Tab 15	SM 1756 by Flores; (Similar to H 01291) Temporary Protected Status to Venezuelans in the United States					

Tab 16 CS/SB 1802 by CJ, Pizzo; (Compare to CS/H 00201) Public Meetings/Urban Core Gun Violence Task Force						
289318	A	S	RCS	GO, Pizzo	Delete L.18 - 25:	02/10 07:30 PM

Tab 17 SB 1872 by Hutson; (Similar to CS/H 01393) Public Records/Commissioner of Financial Regulation/Financial Technology Sandbox Applications						
289714	D	S	RCS	GO, Hutson	Delete everything after	02/10 07:30 PM
117964	AA	S	RCS	GO, Hutson	Delete L.5 - 28:	02/10 07:30 PM

Tab 18 SB 1874 by Hutson; (Compare to CS/H 01391) Fees/Office of Financial Regulation/Financial Technology Sandbox Applications						
763104	D	S	RCS	GO, Hutson	Delete everything after	02/10 07:30 PM
961478	AA	S	RCS	GO, Hutson	Delete L.5 - 9:	02/10 07:30 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY

Senator Hooper, Chair
Senator Rader, Vice Chair

MEETING DATE: Monday, February 10, 2020

TIME: 1:30—3:30 p.m.

PLACE: 301 Senate Building

MEMBERS: Senator Hooper, Chair; Senator Rader, Vice Chair; Senators Albritton, Bean, and Torres

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 666 Commerce and Tourism / Mayfield (Compare CS/H 1271)	Florida Development Finance Corporation; Requiring the executive director of the Department of Economic Opportunity to serve as the chair of the board of directors of the Florida Development Finance Corporation; requiring the department to develop performance standards for the corporation and to include certain information relating to the standards in the department's annual report; requiring the corporation to submit an annual report containing specified information to the department, etc. CM 01/21/2020 Fav/CS GO 02/10/2020 Fav/CS RC	Fav/CS Yeas 5 Nays 0
2	SB 858 Gruters (Similar H 425)	Cost-of-living Adjustment for Special Risk Class Retirees; Revising the manner of calculating the cost-of-living factor for Special Risk Class retirees, and their beneficiaries, who meet certain criteria; providing a declaration of important state interest, etc. GO 02/10/2020 Fav/CS AEG AP	Fav/CS Yeas 4 Nays 0
3	CS/SB 928 Health Policy / Harrell (Similar H 1269, Linked S 926)	Public Records and Meetings/Interstate Medical Licensure Compact; Providing an exemption from public records requirements for certain information held by the Department of Health, the Board of Medicine, or the Board of Osteopathic Medicine, pursuant to the Interstate Medical Licensure Compact; providing an exemption from public meeting requirements for certain meetings or portions of certain meetings of the Interstate Medical Licensure Compact Commission; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. HP 01/28/2020 Fav/CS GO 02/10/2020 Favorable RC	Favorable Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Monday, February 10, 2020, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 966 Gainer (Compare CS/H 1035)	Public Records/Disaster Recovery Assistance; Providing an exemption from public records requirements for certain records and information provided to the Department of Economic Opportunity, the Florida Housing Finance Corporation, a county, a municipality, or a local housing finance agency by or on behalf of an applicant for or a participant in a federal, state, or local housing assistance program for the purpose of disaster recovery assistance; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. IS 01/21/2020 Favorable GO 02/10/2020 Fav/CS RC	Fav/CS Yeas 5 Nays 0
5	CS/SB 1024 Criminal Justice / Bean (Compare CS/H 931)	Public Records/Postconviction Reinvestigative Information; Defining the term "postconviction reinvestigative information"; providing an exemption from public records requirements for certain postconviction reinvestigative information; providing for future review and repeal of the exemption; providing a statement of public necessity, etc. CJ 01/28/2020 Fav/CS GO 02/10/2020 Fav/CS RC	Fav/CS Yeas 5 Nays 0
6	CS/SB 1030 Infrastructure and Security / Stargel (Similar H 1007, Compare H 7001, S 7022)	Public Records/Vessel Title or Registration/Department of Highway Safety and Motor Vehicles; Creating public records exemptions for certain information contained in any record that pertains to a vessel title or vessel registration issued by the Department of Highway Safety and Motor Vehicles; providing exemptions from public records requirements for electronic mail addresses and cellular telephone numbers collected by the department; providing for future legislative review and repeal of the exemptions; providing statements of public necessity, etc. IS 01/21/2020 Fav/CS GO 02/10/2020 Temporarily Postponed RC	Temporarily Postponed

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Monday, February 10, 2020, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	SB 1260 Albritton (Similar H 981)	Florida Space Exploration Monument; Establishing the Florida Space Exploration Monument; providing for administration of the monument by the Department of Management Services; providing for the creation of a design contest and selection committee; requiring the department to develop a plan regarding the monument, etc. MS 01/22/2020 Favorable GO 02/10/2020 Fav/CS AP	Fav/CS Yeas 5 Nays 0
8	SB 1270 Lee (Identical H 1113)	Fiduciary Duty of Care for Appointed Public Officials and Executive Officers; 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 such training programs or publish a list of approved training providers; specifying requirements for the appointment of executive officers and general counsels of governmental entities, etc. GO 02/03/2020 Not Considered GO 02/10/2020 Fav/CS CA RC	Fav/CS Yeas 5 Nays 0
9	SB 1312 Montford (Similar H 1005)	Voting Systems; Defining the term “automatic tabulating equipment” for purposes of the Florida Election Code; revising procedures governing the canvassing of returns to specify usage of a voting system’s automatic tabulating equipment; clarifying the circumstances under which ballots must be processed through automatic tabulating equipment in a recount; specifying the manner by which a manual recount may be conducted, etc. EE 01/27/2020 Favorable GO 02/10/2020 Favorable AP	Favorable Yeas 5 Nays 0
10	SB 1466 Baxley (Similar H 855)	Special Districts; Revising the list of items required to be included on the websites of special districts, etc. CA 01/27/2020 Favorable GO 02/10/2020 Fav/CS RC	Fav/CS Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Monday, February 10, 2020, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	SB 1632 Rouson (Similar CS/H 757)	Cultural Affairs; Providing that the Secretary of State shall be known as "Florida's Chief Arts and Culture Officer"; renaming the Division of Cultural Affairs of the Department of State as the Division of Arts and Culture, etc. GO 02/10/2020 Fav/CS CM RC	Fav/CS Yeas 5 Nays 0
12	SB 1636 Baxley (Similar H 7039, Compare CS/H 1013, H 6027, S 388, S 1616, S 1688)	Repeal of Advisory Bodies and Councils; Repealing chapters 2003-287 and 2006-43, Laws of Florida, relating to the membership, powers, and duties of the Citrus/Hernando Waterways Restoration Council; removing the requirement that the Division of Historical Resources of the Department of State annually convene an ad hoc committee for purposes of administering the Great Floridians program; modifying procedures governing reclamation program applications to conform to the repeal of the Nonmandatory Land Reclamation Committee, etc. GO 02/10/2020 Fav/CS CA RC	Fav/CS Yeas 5 Nays 0
13	CS/SB 1718 Criminal Justice / Brandes (Linked CS/S 574)	Public Meetings and Records/Conditional Aging Inmate Release Program; Exempting from public meetings requirements the protected health information of specified inmates being considered for the conditional aging inmate release program; exempting from public records requirements certain records used by the reviewing panel to make a determination of the appropriateness of conditional aging inmate release and the recordings of closed panel review hearings; providing for legislative review and repeal of the exemption; providing a statement of public necessity, etc. CJ 01/28/2020 Fav/CS GO 02/10/2020 Fav/CS RC	Fav/CS Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Monday, February 10, 2020, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
14	CS/SB 1728 Criminal Justice / Brandes (Compare H 837, Linked CS/S 556)	Public Meetings and Records/Conditional Medical Release Program; Exempting from public meetings requirements the protected health information of specified inmates being considered for the conditional medical release program; exempting from public records requirements certain records used by the reviewing panel to make a determination of the appropriateness of conditional medical release and the recordings of closed panel review hearings; providing for legislative review and repeal of the exemptions; providing a statement of public necessity, etc. CJ 01/28/2020 Fav/CS GO 02/10/2020 Fav/CS RC	Fav/CS Yeas 5 Nays 0
15	SM 1756 Flores (Similar HM 1291)	Temporary Protected Status to Venezuelans in the United States; Urging the Congress of the United States and the President of the United States to grant temporary protected status to Venezuelans in the United States GO 02/10/2020 Favorable JU RC	Favorable Yeas 5 Nays 0
16	CS/SB 1802 Criminal Justice / Pizzo (Compare CS/H 201, Linked CS/S 652)	Public Meetings/Urban Core Gun Violence Task Force; Providing an exemption from public meetings requirements for portions of the Urban Core Gun Violence Task Force meetings at which exempt or confidential and exempt information is discussed; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CJ 01/28/2020 Fav/CS GO 02/10/2020 Fav/CS RC	Fav/CS Yeas 5 Nays 0
17	SB 1872 Hutson (Similar CS/H 1393, Compare CS/H 1391, Linked S 1870)	Public Records/Commissioner of Financial Regulation/Financial Technology Sandbox Applications; Providing exemptions from public records requirements for certain information made available to the Commissioner of Financial Regulation in Financial Technology Sandbox applications, certain records maintained by specified providers of innovative financial products or services, and information relating to certain consultations with the commissioner; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. GO 02/10/2020 Fav/CS BI RC	Fav/CS Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Monday, February 10, 2020, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
18	SB 1874 Hutson (Compare CS/H 1391, Linked S 1870)	Fees/Office of Financial Regulation/Financial Technology Sandbox Applications; Requiring the Financial Technology Sandbox applications with the Office of Financial Regulation to be accompanied by a fee; requiring the office to deposit such fees into a trust fund; requiring applicants and specified individuals to bear the costs of fingerprint processing for the applications, etc. GO 02/10/2020 Fav/CS BI AP	Fav/CS Yeas 5 Nays 0

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointments to the offices indicated.			
Investment Advisory Council			
19	Canida, Maria Teresa (Coral Gables)	12/12/2022	Recommend Confirm Yeas 5 Nays 0
	Olmstead, Vinny (Vero Beach)	02/01/2023	Recommend Confirm Yeas 5 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	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/CS/SB 666

INTRODUCER: Governmental Oversight and Accountability Committee; Commerce and Tourism
Committee and Senator Mayfield

SUBJECT: Florida Development Finance Corporation

DATE: February 10, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 666 modifies the governance and administration of the Florida Development Finance Corporation (FDFC) by:

- Requiring the FDFC and Department of Economic Opportunity (DEO) to provide additional annual reporting on the FDFC's activities;
- Redesigning the FDFC's board of directors to include the executive director of the DEO, who will serve as the chair of the board, and the director of the State Board of Administration's Division of Bond Finance; and
- Instituting a sunset repeal, effective October 1, 2022, and every four years thereafter, unless reviewed and saved from repeal by the Legislature.

The bill is not expected to impact state and local government revenues and expenditures.

The bill takes effect July 1, 2020.

II. Present Situation:

Florida Development Finance Corporation

Operation

The FDFC is a statewide development financing authority created by the Legislature in 1993.¹ The original purpose of the FDFC was to foster the growth of manufacturing and other strong job-creating businesses in Florida by brokering private-activity bond financing through inter-local agreements with counties, municipalities, and other local political subdivisions.²

In the 2010 legislative session, the FDFC's responsibilities were broadened to allow it to participate in a federal Department of Energy guaranteed loan program for the development of renewable energy infrastructure projects, and related energy projects that may be eligible under federal law.³ The FDFC has the power to function within the corporate limits of any public agency including local governments with which it enters into an inter-local agreement.⁴

Pursuant to s. 288.9605, F.S., the FDFC operates as a conduit bond issuer that issues bonds on behalf of borrowers.⁵ While the FDFC functions as a mechanism to help borrowers access capital markets, it does not take on responsibility of debt repayment, even when a borrower fails to repay.⁶ Conversely, the FDFC does not guarantee the bonds it issues but certain borrowers may opt in to the guaranty fund established by the FDFC pursuant to s. 288.9607, F.S., which guarantees that the bonds issued will be repaid. This guaranty fund consists of premiums paid by businesses that wish to participate in the fund and by a property interest in the infrastructure built with the insured bond's proceeds.⁷

A majority of the FDFC's financial assistance results from the issuance of municipal bonds, of which it may issue either a taxable revenue bond or a tax-exempt bond.⁸ The bonds issued can provide financing for projects that further public purposes and are issued on behalf of a range of organizations.

Tax exempt bonds, known also as private activity bonds, require additional borrower qualification processes, including approval pursuant to the Tax Equity and Fiscal Responsibility Act of 1986 (TEFRA) and allocation from the Florida State Board of Administration's Division

¹ Chapter 288, Part X, F.S. The corporation was created as a "public body corporate and politic" meaning that it is a legal entity or corporation with a public function. Ch. 93-187, ss. 24-45, Laws of Fla.

² Section 288.9602, F.S., generally expresses the legislative intent of the FDFC.

³ Sections 2-10, ch. 2010-139, Laws of Fla.

⁴ Section 288.9605(2)(e), F.S.

⁵ "[The] FDFC facilitated the issuance of debt obligations...[t]hese bonds do not constitute a general debt, liability or obligation of FDFC, the state, or any local government." Florida Development Finance Corporation, *Financial Statements for the Year Ended June 30, 2019*, 12 (on file with the Senate Committee on Commerce and Tourism). See also, Florida Development Finance Corporation, *Bond Financing*, <https://www.fdfcbonds.com/traditional-bonds> (last visited Jan. 21, 2020).

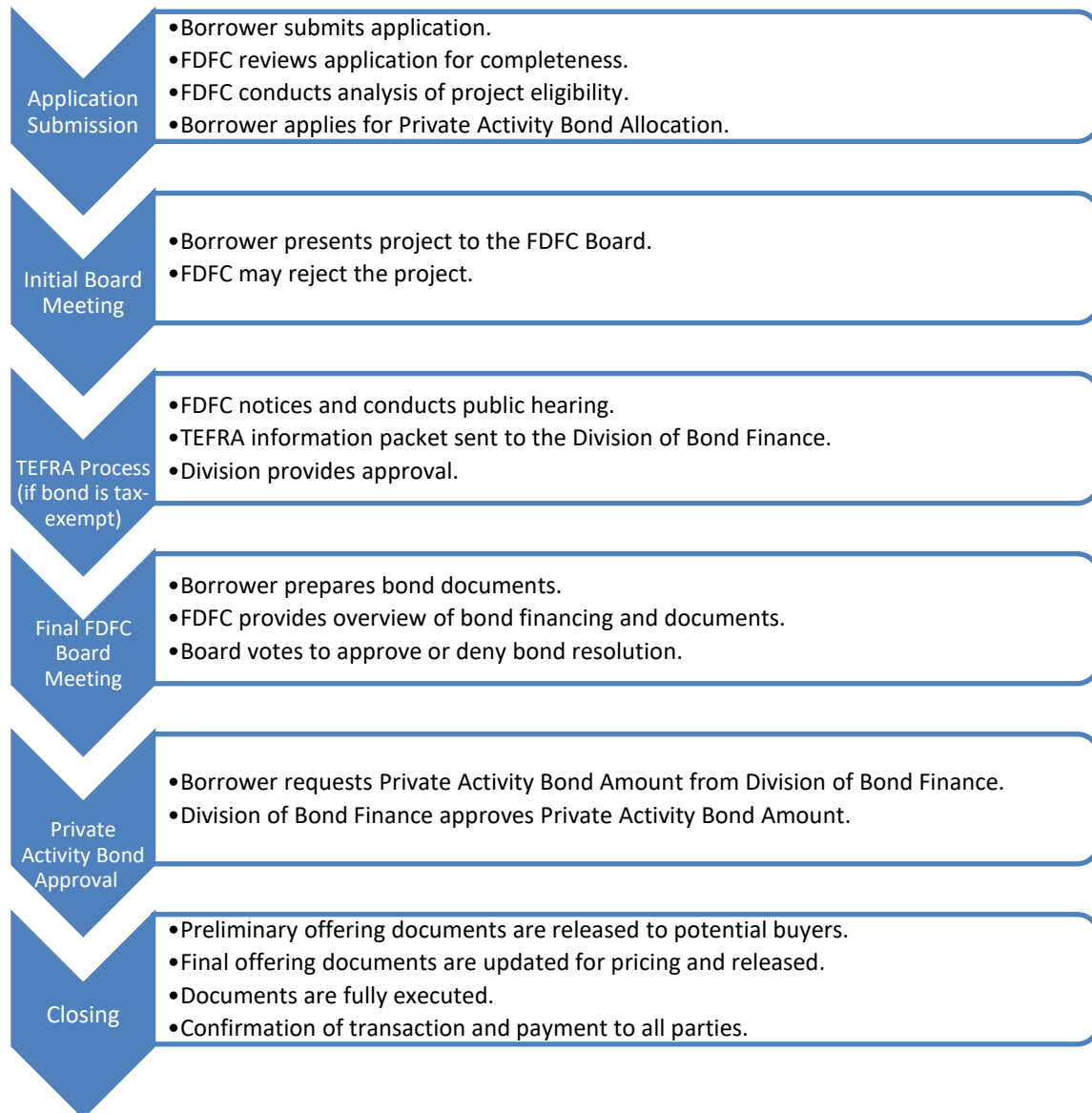
⁶ *Id.*

⁷ The guaranty may not exceed 5 percent of the aggregate principal amount of bonds or other indebtedness relating to any capital project. Section 288.9607, F.S.

⁸ Florida Development Finance Corporation, *About Us*, <https://www.fdfcbonds.com/copy-of-about-us> (last visited Jan. 21, 2020).

of Bond Finance. These bonds are more lucrative financing options because they tend to have a lower interest rate than bank loans or taxable fixed-income securities, and investors benefit by not paying income taxes on interest payments.⁹ The FDFC helps its borrowers pursue private activity bonds by assisting them with the additional qualification processes.¹⁰

In the fiscal year ending June 30, 2019, the FDFC facilitated the issuance of \$2,885,710,000 in eight new bonds. The borrowers served by these bonds include two charter schools, one solid waste disposal, two surface transportation, one healthcare, one student housing, and one not-for-profit business.¹¹



⁹ Steven Maguire and Joseph Hughes, Congressional Research Service, *Private Activity Bonds: An Introduction* (July 13, 2018), available at <https://fas.org/sgp/crs/misc/RL31457.pdf> (last visited Jan. 21, 2020).

¹⁰ Florida Development Finance Corporation, *Bond Financing*, note 5.

¹¹ Florida Development Finance Corporation *Financial Statements for the Year Ended June 30, 2019*, *supra* note 5 at 3.

More generally, an applicant who wishes to work with the FDFC must submit an application, meet board approval for its project, and in cases of tax-exempt bonds, undergo a public hearing and receive approval from the State Board of Administration's Division of Bond Finance, and then have bonds issued for its project. (See exhibit above).¹²

The FDFC also administers the Property Assessed Clean Energy (PACE) program, for which it also may issue bonds and other financial assistance that supports energy conservation.¹³ The PACE Program was launched June 29, 2017 and allows a property owner to use equity accrued from the original purchase as the basis for an extension of credit.¹⁴ The PACE Program facilitated \$19,353,886 in five taxable residential bonds for the 2019 fiscal year.¹⁵

FDFC's revenues are generated exclusively by fees it charges for the issuance of bonds.¹⁶ The fees assessed are a \$1,500 application fee and a tiered issuance fee due at the time of closing (sale of bonds). The tiered issuance fee is based on the face value of the bond issued: bonds valued from \$0 - \$2.5 million pay 75 basis points (0.75%); bonds valued from \$2.5-\$32.5 million pay 25 basis points (0.25%); and bonds valued over \$32.5 million pay 10 basis points (0.10%).¹⁷

Governance and Administration

The FDFC is governed by a five-member board of directors who are appointed by the Governor and confirmed by the Senate for four-year terms.¹⁸ At least three of the FDFC's directors must be bankers selected from a list of candidates nominated by the Enterprise Florida, Inc. (EFI), and one must be an economic development specialist.¹⁹ The directors are vested with the FDFC's powers and may take action on behalf of the corporation by a vote of a majority of the directors present at a meeting, unless otherwise required by the FDFC's bylaws.²⁰ The directors do not receive compensation for their service but are entitled to necessary expenses, including travel expenses.²¹ Lastly, the board is empowered to employ a staff to facilitate the FDFC's functions.²²

The FDFC must provide an annual report to the Governor, the Legislature, the Auditor General, and the governing body of each public entity with which it has an interlocal agreement which details:

- The FDFC's activities, operations, and accomplishments, including the specific number of businesses that the FDFC assisted;

¹² OPPAGA, *Florida Development Finance Corporation has Recently Taken Steps to Improve Accountability* (Nov. 15, 2017) (on file with the Senate Committee on Commerce and Tourism).

¹³ Florida Development Finance Corporation, *Property Assessed Clean Energy "PACE"- Commercial PACE*, <https://www.fdfcbonds.com/pace-commercial> (last visited Jan. 21, 2020). See also, s. 288.9606(7), F.S.

¹⁴ *Id.*

¹⁵ Florida Development Finance Corporation, *Financial Statements for the Year Ended June 30, 2019*, *supra* note 5 at 3.

¹⁶ Florida Development Finance Corporation, *Financial Statements for the Year Ended June 30, 2019*, *supra* note 5 at 6.

¹⁷ Florida Development Finance Corporation, *Conduit Issuance Policy*, 6-7 (Feb. 26, 2019), available at https://ca5cce56-0e6c-4988-82a7-74892bf1d07e.filesusr.com/ugd/b1b27e_0b227d45ff2b4e139bb36f2846f70b4b.pdf (last visited Jan. 21, 2020).

¹⁸ Section 288.9604(2), F.S.

¹⁹ Section 288.9604(2), F.S.

²⁰ Section 288.9604(3), F.S.

²¹ Section 288.9604(3)(a)1., F.S.

²² Section 288.9604(3)(c), F.S.

- The FDFC's assets, liabilities, income, and operating expenses, including a description of all outstanding revenue bonds; and
- Any findings made by the Auditor General in an audit conducted pursuant to s. 11.45, F.S.

Department of Economic Opportunity

The Department of Economic Opportunity (DEO) was created to assist the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and implement coherent and consistent policies and strategies designed to promote economic opportunities for all Floridians.²³ Within the DEO, the Division of Strategic Business Development evaluates business prospects; administers tax refund, tax credit, and grant programs; develops performance measures for state incentive programs and contracted entities; and develops and updates a 5-year statewide strategic plan for business expansion and economic development, consulting with EFI and CareerSource Florida, Inc. (CareerSource). The Division of Community Development assists local governments with community planning, administers state and federal community development grant programs, and assists in the development of the 5-year statewide strategic plan. The Division of Workforce Services submits a unified budget request for workforce development in conjunction with CareerSource, ensures that the state appropriately administers federal and state workforce funding, implements the state's reemployment assistance program, and assists in developing the 5-year statewide strategic plan.²⁴

The DEO, with assistance from EFI, must submit by November 1 of each year an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the condition of the business climate and economic development in the state. The report must include the identification of problems, a prioritized list of recommendations, and the annual reports of specified other programs.²⁵ The DEO must establish annual performance standards for EFI, CareerSource, VISIT FLORIDA, and Space Florida, and report annually on how these performance measures are being met in the annual report.²⁶

The head of the DEO is the executive director, who is appointed by the Governor, subject to confirmation by the Senate. The executive director serves at the pleasure of and reports to the Governor.²⁷ The executive director manages all activities and responsibilities of the DEO, and serves as the manager for the state with respect to contracts with EFI, and all applicable direct-support organizations.²⁸

The Division of Bond Finance

The Division of Bond Finance (Division) was created by the Legislature in 1969 to issue bonds on behalf of local governments and agencies of the State of Florida. It assumed the powers of its predecessor, the Florida Development Commission. The Division has been administratively

²³ Section 20.60(4), F.S.

²⁴ Section 20.60(5), F.S.

²⁵ Section 20.60(10), F.S.

²⁶ Section 20.60(11), F.S.

²⁷ Section 20.60(2), F.S.

²⁸ Section 20.60(9), F.S.

housed within the State Board of Administration since 1992 and operates under the control of a governing board which consists of the Governor and Cabinet.²⁹ The Division has the power to:

- Sue and be sued;
- Issue any bonds of the state, and to issue bonds on behalf of any state agency;
- Exercise all of the powers relating to the issuance of bonds of any state agency;
- Employ a director of the division to be designated by the Governor;
- Employ or retain persons, firms, or corporations;
- Prepare resolutions and other necessary proceedings relating to the issuance and sale of bonds;
- Sell all state bonds authorized by law;
- Request assistance related to bond issuance from any state agency;
- Exercise the power of eminent domain;
- Remit the proceeds of any bonds sold for any state agency;
- Exercise control over the state's arbitrage compliance program; and
- Undertake investigations.³⁰

The Division also determines the allocations for private activity bonds permitted to be issued in Florida under the Internal Revenue Code.³¹

III. Effect of Proposed Changes:

Board of Directors

Section 1 amends s. 20.60, F.S., to designate the executive director of the DEO to serve as a member of the FDFC. The executive director is authorized to designate another DEO employee to serve in this capacity.

Section 2 amends s. 288.9604, F.S., to restructure the FDFC board of directors to add two new director positions that will be filled by the DEO's executive director and the State Board of Administration's director of the Division of Bond Finance, or his or her designee. The DEO executive director, or his or her designee, will serve at the chair of the board of directors.

This section makes conforming changes to transition the remaining five board seats, which are filled by gubernatorial appointees, to board director roles exclusively. The eligibility requirements for directors is broadened to allow three of the appointed directors to be either a banker or an individual with experience in finance. Additionally, this section removes the role of the EFI from the appointment process, thereby allowing individuals to apply directly to the Governor or FDFC to serve as board directors, rather than going through a nomination process that involves the EFI.

²⁹ Information from <https://www.sbafla.com/bond/Home/About-the-Division-of-Bond-Finance>, last visited January 21, 2020.

³⁰ Section 215.64, F.S.

³¹ Section 159.804, F.S. See also, Division of Bond Finance, *Tax Equity and Fiscal Responsibility Act (TEFRA) Approval*, <https://www.sbafla.com/bondfinance/Other-Functions/TEFRA>, last visited Jan. 21, 2020.

Section 3 provides that those members who serve as the chair and vice chair of the FDFC's board of directors as of June 30, 2020, will serve as regular members of the board of directors beginning on July 1, 2020

Reporting Requirements

Section 4 amends s. 288.9610, F.S., to require the FDFC to furnish a copy of its annual report to the DEO on or before 90 days after the close of its fiscal year. Additionally, **section 1** amends s. 20.60, F.S., to require the DEO to include both a summary of the FDFC's annual report and an additional detailed report on the FDFC's performance in its own annual report, due on November 1 of each year to the Governor, Senate President, and Speaker of the House of Representatives.

Effective Date and Sunset Provision

The bill takes effect on July 1, 2020, and is subject to sunset on October 1, 2022, and every fourth year thereafter, unless reviewed and saved from repeal by the Legislature.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions in the State Constitution 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.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:**Potential Conflict of Interest for the Division of Bond Finance**

Lines 79-82 designates the director of the Division of Bond Finance, or his or her designee, as a member of the board of directors of the FDFC. The Division of Bond Finance has an active role in approving tax exempt bond issues and the amount of private activity bond allocations for particular issues. This dual role of director (as a member of the board and the approving authority) may create an appearance of conflict or an actual conflict.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.60, 288.9604, and 288.9610. The bill also creates an unnumbered section of law.

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

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

CS/CS by Governmental Oversight and Accountability on February 10, 2020:

- Clarifies that the DEO executive director may designate a DEO employee to serve as a member and chair of the FDFC.
- Removes from the bill unnecessary language regarding the continuation of contracts between FDFC and others.

CS by Commerce and Tourism on January 21, 2020:

- Substituted “directors” for the term “members” to provide for consistent use of terminology; and
- Removed from the bill the transfer of the FDFC’s officers, employees, and administrative and support staff to the DEO.

B. Amendments:

None.



393200

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/10/2020	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 38 - 39
and insert:

(c) Serve as a member of the board of directors of the
Florida Development Finance Corporation. The executive director
may designate an employee of the department to serve in this
capacity.

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



393200

11 And the title is amended as follows:

12 Delete lines 5 - 7

13 and insert:

14 Opportunity to serve as a member of the board of
15 directors of the Florida Development Finance
16 Corporation; authorizing the executive director to
17 designate a department employee to serve in this
18 capacity; requiring that the annual report of the



864692

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/10/2020	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 148 - 154.

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

And the title is amended as follows:

Delete lines 26 - 28

and insert:

specified information to the department; providing an
effective date.

By the Committee on Commerce and Tourism; and Senator Mayfield

577-02398-20

2020666c1

1 A bill to be entitled
 2 An act relating to the Florida Development Finance
 3 Corporation; amending s. 20.60, F.S.; requiring the
 4 executive director of the Department of Economic
 5 Opportunity to serve as the chair of the board of
 6 directors of the Florida Development Finance
 7 Corporation; requiring that the annual report of the
 8 corporation be incorporated into the department's
 9 annual report on the condition of the business climate
 10 and economic development in the state; requiring the
 11 department to develop performance standards for the
 12 corporation and to include certain information
 13 relating to the standards in the department's annual
 14 report; amending s. 288.9604, F.S.; revising the
 15 membership of the board of directors of the
 16 corporation; requiring that the director of the
 17 Division of Bond Finance of the State Board of
 18 Administration, or his or her designee, serve on the
 19 board of directors of the corporation; making
 20 conforming changes; providing for future repeals;
 21 requiring the chair and vice chair of the board of
 22 directors of the corporation to serve as regular
 23 members of the board after a specified date; providing
 24 construction; amending s. 288.9610, F.S.; requiring
 25 the corporation to submit an annual report containing
 26 specified information to the department; providing for
 27 the continuation of certain contracts and interlocal
 28 agreements; providing an effective date.
 29

Page 1 of 6

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

577-02398-20

2020666c1

30 Be It Enacted by the Legislature of the State of Florida:
 31
 32 Section 1. Paragraph (c) is added to subsection (9) of
 33 section 20.60, Florida Statutes, and paragraph (b) of subsection
 34 (10) and subsection (11) of that section are amended, to read:
 35 20.60 Department of Economic Opportunity; creation; powers
 36 and duties.—
 37 (9) The executive director shall:
 38 (c) Serve as the chair of the board of directors of the
 39 Florida Development Finance Corporation.
 40 (10) The department, with assistance from Enterprise
 41 Florida, Inc., shall, by November 1 of each year, submit an
 42 annual report to the Governor, the President of the Senate, and
 43 the Speaker of the House of Representatives on the condition of
 44 the business climate and economic development in the state.
 45 (b) The report must incorporate annual reports of other
 46 programs, including:
 47 1. Information provided by the Department of Revenue under
 48 s. 290.014.
 49 2. Information provided by enterprise zone development
 50 agencies under s. 290.0056 and an analysis of the activities and
 51 accomplishments of each enterprise zone.
 52 3. The Economic Gardening Business Loan Pilot Program
 53 established under s. 288.1081 and the Economic Gardening
 54 Technical Assistance Pilot Program established under s.
 55 288.1082.
 56 4. A detailed report of the performance of the Black
 57 Business Loan Program and a cumulative summary of quarterly
 58 report data required under s. 288.714.

Page 2 of 6

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

577-02398-20

2020666c1

59 5. The Rural Economic Development Initiative established
60 under s. 288.0656.

61 6. The Florida Unique Abilities Partner Program.

62 7. A detailed report of the performance of the Florida
63 Development Finance Corporation and a summary of the
64 corporation's report required under s. 288.9610.

65 (11) The department shall establish annual performance
66 standards for Enterprise Florida, Inc., CareerSource Florida,
67 Inc., the Florida Tourism Industry Marketing Corporation, ~~and~~
68 Space Florida, and the Florida Development Finance Corporation
69 and report annually on how these performance measures are being
70 met in the annual report required under subsection (10).

71 Section 2. Subsection (2), paragraphs (a) and (c) of
72 subsection (3), and subsection (4) of section 288.9604, Florida
73 Statutes, are amended, and subsection (5) is added to that
74 section, to read:

75 288.9604 Creation of the authority.—

76 (2) The board of directors of the corporation shall consist
77 of seven directors. The executive director of the department, or
78 his or her designee, shall serve as chair of the board of
79 directors of the corporation. The director of the Division of
80 Bond Finance of the State Board of Administration, or his or her
81 designee, shall serve as a director of the board of directors of
82 the corporation. The Governor, subject to confirmation by the
83 Senate, shall appoint the remaining five directors of the board
84 of directors of the corporation, who shall be five in number.
85 The terms of office for the appointed directors shall be for 4
86 years from the date of their appointment. A vacancy occurring
87 during a term of an appointed director shall be filled for the

577-02398-20

2020666c1

88 unexpired term. A director shall be eligible for reappointment.
89 At least three of the appointed directors of the corporation
90 shall be bankers or individuals with experience in finance ~~who~~
91 ~~have been selected by the Governor from a list of bankers who~~
92 ~~were nominated by Enterprise Florida, Inc.,~~ and one of the
93 directors shall be an economic development specialist.

94 (3)(a)1. A director may not receive compensation for his or
95 her services, but is entitled to necessary expenses, including
96 travel expenses, incurred in the discharge of his or her duties.
97 Each appointed director shall hold office until his or her
98 successor has been appointed.

99 2. Directors are subject to ss. 112.313(1)-(8), (10), (12),
100 and (15); 112.3135; and 112.3143(2). For purposes of applying
101 ss. 112.313(1)-(8), (10), (12), and (15); 112.3135; and
102 112.3143(2) to activities of directors, directors shall be
103 considered public officers and the corporation shall be
104 considered their agency.

105 (c) ~~The directors of the corporation shall annually elect~~
106 ~~one of their members as chair and one as vice chair.~~ The
107 corporation may employ a president, technical experts, and such
108 other agents and employees, permanent and temporary, as it
109 requires and determine their qualifications, duties, and
110 compensation. For such legal services as it requires, the
111 corporation may employ or retain its own counsel and legal
112 staff.

113 (4) The board may remove an appointed ~~a~~ director for
114 inefficiency, neglect of duty, or misconduct in office. Such
115 director may be removed only after a hearing and only if he or
116 she has been given a copy of the charges at least 10 days before

577-02398-20

2020666c1

such hearing and has had an opportunity to be heard in person or by counsel. The removal of a director shall create a vacancy on the board which shall be filled pursuant to subsection (2).

(5) This section is repealed October 1, 2022, and October 1 of every fourth year thereafter, unless reviewed and saved from repeal by the Legislature.

Section 3. In order to implement the changes made by this act to s. 288.9604, Florida Statutes, the chair and vice chair of the board of directors of the Florida Development Finance Corporation as of June 30, 2020, shall serve as regular members beginning July 1, 2020. Nothing in this act may be construed to affect the terms of the directors serving on the board on July 1, 2020.

Section 4. Section 288.9610, Florida Statutes, is amended to read:

288.9610 Annual reports of Florida Development Finance Corporation.—On or before 90 days after the close of the Florida Development Finance Corporation's fiscal year, the corporation shall submit to the Governor, the Legislature, the Auditor General, the Department of Economic Opportunity, and the governing body of each public entity with which it has entered into an interlocal agreement a complete and detailed report setting forth:

(1) The results of any audit conducted pursuant to s. 11.45.

(2) The activities, operations, and accomplishments of the Florida Development Finance Corporation, including the number of businesses assisted by the corporation.

(3) Its assets, liabilities, income, and operating expenses

577-02398-20

2020666c1

at the end of its most recent fiscal year, including a description of all of its outstanding revenue bonds.

Section 5. Any contract or interlocal agreement existing before July 1, 2020, between the Florida Development Finance Corporation, or any entity or agent of the corporation, and any other entity or person shall continue as a contract or agreement on the successor department or entity responsible for the program, activity, or function relative to the contract or agreement.

Section 6. This act shall take effect July 1, 2020.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Agriculture,
Environment, and General Government, *Chair*
Children, Families, and Elder Affairs, *Vice Chair*
Appropriations
Environment and Natural Resources
Health Policy

SENATOR DEBBIE MAYFIELD

17th District

February 4, 2020

The Honorable Ed Hooper
Chairman, Governmental Oversight and Accountability
326 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

RE: SB 666

Dear Chairman Hooper,

I am respectfully requesting Senate Bill 666, a bill relating to Florida Development Finance Corporation, be placed on the agenda for your Committee on Governmental Oversight and Accountability.

I appreciate your consideration of this bill and I look forward to working with you and the Committee on Governmental Oversight and Accountability. If there are any questions or concerns, please do not hesitate to call my office at 850-487-5017

Thank you,



Senator Debbie Mayfield
District 17

Cc; Joe McVaney and Tamra Redig

REPLY TO:

- ☐ 900 East Strawbridge Avenue, Melbourne, Florida 32901 (321) 409-2025 FAX: (888) 263-3815
- ☐ 1801 27th Street, Vero Beach, Florida 32960 (772) 226-1970
- ☐ 322 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

APPEARANCE RECORD

February 10, 2020

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

666

Meeting Date

Bill Number (if applicable)

Topic Florida Development Finance Corporation

Amendment Barcode (if applicable)

Name Edgar G. Fernandez

Job Title _____

Address 201 W Park Avenue, Suite 100Phone 786 255-5755

Street

Tallahassee

FL

32301Email Edgar@Anfieldflorida.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing Indian River CountyAppearing 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: CS/SB 858

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Gruters

SUBJECT: Cost-of-living Adjustment for Special Risk Class Retirees

DATE: February 10, 2020 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney	GO	Fav/CS
2.			AEG	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 858 amends s. 121.101(4), F.S., to base the annual cost-of-living adjustment (COLA) for a Florida Retirement System (FRS) Pension Plan retiree who was a member of the Special Risk Class on June 30, 2011, and on the date of retirement, on the member's total service credit earned as of June 30, 2020 (rather than the member's full service). This COLA adjustment for eligible retirees will be applied prospectively for retirement payments beginning on or after July 1, 2020.

An actuarial study has been completed to determine the amount of additional funding necessary to meet the requirements under Article X, Section 14 of the State Constitution and Part VII, chapter 112, F.S., that retirement benefit enhancements are funded on a concurrent and actuarially sound basis. Based on an actuarial study¹ of the impact of the bill, the annual retirement contributions system-wide will need to be increased by \$54 million² to meet the concurrent funding requirement. The bill includes the necessary adjustments to FRS contributions to fund the enhanced benefits.

The bill provides a determination that the bill fulfills an important state interest.

¹ Letter to Mr. David DiSalvo, Re: Special Actuarial Study of Modified COLA Rate for Certain Tier 1 Special Risk Class Members and Beneficiaries, dated January 31, 2020 (on file with the Senate Committee on Governmental Oversight and Accountability).

² *Id.* at Table 2-1.

The bill takes effect July 1, 2020.

II. Present Situation:

The Florida Retirement System

Overview

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the FRS, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group.³ The FRS is a contributory system, with active members contributing three percent of their salaries.⁴

The FRS is a multi-employer, contributory plan, governed by the Florida Retirement System Act in Chapter 121, F.S. As of June 30, 2019, the FRS had 647,942 active members, 424,895 annuitants, 15,783 disabled retirees, and 32,670 active participants of the Deferred Retirement Option Program (DROP).⁵ As of June 30, 2019, the FRS consisted of 976 total employers; it is the primary retirement plan for employees of state and county government agencies, district school boards, Florida College institutions, and state universities, and also includes the 176 cities and 136 special districts that have elected to join the system.⁶

The membership of the FRS is divided into five membership classes:

- The Regular Class⁷ consists of 554,631 active members and 7,629 in renewed membership;
- The Special Risk Class⁸ includes 74,274 active members and 1,112 in renewed membership;
- The Special Risk Administrative Support Class⁹ has 100 active members and 1 in renewed membership;
- The Elected Officers' Class¹⁰ has 2,088 active members and 112 in renewed membership; and

³ Florida Retirement System Pension Plan and Other State Administered Retirement Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2019, at p. 35. Available online at: https://www.rol.frs.state.fl.us/forms/2018-19_CAFR.pdf. (last visited January 13, 2020).

⁴ Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class employees or 6 percent for Special Risk Class members. Employees were again required to contribute to the system after July 1, 2011. Members in the Deferred Retirement Option Program do not contribute to the system.

⁵ Florida Retirement System Pension Plan and Other State Administered Retirement Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2019, at p. 158.

⁶ *Id.* at 193.

⁷ The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

⁸ The Special Risk Class is for members employed as law enforcement officers, firefighters, correctional officers, probation officers, paramedics and emergency technicians, among others. Section 121.0515, F.S.

⁹ The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the Florida Retirement System. Section 121.0515(8), F.S.

¹⁰ The Elected Officers' Class is for elected state and county officers, and for those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.

- The Senior Management Service Class¹¹ has 7,767 active members and 214 in renewed membership.¹²

Each class is funded separately based upon the costs attributable to the members of that class.

Members of the FRS have two primary plan options available for participation:

- The defined contribution plan, also known as the Investment Plan; and
- The defined benefit plan, also known as the Pension Plan.

Special Risk Class

The Special Risk Class of the FRS consists of state and local government employees who meet the criteria for special risk membership. The class covers persons employed in law enforcement, firefighting, criminal detention, and emergency, correctional and forensic medical care who meet statutory criteria for membership as set forth in section 121.0515, F.S.

Cost of living adjustments to retirement benefits

Under current law, the COLA is 3 percent for retirees and beneficiaries with an effective retirement date prior to July 1, 2011. Retirements effective on and after July 1, 2011, receive an individually determined COLA calculated as 3 percent multiplied by the quotient of the sum of the member's service credit earned prior to July 1, 2011, divided by the sum of the member's total service credit earned. Pension Plan members initially enrolled on or after July 1, 2011, have a post-retirement COLA equal to zero.

When the FRS was created COLA was variable, tied to the consumer price index with a 3 percent cap each year. There have been a period of special adjustments without impacting the increase in general for all FRS retirees and surviving beneficiaries, until the 1987 Florida Legislature changed the COLA to a fixed 3 percent of the June benefit unless the retiree was not retired for at least 12 calendar months in which case the first COLA was a prorated portion of 3 percent based on the number of months retired prior to the first July after retirement.

Funding for Benefit Enhancements

Article X, Section 14, of the State Constitution

Since 1976, the State Constitution has required that benefit improvements under public pension plans in the State of Florida must be concurrently funded on a sound actuarial basis, as set forth below:

SECTION 14. State retirement systems benefit changes. – A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits

¹¹ The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. Section 121.055, F.S.

¹² All figures are from Florida Retirement System Pension Plan and Other State Administered Retirement Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2019, at p. 161.

to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Part VII of Chapter 112, F.S.

Article X, Section 14, of the State Constitution is implemented by statute under part VII of chapter 112, F.S., the “Florida Protection of Public Employee Retirement Benefits Act,” which establishes minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. The key provision of this act states the legislative intent to “... prohibit the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers.”

III. Effect of Proposed Changes:

Section 1 amends s. 121.101, F.S., to base the annual cost-of-living adjustment (COLA) for a Florida Retirement System (FRS) Pension Plan retiree who was a member of the Special Risk Class on June 30, 2011, and on the date of retirement, on the member’s total service credit earned as of June 30, 2020 (rather than the member’s full service). This COLA adjustment for eligible retirees will be applied prospectively for retirement payments beginning on or after July 1, 2020.

Section 2 increases the employer paid rates for the FRS by 1.02 percentage points for the Special Risk Class and 0.08 percentage point for DROP. These amounts are addition to any other rates effective July 1, 2020.

Section 3 provides a declaration that the bill fulfills an important state interest.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the State Constitution provides 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 expenditure is required to comply with a law that applies to all persons similarly situated....”

This bill includes legislative findings that the bill fulfills important state interests, and the bill applies to all persons similarly situated (those employers participating in the Florida Retirement System), including state agencies, school boards, community colleges, counties, and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Since 1976, Article X, Section 14, of the State Constitution has required that benefit improvements under public pension plans in the State of Florida must be concurrently funded on a sound actuarial basis, as set forth below:

SECTION 14. State retirement systems benefit changes. – A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

An actuarial study has been completed to comply with Article X, section 14 of the State Constitution, and section 2 provides the adjustment to contribution rates necessary to fund the cost of the retirement benefit enhancements.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Based on an actuarial study¹³ of the impact of similar changes with a 2 percent minimum COLA, the annual retirement contributions system-wide will be increased by \$54 million¹⁴ to meet the concurrent funding requirement beginning July 1, 2020.

¹³ Letter to Mr. David DiSalvo, *supra* note 1.

¹⁴ *Id.* at Table 2-1 (page (2 of 2)).

The Department of Management Services will incur some costs to modify the benefits calculation programs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 121.101 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 February 10, 2020:

The committee substitute increases the employer-paid contributions to the FRS to fund this enhanced benefit.

- B. Amendments:

None.



873758

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/10/2020	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 33 and 34
insert:

Section 2. (1) In order to fund the benefit changes
provided in this act, the required employer contribution rates
for members of the Florida Retirement System are increased as
follows:

(a) By 0.39 percentage points for the rate established in
s. 121.71(4), Florida Statutes, for the Special Risk Class.



873758

(b) By 0.63 percentage points for the rate established in s. 121.71(5), Florida Statutes, for the Special Risk Class.

(c) By 0.08 percentage points for the rate established in s. 121.71(4), Florida Statutes, for DROP.

(2) The adjustments provided in subsection (1) are in addition to any other changes to such contribution rates which may be enacted into law to take effect on July 1, 2020. The Division of Law Revision is directed to adjust accordingly the contribution rates provided in s. 121.71, Florida Statutes.

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

And the title is amended as follows:

Delete line 6

and insert:

their beneficiaries, who meet certain criteria;
directing the Division of Law Revision to adjust the
employer contribution rates for the Special Risk Class
and DROPO in the Florida Retirement System;

By Senator Gruters

23-00932-20

2020858__

A bill to be entitled

An act relating to cost-of-living adjustment for Special Risk Class retirees; amending s. 121.101, F.S.; revising the manner of calculating the cost-of-living factor for Special Risk Class retirees, and their beneficiaries, who meet certain criteria; providing a declaration of important state interest; providing an effective date.

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

Section 1. Paragraph (c) of subsection (4) of section 121.101, Florida Statutes, is amended to read:

121.101 Cost-of-living adjustment of benefits.—

(4) For members whose effective retirement date is on or after July 1, 2011, the benefit of each retiree and annuitant shall be adjusted annually on July 1 as follows:

(c) The department shall calculate a cost-of-living factor for each retiree and beneficiary retiring on or after July 1, 2011. This factor shall equal the product of 3 percent multiplied by the quotient of the sum of the member's service credit earned for service before July 1, 2011, divided by the sum of the member's total service credit earned. However, beginning July 1, 2020, the cost-of-living factor for each retiree, and the beneficiary of such a retiree, who was a member of the Special Risk Class on June 30, 2011, is a member of the Special Risk Class on the effective date of retirement, who retires on or after July 1, 2011, and has earned service credit before July 1, 2011, shall equal the product of 3 percent

Page 1 of 2

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

23-00932-20

2020858__

multiplied by the quotient of the sum of the member's service credit earned for service before July 1, 2011, divided by the sum of the member's total service credit earned as of June 30, 2020.

Section 2. The Legislature finds that a proper and legitimate state purpose is served when employees and retirees of the state and its political subdivisions, and the dependents, survivors, and beneficiaries of such employees and retirees, are extended the basic protections afforded by governmental retirement systems. These persons must be provided benefits that are fair and adequate and that are managed, administered, and funded in an actuarially sound manner, as required by s. 14, Article X of the State Constitution and part VII of chapter 112, Florida Statutes. Therefore, the Legislature determines and declares that this act fulfills an important state interest.

Section 3. This act shall take effect July 1, 2020.

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-10-20
Meeting Date

858
Bill Number (if applicable)

Topic COST OF LIVING ADJUSTMENTS

Amendment Barcode (if applicable)

Name Wayne "Bernie" BERNOSKA

Job Title President

Address 343 W. MADISON St.
Street

Phone 321-231-9116

TALLAHASSEE FL 32301
City State Zip

Email Bernie@FPFP.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLORIDA PROFESSIONAL FIRE FIGHTERS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/10/2020

Meeting Date

SB 858

Bill Number (if applicable)

Topic Cost-of-living Adjustment

Amendment Barcode (if applicable)

Name Matt Rickett

Job Title lobbyist

Address 300 East Brevard St.

Phone _____

Street

Tallahassee

FL

32301

City

State

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Police Benevolent Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

858

Meeting Date _____

Bill Number (if applicable) _____

Topic COLA

Amendment Barcode (if applicable) _____

Name Timothy Morris

Job Title _____

Address 1161 MILL CREEK DR.

Phone _____

Street

JAX. FL 32259

Email _____

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FRATERNAL ORDER OF POLICE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
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858

Meeting Date _____

Bill Number (if applicable) _____

Topic COLA

Amendment Barcode (if applicable) _____

Name Harlan Peterson

Job Title _____

Address 1077 Waterfall Dr.
Street

Phone _____

Jax. FL 32225
City State Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Fraternal order of Police

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

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858

Meeting Date _____

Bill Number (if applicable) _____

Topic COLA

Amendment Barcode (if applicable) _____

Name Lisa Henning

Job Title Legislative Director

Address 245 Office Plaza Dr

Phone 850-766-8808

Street

Tallahassee

FL

32301

City

State

Zip

Email lregislative@aol.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Fraternal Order of Police

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)



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January 31, 2020

David DiSalvo
State Retirement Director
Florida Department of Management Services, Division of Retirement

**Re: Special Actuarial Study of Modified COLA Rate Calculation for Certain Tier I
Special Risk Class Members and Their Beneficiaries**

Dear Director DiSalvo:

In response to a Senate request dated December 19, 2019, and as outlined in our project scope letter dated December 27, 2019, this letter provides actuarial analysis on a concept that would modify the COLA calculation for qualifying Tier I Special Risk Class retirees and their beneficiaries, first effective with cost-of-living adjustments made in July 2020.

Executive Summary

The estimated impact of the proposed concept on the blended proposed 2020-2021 statutory contribution rates is shown in the table below. The concept would increase the projected present value of future benefits for affected members and their beneficiaries. As such, under the individual entry age normal actuarial cost allocation method as adopted by the 2019 FRS Actuarial Assumption Conference, the concept, if adopted, would increase the Normal Cost, the Actuarial Liability and the Unfunded Actuarial Liability. The concept would affect the DROP Normal Cost Rate, which is set equal to the composite FRS Pension Plan average employer-paid Normal Cost Rate, which would increase from 7.03% to 7.11% of applicable payroll.

Blended Proposed 2020-2021 Statutory Contribution Rate Changes Due to Concept (as a % of Payroll):			
	Special Risk Class	DROP	Composite System including DROP
Employer Normal Cost Contribution Rate	0.39%	0.08%	0.07%
Employer UAL Contribution Rate	<u>0.63%</u>	<u>0.00%</u>	<u>0.09%</u>
Total Employer Contribution Rate	1.02%	0.08%	0.16%

The table above shows the increase in blended proposed 2020-2021 statutory contribution rates, which would be assessed on both FRS Pension Plan and FRS Investment Plan payroll.

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Background

Under current statute, annual Cost-of-Living Adjustments (COLAs) to FRS Pension Plan benefits for Tier I members are defined by a formula equal to 3% multiplied by a fraction, the numerator of which is service through June 30, 2011 and the denominator of which is total service at retirement or DROP entry. Under the formula currently in effect, Tier II members (those initially enrolled on or after July 1, 2011) receive 0% COLA; Tier I members with service subsequent to June 30, 2011 receive a COLA rate less than 3%. For Tier I members, the effective COLA rate decreases as service subsequent to June 30, 2011 increases.

Concept for Analysis

Under the concept studied, the COLA calculation formula would change for future retirees who were members of the Special Risk Class on June 30, 2011 and who retire on or after July 1, 2020 as members of the Special Risk Class with service credit earned before July 1, 2011 (Tier I members). The COLA on benefits payable to the surviving beneficiaries of affected members would also change. The concept's formula would first affect COLAs payable in July 2020.

Under the proposed COLA calculation formula, the annual COLAs to FRS Pension Plan benefits for affected Tier I members would be equal to 3% multiplied by a fraction, the numerator of which is service through June 30, 2011 and the denominator of which is total service through June 30, 2020. Current retirees and future retirees who retire before July 1, 2020 would be unaffected by the concept, assuming they do not return to active employment, since the proposed formula would only change the COLA calculation for members with service subsequent to June 30, 2020.

Below is an example of how a Tier I Special Risk Class member's COLA rate would be affected due to this concept. In this example the member is assumed to have six years of service credit earned before July 1, 2011.

Date of Retirement	(A) Service as of Date	(B) Service earned through June 30, 2020	(C) Current Benefit Provisions COLA Calculation [(6 years) / (A) x 3.00%]	(D) Modified Benefit Provisions COLA Calculation [(6 years) / (B) x 3.00%]
June 30, 2019	14	14	1.286%	1.286%
June 30, 2020	15	15	1.200%	1.200%
June 30, 2021 and onward	16+	15	1.125% decreases going forward	1.200% fixed going forward

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The analyzed concept would affect Tier I Special Risk Class members noted above and their beneficiaries. Such members would benefit from the concept if they perform service subsequent to June 30, 2020. The COLA concept would also apply to disability and in-line-of-duty death benefits provided on behalf of former FRS Investment Plan members who have elected to receive FRS Pension Plan benefits in lieu of their IP account balances. (121.591(2) F.S. and 121.591(4) F.S.) The concept would not affect Tier II members, nor would it affect Tier I Special Risk Class members who retired prior to July 1, 2020 or other Tier I members who do not satisfy the eligibility criteria for the concept as articulated above.

Benefits under the concept would be prospective starting on July 1, 2020 for eligible members and beneficiaries.

Summary of Results

The projected impact of the concept was assessed on a member-by-member basis for each member assumed to be eligible under the study's methodology. The magnitude of the effect of the concept varies from member to member and depends on the member's date of separation from service or timing of entry into DROP. The projected timing for service separation or timing of DROP entry for current active members was modeled by using the most recently adopted actuarial valuation assumptions for the Special Risk Class.

Applying the adopted actuarial cost allocation method used for determining 2020-2021 fiscal year actuarially calculated contribution rates, the FRS Pension Plan Normal Cost, Actuarial Liability and Unfunded Actuarial Liability would be increased by this concept.

Our analysis quantifies the estimated impact of the concept when compared to the current benefit structure for the Special Risk Class FRS Pension Plan participants. The modified COLA rate calculation in this concept would also extend to qualifying Tier I Special Risk Class members in the FRS Investment Plan who receive future disability or in-line-of-duty death benefits from the FRS Pension Plan after surrender of their IP account balances to the FRS Pension Plan. The estimated impact of this concept on the cost allocations for member in-line-of-duty death benefits and disability benefits coverage for FRS Investment Plan members in the Special Risk Class are each less than 0.005% of payroll.

Under the concept, both FRS Pension Plan Actuarial Liability and Unfunded Actuarial Liability (UAL) for the Special Risk Membership Class would increase by approximately \$500 million. The impact on the proposed blended statutory 2020-2021 contribution rates is as shown on the table on page one of this analysis, and in Table 2 of the attached exhibits.

Table 1-PP of the attached exhibits shows the impact of the change on the FRS Pension Plan's July 1, 2019 actuarial valuation results for Special Risk Class members prior to blending with FRS Investment Plan cost levels to create 2020-2021 proposed blended statutory employer contribution rates. The concept would also affect the DROP Normal Cost Rate, which is set equal to the composite FRS Pension Plan average employer-paid Normal Cost Rate. Section A

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of the table shows the estimated increase to the actuarially calculated Employer Normal Cost Rate and UAL Cost Rate. Section B of the table shows the estimated increase to the FRS Pension Plan's Actuarial Liability due to the effects of the concept's increase in the projected value of projected benefits, calculated based on the methodology used to calculate Actuarial Liability for FRS Pension Plan funding calculations as approved by the 2019 FRS Actuarial Assumption Conference.

Table 1-IP of the attached exhibits shows the actuarially calculated FRS Investment Plan employer contribution rates due to the concept. The FRS Investment Plan rates shown in this table are prior to blending with FRS Pension Plan contribution rates to create 2020-2021 proposed blended statutory employer contribution rates. The estimated impact of this concept on the cost allocations for member in-line-of-duty death benefits and disability benefits coverage for FRS Investment Plan members in the Special Risk Class are each less than 0.005% of payroll.

Table 2 shows the estimated impact of the modified COLA concept on the proposed blended statutory rates for the 2020-2021 plan year. Section A of the table develops the 2020-2021 proposed blended statutory employer-paid Normal Cost Rate reflecting the expected impact of the concept, based on the concept's increase to the FRS Pension Plan employer Normal Cost Rate for the Special Risk Class and the DROP. The FRS Pension Plan and FRS Investment Plan rates shown are based on the results of this study's analysis.

Section B of Table 2 develops the proposed blended statutory Employer UAL Contribution Rate as the total employer UAL Cost derived from the FRS Pension Plan divided by the total projected payroll of the FRS Pension Plan and FRS Investment Plan. Section C of the table compares the proposed blended statutory rates reflecting the impact of the concept to those developed in the 2020-2021 Blended Rate Study, which was developed as part of the July 1, 2019 Actuarial Valuation. Section D of the table translates the estimated change in 2020-2021 proposed blended statutory rates to an estimated increase in employer contributions during the 2020-2021 plan year.

The payroll for some employee groups is subject to only the blended Employer UAL Contribution Rate component of the overall employer contribution rate (e.g., participants in the SUSORP, SMSOAP, and SCCORP, and reemployed members not eligible for renewed membership). The payroll for those employee groups is included in the calculation of the proposed blended statutory Employer UAL Contribution Rate, but is excluded from the calculation of the proposed blended statutory Employer Normal Cost Contribution Rate.

The contribution rates shown in Table 2 excludes the 0.06% contribution rate for FRS Investment Plan administration and education (applied to all membership classes except DROP) and the 1.66% contribution rate for the Florida Health Insurance Subsidy (HIS) program, which is charged to all FRS Pension Plan and FRS Investment Plan payroll.

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Analysis-Specific Assumptions and Methodology

For purposes of this study, we treated all Tier 1 active Special Risk Class members as of July 1, 2019 as though they were members of the Special Risk Class on June 30, 2011, and therefore eligible for the proposed concept. The assessment of the Section 121.73 and 121.735 allocations for FRS Investment Plan member disability coverage and in-line-of-duty-death benefits was based on FRS Investment Plan (IP) member census and payroll data as of July 1, 2019 and IP account balance information as of June 30, 2019. Individual member account balances were projected forward to the assumed date of death or disability assuming 5.75% annual return plus annual contributions to member accounts equal to 14.00% of gross compensation for Special Risk Class members, as specified in Section 121.72. FRS Investment Plan members were assumed to receive salary increases and leave active employment (due to death, disability, termination or retirement) consistent with the assumptions applied to a similarly situated FRS Pension Plan member.

Other Assumptions and Methods

The calculations are based on census and payroll data as of July 1, 2019 provided to us by the Division of Retirement for development of the FRS Actuarial Valuation as of July 1, 2019 and the FRS 2020-2021 Blended Rate Study. We have not audited or verified this data and other information. If the underlying data or information is inaccurate or incomplete, the results of our analysis may likewise be inaccurate or incomplete.

We performed a limited review of the data used directly in our analysis for reasonableness and consistency and have not found material defects in the data. If there are material defects in the data, it is possible that they would be uncovered by a detailed, systematic review and comparison of the data to search for data values that are questionable or for relationships that are materially inconsistent. Such a review was beyond the scope of our assignment.

Except where otherwise noted in this letter, this analysis is based on the methods and assumptions as stated in the FRS Actuarial Valuation as of July 1, 2019 report. The data was based on the July 1, 2019 FRS actuarial valuation database. The results of our study depend on future experience conforming to those actuarial assumptions discussed earlier in this letter. Future actuarial measurements may differ significantly from the current measurements presented in this analysis due to many factors, including: plan experience differing from that anticipated by the economic or demographic assumptions; changes in economic or demographic assumptions; increases or decreases expected as part of the natural operation of the methodology used for these measurements (such as the end of an amortization period) and changes in plan provisions or applicable law. Due to the limited scope of our assignment, we did not perform an analysis of the potential range of future measurements. In addition, the cost of the proposed change will depend on the actual legislation.

Milliman's work product was prepared exclusively for the internal business use of Florida Department of Management Services, Division of Retirement. It is a complex technical analysis

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that assumes a high level of knowledge concerning the Florida Retirement System's operations, and uses Division data, which Milliman has not audited. To the extent that Milliman's work is not subject to disclosure under applicable public record laws, Milliman's work may not be provided to third parties without Milliman's prior written consent. Milliman does not intend to benefit or create a legal duty to any third party recipient of its work product. Milliman's consent to release its work product to any third party may be conditioned on the third party signing a Release, subject to the following exceptions:

- a. The Division of Retirement may provide a copy of Milliman's work, in its entirety, to the System's professional service advisors who are subject to a duty of confidentiality and who agree to not use Milliman's work for any purpose other than to benefit the System.
- b. The Division of Retirement may provide a copy of Milliman's work, in its entirety, to other governmental entities, as required by law.

No third party recipient of Milliman's work product should rely upon Milliman's work product. Such recipients should engage qualified professionals for advice appropriate to their own specific needs.

The consultants who worked on this assignment are retirement actuaries. Milliman's advice is not intended to be a substitute for qualified legal or accounting counsel.

Milliman consultants are independent of the plan sponsor. We are not aware of any relationship that would impair the objectivity of our work.

The undersigned is a consulting actuary for Milliman, Inc., a member of the American Academy of Actuaries, and meets their Qualification Standards to render the actuarial opinion contained herein.

Please let us know of any questions or comments regarding this letter.

Sincerely,



Matt Larrabee, FSA, EA, MAAA
Principal & Consulting Actuary

cc: Garry Green (Division of Retirement), Daniel Wade (Milliman), Kathryn Hunter (Milliman)

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FLORIDA RETIREMENT SYSTEM
FISCAL IMPACT ANALYSIS

*Effect on July 1, 2019 Defined Benefit FRS Pension Plan Actuarial Valuation Results
Impact to FRS Pension Plan of Proposal for Modified COLA Rate for Certain Tier 1 Special Risk Class Members and their Beneficiaries Effective July 1, 2020*
Please see the attached letter for details regarding data, assumptions, methodology, and plan provisions used
(Dollars in Thousands)

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A. Actuarially Calculated Pension Plan Employer Contribution Rates (prior to blending to create proposed blended statutory contribution rates)

1. Actuarially Calculated Pension Plan Employer Contribution Rates Developed in July 1, 2019 Valuation ¹

	Regular	Special Risk	Special Risk Administrative	Judicial	-----Elected Officers' Class----- Leg-Atty-Cab	Local	Senior Management	Composite (excluding DROP)	DROP	Composite (including DROP)
a. Employer Normal Cost	5.19%	15.41%	11.13%	13.64%	8.76%	10.57%	6.90%	7.03%	7.03%	7.03%
b. UAL Cost	4.26%	8.85%	30.87%	28.28%	60.66%	52.59%	25.95%	5.59%	8.23%	5.90%
c. Total Employer Cost	9.45%	24.36%	42.00%	41.90%	69.42%	63.16%	32.85%	12.62%	15.32%	12.83%

2. Actuarially Calculated Pension Plan Employer Contribution Rates Reflecting Proposed Change

a. Employer Normal Cost	5.19%	15.87%	11.13%	13.64%	8.76%	10.57%	6.90%	7.11%	7.11%	7.11%
b. UAL Cost	4.26%	9.69%	30.87%	28.26%	60.66%	52.59%	25.95%	5.70%	8.28%	5.90%
c. Total Employer Cost	9.45%	25.56%	42.00%	41.90%	69.42%	63.16%	32.85%	12.81%	15.40%	13.01%

3. Change in Actuarially Calculated Pension Plan Employer Contribution Rates due to Proposed Change

a. Normal Cost	0.00%	0.46%	0.00%	0.00%	0.00%	0.00%	0.00%	0.08%	0.08%	0.08%
b. UAL Cost	0.00%	0.74%	0.00%	0.00%	0.00%	0.00%	0.00%	0.11%	0.05%	0.10%
c. Total Cost	0.00%	1.20%	0.00%	0.00%	0.00%	0.00%	0.00%	0.19%	0.08%	0.18%

B. FRS Pension Plan Unfunded Actuarial Liability (UAL) and Present Value of Projected Benefits (Dollars in Thousands)

1. July 1, 2019 Actuarial Valuation UAL ²	\$17,565,640	\$6,853,209	\$16,168	\$490,323	\$64,419	\$377,139	\$2,196,569	\$27,563,467	\$2,762,896	\$30,326,363
2. July 1, 2019 UAL Reflecting Proposed Change	17,565,640	7,384,882	16,168	490,323	64,419	377,139	2,196,569	28,095,145	2,762,896	30,858,041
3. Increase in UAL due to Proposed Change	\$0	\$531,678	\$0	\$0	\$0	\$0	\$0	\$531,678	\$0	\$531,678
4. Increase in Present Value of Future Normal Costs	\$0	\$201,692	\$0	\$0	\$0	\$0	\$0	\$201,692	\$0	\$201,692
5. Increase in Present Value of Projected Benefits (3 + 4.)	\$0	\$733,370	\$0	\$0	\$0	\$0	\$0	\$733,370	\$0	\$733,370

¹ As reported in the July 1, 2019 valuation - Table 4-11

² As reported in the July 1, 2019 valuation - Table 3-2

FLORIDA RETIREMENT SYSTEM
FISCAL IMPACT ANALYSIS

Impact to FRS Investment Plan of Proposal for Modified COLA Rate for Certain Tier 1 Special Risk Class Members and their Beneficiaries Effective July 1, 2020
Please see the attached letter for details regarding data, assumptions, methodology, and plan provisions used
(Dollars in Thousands)

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	Regular		Special Risk		Judicial	Elected Officers' Class		Local	Senior Management	Composite
			Special Risk	Administrative		Leg-Atty-Cab				
A. Actuarially Calculated Investment Plan Employer Contribution Rates (prior to blending to create proposed blended statutory contribution rates)										
1. Employer Rates effective since July 1, 2012 (Sec 121.72-73; 121.735) ¹										
a. Employer Cost (excludes member contributions)	3.60%	13.54%	5.43%	11.05%	6.94%	8.95%	4.98%	4.83%		
b. UAL Cost	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%		
c. Total Employer Cost	3.60%	13.54%	5.43%	11.05%	6.94%	8.95%	4.98%	4.83%		
2. Actuarially Calculated Investment Plan Employer Contribution Rates Reflecting Proposed Change										
a. Employer Cost (excludes member contributions)	3.60%	13.54%	5.43%	11.05%	6.94%	8.95%	4.98%	4.83%		
b. UAL Cost	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%		
c. Total Employer Cost	3.60%	13.54%	5.43%	11.05%	6.94%	8.95%	4.98%	4.83%		
3. Change in Actuarially Calculated Investment Plan Employer Contribution Rates due to Proposed Change ²										
a. Employer Cost	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%		
b. UAL Cost	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%		
d. Total Employer Cost	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%		

¹ As reported in the 2020-2021 Blended Rates Study dated December 5, 2019.

² The combined impact on the allocations for member disability coverage (F.S. Sec. 121.73) and line-of-duty death benefits (F.S. Sec. 121.735) is below the 0.005% of payroll rounding threshold, meaning the impact on the

FLORIDA RETIREMENT SYSTEM
FISCAL IMPACT ANALYSIS

Effect on Proposed Blended Statutory Employer Contribution Rates for 2020-2021 Plan Year
Impact to FRS Pension Plan and FRS Investment Plan of Proposal for Prospective Modified COLA Rate Calculation for Certain Tier 1 Special Risk Class Members and their Beneficiaries Effective July 1, 2020
Assumes 3.25% Annual Growth in Total Payroll

Please see the attached letter for details regarding data, assumptions, methodology, and plan provisions used

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	Regular	Special Risk	Special Risk	Administrative	Judicial	Elected Officers' Class		Senior Management	Composite (excluding DROP)	DROP	Composite (including DROP)
						Leg-Atty-Cab	Local				
A. Proposed Blended Statutory Normal Cost Contribution Rates Reflecting the Concept (Dollars in Thousands)											
1. Actuarially Calculated Defined Benefit Pension Plan Normal Cost											
a. Employer Pension Plan Normal Cost Rate	5.19%	15.87%	11.13%		13.64%	8.76%	10.57%	6.90%	7.11%	7.11%	7.11%
b. Projected Pension Plan Normal Cost Payroll	\$20,118,463	\$4,322,041	\$3,729		\$114,351	\$6,583	\$45,103	\$53,566	\$25,163,896	\$2,364,056	\$27,527,912
c. Total Employer Pension Plan Normal Cost [(1a) x (1b)]	\$1,044,149	\$885,908	\$415		\$15,597	\$77	\$4,767	\$38,196	\$1,789,609	\$168,084	\$1,957,693
2. Investment Plan Employer Cost											
a. Employer Rates effective July 1, 2019 (Sec 121.72-73; 121.735)											
b. Additional Contribution Due to Concept	3.60%	13.54%	5.43%		11.05%	6.94%	8.95%	4.98%	4.83%	0.00%	4.83%
c. Total Employer Contribution Rate effective July 1, 2020	0.00%	0.00%	0.00%		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
d. Projected Investment Plan Payroll											
e. Total Employer Investment Plan Cost [(2c) x (2d)]	\$5,663,268	\$774,118	\$1,021		\$16,582	\$1,743	\$20,089	\$201,290	\$6,678,111	\$0	\$6,678,111
	\$203,878	\$104,816	\$55		\$1,832	\$121	\$1,798	\$10,024	\$322,524	\$0	\$322,524
3. Proposed Blended Statutory Employer Normal Cost Rate (Pension Plan + Investment Plan)											
a. Total Employer Normal Cost Contribution [(1c) + (2e)]	\$1,248,027	\$790,724	\$470		\$17,429	\$998	\$6,565	\$48,220	\$2,112,133	\$168,084	\$2,280,217
b. Total System Projected Payroll [(1b) + (2d)]	\$25,781,751	\$5,096,159	\$4,750		\$130,933	\$8,326	\$85,192	\$754,856	\$31,841,967	\$2,364,056	\$34,206,023
c. Proposed Blended Statutory Employer Normal Cost Contribution Rate ¹	4.84%	15.52%	9.89%		13.31%	8.38%	10.07%	6.39%	6.63%	7.11%	6.67%
B. Proposed Blended Statutory Unfunded Actuarial Liability (UAL) Cost Contribution Rates Reflecting the Concept (Dollars in Thousands)											
1. Actuarially Calculated Defined Benefit Pension Plan UAL Cost											
a. Pension Plan UAL Cost Rate	4.26%	9.69%	30.87%		28.26%	60.66%	52.59%	25.95%	5.70%	8.29%	5.90%
b. Projected Pension Plan UAL Cost Payroll	\$23,739,856	\$4,346,448	\$3,729		\$114,991	\$7,177	\$49,410	\$569,732	\$28,831,343	\$2,364,056	\$31,195,399
c. Total Employer UAL Cost [(1a) x (1b)]	\$1,011,318	\$421,171	\$1,151		\$32,496	\$4,354	\$25,985	\$147,845	\$16,644,520	\$195,980	\$17,840,500
2. Investment Plan Projected Payroll											
	\$5,663,268	\$774,118	\$1,021		\$16,582	\$1,743	\$20,089	\$201,290	\$6,678,111	\$0	\$6,678,111
3. Proposed Blended Statutory Employer UAL Contribution Rate (Pension Plan + Investment Plan)											
a. Total Employer UAL Cost [(1c)]	\$1,011,318	\$421,171	\$1,151		\$32,496	\$4,354	\$25,985	\$147,845	\$16,644,520	\$195,980	\$17,840,500
b. Total System Projected Payroll [(1b) + (2)]	\$29,403,124	\$5,120,566	\$4,750		\$131,573	\$8,920	\$69,499	\$771,022	\$35,509,454	\$2,364,056	\$37,873,510
c. Proposed Blended Statutory Employer UAL Contribution Rate ¹	3.44%	8.23%	24.23%		24.70%	48.81%	37.39%	19.18%	4.63%	8.29%	4.86%

¹ Rates shown do not include the HTS contribution rate or IT administrative fees.

*Impact on Proposed Blended Statutory Employer Contribution Rates for 2020-2021 Plan Year
Effect on Prospective Modified COLA Rate Calculation for Certain Tier I Special Risk Class Members and their Beneficiaries Effective July 1, 2020
Assumes 3.25% Annual Growth in Total Payroll*

Please see the attached letter for details regarding data, assumptions, methodology, and plan provisions used
Assumes 3.23% Annual Growth in Total Payroll

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C. Proposed Blended Statutory Employer Contribution Rates Reflecting the Concept	Regulator	Special Risk		-----Elected Officers' Class-----			Senior Management	Composite (excluding DROP)	DROP	Composite (including DROP)
		Special Risk	Administrative	Judicial	Leg-Atty-Cab	Local				
1. Proposed Blended Statutory Employer Contribution Rates Based on July 1, 2019 Valuation ²										
a. Employer Normal Cost Contribution Rate	4.84%	15.13%	9.89%	13.31%	8.38%	10.07%	6.39%	6.57%	7.03%	6.50%
b. Employer UAL Contribution Rate	2.44%	7.60%	24.23%	24.70%	48.81%	37.39%	19.18%	4.54%	8.29%	4.77%
c. Total Employer Contribution Rate [(C1a) + (C1b)]	8.28%	22.73%	34.12%	38.01%	57.19%	47.46%	25.57%	11.11%	15.32%	11.37%
2. Proposed Blended Statutory Employer Contribution Rates Reflecting Proposed Change ¹										
a. Employer Normal Cost Contribution Rate [(A3c)]	4.84%	15.52%	9.89%	13.31%	8.38%	10.07%	6.39%	6.63%	7.11%	6.67%
b. Employer UAL Contribution Rate [(B3c)] ³	2.44%	8.23%	24.23%	24.70%	48.81%	37.39%	19.18%	4.63%	8.29%	4.77%
c. Total Employer Contribution Rate [(C3a) + (C3b)]	8.28%	23.75%	34.12%	38.01%	57.19%	47.46%	25.57%	11.26%	15.40%	11.55%
3. Change in Proposed Blended Statutory Employer Contribution Rates due to Proposed Change										
a. Employer Normal Cost Contribution Rate [(C2a) - (C1a)]	0.00%	0.39%	0.00%	0.00%	0.00%	0.00%	0.00%	0.06%	0.08%	0.07%
b. Employer UAL Contribution Rate [(C2b) - (C1b)]	0.00%	0.63%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
c. Total Employer Contribution Rate [(C2a) + (C2b)]	0.00%	1.02%	0.00%	0.00%	0.00%	0.00%	0.00%	0.15%	0.08%	0.16%
D. Additional/(Reduced) Proposed Statutory Employer Contributions for the 2020-2021 Plan Year Due to Proposed Change										
1. State	\$0	\$10,676,043	\$0	\$0	\$0	\$0	\$0	\$10,676,043	\$275,948	\$10,951,991
2. School Boards	\$0	\$492,160	\$0	\$0	\$0	\$0	\$0	\$492,160	\$821,186	\$1,313,346
3. State Universities	\$0	\$335,062	\$0	\$0	\$0	\$0	\$0	\$335,062	\$404,158	\$739,220
4. Community Colleges	\$0	\$23,073	\$0	\$0	\$0	\$0	\$0	\$23,073	\$55,179	\$78,252
5. Counties	\$0	\$37,493,874	\$0	\$0	\$0	\$0	\$0	\$37,493,874	\$571,186	\$38,065,060
6. Other	\$0	\$3,114,375	\$0	\$0	\$0	\$0	\$0	\$3,114,375	\$58,650	\$3,173,025
7. Total	\$0	\$44,175,512	\$0	\$0	\$0	\$0	\$0	\$44,175,512	\$1,500,307	\$45,675,819

¹ Rates shown do not include the HIS contribution rate or IP administrative fees.

² As reported in the 2020-2021 Blended Rates Study dated December 5, 2019.

³ Employers of employee groups subject to only the UAL contribution rate would pay the rates shown in line (C.2.b.) and line (C.3.b.), as reported in the 2009-2014 Member Rates Study dated December 5, 2019.

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 928

INTRODUCER: Health Policy Committee and Senator Harrell

SUBJECT: Public Records and Meetings/Interstate Medical Licensure Compact

DATE: February 7, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Kibbey	Brown	HP	Fav/CS
2. Ponder	McVane	GO	Favorable
3. _____	_____	RC	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 928 exempts from public inspection and copying requirements the personal identifying information of a physician, other than the physician's name, licensure status, or licensure number, obtained from the coordinated information system under the Interstate Medical Licensure Compact, as defined in s. 456.4501, F.S.,¹ and held by the Department of Health (DOH) or the Board (the Board of Medicine or the Board of Osteopathic Medicine).² This information is not exempt from public records requirements under the bill if the state originally reporting the information to the coordinated information system authorizes disclosure of such information by law.

The bill exempts from public meeting requirements a meeting or a portion of the meeting of the Interstate Medical Licensure Commission established under the Interstate Medical Licensure Compact. The exemption applies when matters specifically exempted from disclosure by state or federal law are discussed. The bill provides that recordings, minutes, and records generated from those meetings are also exempt from requirements to disclose such public records.

The bill has no impact on state revenues or state expenditures.

¹ Section 456.4501, F.S., is created in SB 926 and establishes the state's participation in the Interstate Medical Licensure Compact and the coordinated information system.

² Section 456.001, F.S.

The bill provides an effective date of the same date that SB 926 or similar legislation takes effect. SB 926, the substantive bill authorizing Florida's participation in the Interstate Medical Licensure Compact, has an effective date of July 1, 2021.

The bill provides for the repeal of the exemption on October 2, 2025, unless reviewed and reenacted by the Legislature. It also provides statements of public necessity for the public records and public meetings exemptions as required by the State Constitution.

The bill creates a new public records exemption; therefore, a two-thirds vote of the members present and voting in each house of the Legislature is required for final passage.

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.³ 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.⁴

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.⁵ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁶ Lastly, ch. 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.⁷

³ FLA. CONST. art. I, s. 24(a).

⁴ *Id.*

⁵ 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)

⁶ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁷ 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.”

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁸ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁹

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.¹⁰ A violation of the Public Records Act may result in civil or criminal liability.¹¹

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.¹² 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.¹³

General exemptions from the public records requirements are contained in the Public Records Act.¹⁴ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹⁵

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.¹⁶ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁷

⁸ 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.”

⁹ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

¹⁰ Section 119.07(1)(a), F.S.

¹¹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹² FLA. CONST. art. I, s. 24(c).

¹³ *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).

¹⁴ 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).

¹⁵ 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).

¹⁶ See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁷ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁸ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁹ public records or open meetings exemptions, with specified exceptions.²⁰ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²¹

Open Meetings Law

The State Constitution provides that the public has a right to access governmental meetings.²² Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.²³ This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts or special districts.²⁴

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the “Government in the Sunshine Law,”²⁵ or the “Sunshine Law,”²⁶ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.²⁷ The board or commission must provide the public reasonable notice of such meetings.²⁸ Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public’s access to the facility.²⁹ Minutes of a public meeting must be promptly recorded and open to public inspection.³⁰ Failure to abide by public meetings requirements will invalidate any resolution, rule or formal action adopted at a meeting.³¹ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.³²

¹⁸ Section 119.15, F.S.

¹⁹ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

²⁰ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

²¹ Section 119.15(3), F.S.

²² FLA CONST. art. I, s. 24(b).

²³ *Id.*

²⁴ FLA CONST. art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: “The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

²⁵ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

²⁶ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

²⁷ Section 286.011(1)-(2), F.S.

²⁸ *Id.*

²⁹ Section 286.011(6), F.S.

³⁰ Section 286.011(2), F.S.

³¹ Section 286.011(1), F.S.

³² Section 286.011(3), F.S.

The Legislature may create an exemption to public meetings requirements by passing a general law by at least a two-thirds vote of both the Senate and the House of Representatives.³³ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.³⁴ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.³⁵

The following are general exemptions from the requirement that all meetings of any state agency or authority be open to the public:

- That portion of a meeting that would reveal a security or fire safety system plan; and
- Any portion of a team meeting at which negotiation strategies are discussed.³⁶

Practitioner Profiles

Pursuant to s. 456.041, F.S., the DOH operates a database of Florida's health care practitioners, which includes physicians. The practitioner profile database is online and searchable.³⁷ The profile may include information that is public record and relates to the practitioner's profession.³⁸ Practitioners and the DOH are required to update profiles.³⁹ Information exempt from public disclosure and submitted by another governmental entity that the DOH uses for practitioner profiles, continues to maintain its exempt status.⁴⁰

Interstate Medical Licensure Compact and Commission

Interstate Medical Licensure Compact

The Interstate Medical Licensure Compact (Compact) provides an expedited pathway for medical and osteopathic physicians to qualify to practice medicine across state lines within a licensure compact. Currently, 29 states, the District of Columbia and the Territory of Guam which cover 43 medical and osteopathic boards participate in the Compact.⁴¹

Approximately 80 percent of physicians meet the eligibility guidelines for licensure through the Compact.⁴² The providers' applications are expedited by using the information previously

³³ FLA CONST., art. I, s. 24(c).

³⁴ *Id.*

³⁵ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a public records statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

³⁶ Section 286.0113, F.S.

³⁷ Section 456.041(8), F.S.; Department of Health Practitioner Profile Search, <https://appsmqa.doh.state.fl.us/MQASearchServices/HealthCareProviders/PractitionerProfileSearch> (last visited Jan. 23, 2020).

³⁸ Section 456.041(7), F.S.

³⁹ Section 456.042, F.S.

⁴⁰ Section 456.046, F.S.

⁴¹ Interstate Medical Licensure Compact, *The IMLC*, <https://imlcc.org/> (last visited Jan. 23, 2020).

⁴² *Id.*

submitted in their state of principal licensure (SPL). The physician can then seek expedited licensure in member states after a fresh background check is completed.

Interstate Medical Licensure Compact Commission

The Interstate Medical Licensure Compact Commission (commission) is created in Section 11 of the Compact and serves as the administrative arm of the Compact and the member states. Each member state has two voting representatives on the commission and, if the state has separate regulatory boards for allopathic and osteopathic, then the representation is split between the two boards.⁴³

The commission meets at least once per calendar year in a publicly noticed meeting. The Compact also creates an Executive Committee that may act on behalf of the commission, with the exception of rulemaking. Information, rules, and minutes of the commission and the Executive Committee, with the exception of those areas that may be closed to the public, are available to the public for inspection.⁴⁴

All or a portion of a commission meeting may be closed to the public if a topic is likely to involve certain matters, based on a two-thirds vote of those commission members present at the meeting. The areas covered by a closed meeting are:

- Personnel matters;
- Matters specifically exempted from disclosure by federal law;
- Trade secrets, commercial, or financial information that is privileged or confidential;
- Information that involves accusing a person of a crime or that formally censures a person;
- Information of a personal nature where disclosure would clearly constitute an unwarranted invasion of personal privacy;
- Investigative records compiled for law enforcement purposes; or
- Information that specifically relates to the commission's participation in a civil action or other legal proceeding.⁴⁵

III. Effect of Proposed Changes:

Section 1 creates s. 456.4502, F.S., to make a physician's personal identifying information, other than the physician's name, licensure status, or licensure number, obtained from the IMLC's coordinated information system, as defined in s. 456.4501, F.S., and held by the DOH or the Boards, exempt from public disclosure under s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The personal identifying information is exempt from public disclosure under the bill unless the state that originally reported the information to the coordinated information system authorizes the disclosure of such information. Under such circumstances, the information may only be disclosed to the extent permitted by the reporting state's law.

⁴³ Interstate Medical Licensure Compact, Section 11, (d), p. 11, <https://imlcc.org/wp-content/uploads/2018/04/IMLC-Compact-Law.pdf> (last visited Jan. 23, 2020).

⁴⁴ Interstate Medical Licensure Compact, Section 11(d), pg. 13, <https://imlcc.org/wp-content/uploads/2018/04/IMLC-Compact-Law.pdf> (last visited Jan. 23, 2020).

⁴⁵ See *Interstate Medical Licensure Compact*, Section 11(h), pp. 12-13, <https://imlcc.org/wp-content/uploads/2018/04/IMLC-Compact-Law.pdf> (last visited Jan. 23, 2020).

The bill also creates an exemption from s. 286.011, F.S., and s. 24(b), Art. I, of the State Constitution for a meeting or any portion of a meeting of the commission that is closed to the public by a two-thirds vote of the commission members present. Such a meeting may be closed if Commission members believe that the meeting would likely:

- Relate solely to the internal personnel practices and procedures of the commission;
- Involve discussion of matters exempted from disclosure by federal statute;
- Involve discussion of trade secrets, commercial, or financial information that is privileged or confidential;
- Involve accusing a person of a crime or that formally censures a person;
- Involve discussion of information of a personal nature where disclosure would clearly constitute an unwarranted invasion of personal privacy;
- Involve discussion of investigative records compiled for law enforcement purposes; or
- Relate specifically to participation in a civil action or other legal proceeding.

Recordings, minutes, and records generated during an exempt meeting are exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

These exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 provides, as required by the State Constitution, a statement of public necessity which provides that protection of the specified information is required under the Compact which the state must adopt in order to become a member state and a party to the Compact. Without the public records exemption, the state would be unable to effectively and efficiently function as a member of the Compact.

Additionally, the bill provides a statement of public necessity, as required by the Florida Constitution, for protecting any meeting or portion of a meeting of the commission at which matters specifically exempted from disclosure by federal or state statute are discussed. These meetings or portions of meetings would be exempted from s. 286.011, F.S., and s. 24(b), Art. I, of the State Constitution. Without the public meeting exemption, the state will be prohibited from becoming a party to the Compact.

The bill includes a statement of public necessity by the Legislature that the recordings, minutes, and records generated during an exempt meeting of the commission are exempt pursuant to s. 464.0096, F.S., and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. Release of such information would negate the public meeting exemption.

Section 3 provides that the bill takes effect on the same date as SB 926 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take 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:

Vote Requirement

Article I, section 24(c), of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill creates a public records exemption and a public meeting exemption; therefore, it requires a two-thirds vote.

Public Necessity Statement

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

Breadth of Exemption

Article I, section 24(c), of the State Constitution requires exemptions to the public records and public meetings requirements to be no broader than necessary to accomplish the stated purpose of the law. It is not clear if the public records exemption is broader than necessary to accomplish the purposes outlined in the public necessity statement. The exemption covers a physician's personal identifying information (excluding a physician's name, licensure status and license number) that is otherwise exempt in the physician's home state. In the context of the Compact, it is not clear what information would be considered "personal identifying information" for purposes of this exemption. Personal identifying information is used throughout the Florida Statutes and is not defined. It is not clear if a state would consider a physician's business address, certifications, or level of education to be personal identifying information. State laws are also subject to change, so it is not clear if this exemption is limited to state laws as currently enacted or in the future. Therefore, the breadth of the exemption is subject to change depending on when or how the DOH and the Boards interpret the laws of the physician's home state.

It is also unclear if the public meetings exemption is broader than necessary to accomplish the purposes outlined in the public necessity statement. The bill provides instances during which a public meeting may be closed. Some of those matters are already exempted under Florida's public meetings exemptions.⁴⁶ In addition, the bill

⁴⁶ Meetings with attorneys on pending litigation are exempt under s. 286.011(8), F.S. Competitive solicitations team meetings and some negotiations are exempt under s. 286.0113(2), F.S. Meetings to determine if there is probable cause to find that a

provides that the commission has the authority to vote on when it will close a meeting, so it is not clear exactly which meetings or portions of meetings will be closed. The bill provides the commission with authority to close a meeting or a portion of a meeting by a two-thirds vote. This could be considered an overly broad exemption. Additionally, one of the seven reasons enumerated upon which the commission may vote to close a meeting is when the meeting would likely involve a discussion of personal information that would constitute a clearly unwarranted invasion of personal privacy. This may conflict with article 1, section 23, of the State Constitution which provides:

Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

Courts will look to the Legislature to balance these competing interests.⁴⁷

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 be subject to the cost, to the extent imposed, associated with the DOH making redactions in response to public records request.

practitioner is subject to discipline are closed until 10 days after probable cause has been found pursuant to s. 456.073(4), F.S. These exemptions are provided as examples and not an exhaustive list of relevant public meetings exemptions.

⁴⁷ See *Campus Communications, Inc. v. Earnhardt*, 821 So. 2d 388, 402-403 (Fla. 5th DCA 2002) ("Thus our function here has not been to weigh these two constitutional rights with respect to autopsy photographs and determine whether the right that helps ensure an open government freely accessible by every citizen is more significant or profound than the right that preserves individual liberty and privacy. Rather, our function has been to determine whether the Legislature has declared that the latter prevails over the former in a manner that is consistent with the constitutional provisions that bestow upon it the power to do so."); see also *Wallace v. Guzman*, 687 So. 2d 1351, 1354 (Fla. 3d DCA 1997) (noting "[t]he [L]egislature has balanced the private/public rights by creating the various exemptions from public disclosure contained in section 119.07, Florida Statutes (1995).").

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 456.4503 of the Florida Statutes.

IX. Additional Information:

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

CS by Health Policy on January 28, 2020:

The CS corrects a typographical error on line 81. The CS also revises the contingent effective date so that the bill will take effect on the same date that SB 926 or similar legislation takes effect if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

- B. Amendments:

None.

By the Committee on Health Policy; and Senator Harrell

588-02757-20

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A bill to be entitled

An act relating to public records and meetings; creating s. 456.4503, F.S.; providing an exemption from public records requirements for certain information held by the Department of Health, the Board of Medicine, or the Board of Osteopathic Medicine, pursuant to the Interstate Medical Licensure Compact; providing an exemption from public meeting requirements for certain meetings or portions of certain meetings of the Interstate Medical Licensure Compact Commission; providing an exemption from public records requirements for recordings, minutes, and records generated during the closed portions of such meetings; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 456.4503, Florida Statutes, is created to read:

456.4503 Interstate Medical Licensure Compact; public records and meetings exemptions.—

(1) A physician's personal identifying information, other than the physician's name, licensure status, or licensure number, obtained from the coordinated information system, as described in section 8 of s. 456.4501, and held by the department, the Board of Medicine, or the Board of Osteopathic

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

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Medicine, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless the state that originally reported the information to the coordinated information system authorizes the disclosure of such information by law. If disclosure is so authorized, information may be disclosed only to the extent authorized by law by the reporting state.

(2) (a) A meeting or a portion of a meeting of the Interstate Medical Licensure Compact Commission, established in section 11 of s. 456.4501, is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution if the commission has determined that an open meeting would be likely to:

1. Relate solely to the internal personnel practices and procedures of the commission;

2. Discuss matters specifically exempted from disclosure by federal statute;

3. Discuss trade secrets or commercial or financial information that is privileged or confidential;

4. Involve accusing a person of a crime, or formally censuring a person;

5. Discuss information of a personal nature when disclosure would constitute a clearly unwarranted invasion of personal privacy;

6. Discuss investigative records compiled for law enforcement purposes; or

7. Specifically relate to the participation in a civil action or other legal proceeding.

(b) In keeping with the intent of the Interstate Medical Licensure Compact, recordings, minutes, and records generated during an exempt meeting or portion of such a meeting are exempt

Page 2 of 4

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59 from s. 119.07(1) and s. 24(a), Art. I of the State
 60 Constitution.

61 (3) This section is subject to the Open Government Sunset
 62 Review Act in accordance with s. 119.15 and shall stand repealed
 63 on October 2, 2025, unless reviewed and saved from repeal
 64 through reenactment by the Legislature.

65 Section 2. (1) The Legislature finds that it is a public
 66 necessity that a physician's personal identifying information,
 67 other than the physician's name, licensure status, or licensure
 68 number, obtained from the coordinated information system, as
 69 described in section 8 of s. 456.4501, Florida Statutes, and
 70 held by the Department of Health, the Board of Medicine, or the
 71 Board of Osteopathic Medicine, be made exempt from s. 119.07(1),
 72 Florida Statutes, and s. 24(a), Article I of the State
 73 Constitution. Protection of such information is required under
 74 the Interstate Medical Licensure Compact, which the state must
 75 adopt in order to become a member state of the compact. Without
 76 the public records exemption, this state will be unable to
 77 effectively and efficiently implement and administer the
 78 compact.

79 (2)(a) The Legislature finds that it is a public necessity
 80 that any meeting of the Interstate Medical Licensure Compact
 81 Commission held as provided in s. 456.4501, Florida Statutes, in
 82 which matters specifically exempted from disclosure by federal
 83 or state law are discussed be made exempt from s. 286.011,
 84 Florida Statutes, and s. 24(b), Article I of the State
 85 Constitution.

86 (b) The Interstate Medical Licensure Compact requires the
 87 closure of any meeting, or any portion of a meeting, of the

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88 Interstate Medical Licensure Compact Commission if two-thirds of
 89 the commission members determine that certain sensitive and
 90 confidential subject matters may arise during the meeting and
 91 that the meeting should be closed to the public. In the absence
 92 of a public meeting exemption, this state would be prohibited
 93 from becoming a member state of the compact.

94 (3) The Legislature also finds that it is a public
 95 necessity that the recordings, minutes, and records generated
 96 during a meeting that is exempt pursuant to s. 456.4503(2),
 97 Florida Statutes, be made exempt from s. 119.07(1), Florida
 98 Statutes, and s. 24(a), Article I of the State Constitution.
 99 Release of such information would negate the public meeting
 100 exemption. As such, the Legislature finds that the public
 101 records exemption is a public necessity.

102 Section 3. This act shall take effect on the same date that
 103 SB 926 or similar legislation takes effect, if such legislation
 104 is adopted in the same legislative session or an extension
 105 thereof and becomes a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR GAYLE HARRELL
25th District

COMMITTEES:

Health Policy, *Chair*
Appropriations Subcommittee on Health
and Human Services, *Vice Chair*
Appropriations Subcommittee on Criminal
and Civil Justice
Children, Families, and Elder Affairs
Military and Veterans Affairs and Space

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

January 28, 2020

Senator Ed Hooper, Chair
Committee on Governmental Oversight and Accountability
330 Knott
404 South Monroe Street
Tallahassee, FL 32399

Chair Hooper,

I respectfully request that **SB 928 – Medical Licensure Compact and Public Records** be placed on the next available agenda for the Committee on Governmental Oversight and Accountability. SB 928 passed its last committee stop unanimously.

Should you have any questions or concerns, please feel free to contact my office. Thank you in advance for your consideration.

Thank you,

A handwritten signature in blue ink that reads "Gayle".

Senator Gayle Harrell
Senate District 25

Cc: Joe McVane, Staff Director
Tamra Redig, Committee Administrative Assistant

REPLY TO:

- 215 SW Federal Highway, Suite 203, Stuart, Florida 34994 (772) 221-4019
- 310 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
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: CS/SB 966

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Gainer

SUBJECT: Public Records/Disaster Recovery Assistance

DATE: February 11, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Proctor	Miller	IS	Favorable
2.	Ponder	McVane	GO	Fav/CS
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 966 makes confidential and exempt from public disclosure requirements property photographs and applicant financial documentation provided to the Department of Economic Opportunity (DEO); the Florida Housing Finance Corporation (FHFC), a county; a municipality; or a local housing finance agency by or on behalf of an applicant for or a participant in a federal, state, or local housing assistance programs for the purposes of disaster recovery assistance for a presidentially declared disaster.

The bill provides for the disclosure of such confidential and exempt information to a governmental entity or its agents for specified purposes.

The bill is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2025, unless reviewed and reenacted by the Legislature. The bill contains a public necessity statement as required by the Florida Constitution. Because this bill creates a new public records exemption, a two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

The bill may have a minimal negative fiscal impact on the governmental sector.

The bill has an effective date of July 1, 2020.

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.¹ 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.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (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.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ 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.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

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

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ 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)

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

⁵ 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.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

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.¹⁰ 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.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

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.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *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).

¹² *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).

¹³ *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).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

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

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

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

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

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

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

Department of Economic Opportunity

The DEO was created to assist the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and implement coherent and consistent policies and strategies designed to promote economic opportunities for all Floridians.²⁷ The head of the DEO is the executive director, who is appointed by the Governor, subject to confirmation by the Senate. The executive director serves at the pleasure of and reports to the Governor.²⁸ The executive director manages all activities and responsibilities of the DEO, and serves as the manager for the state with respect to contracts with Enterprise Florida Inc., and

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

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

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

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 20.60(4), F.S.

²⁸ Section 20.60(2), F.S.

all applicable direct-support organizations.²⁹ Within the DEO, the Office of Disaster Recovery “supports communities following disasters by addressing long-term recovery needs for housing, infrastructure and economic development.”³⁰

Florida Housing Corporation

The Florida Housing Finance Corporation Act provides that the FHFC is created within the Department of Economic Opportunity and is a public corporation.³¹ The FHFC is responsible for increasing the amount of affordable housing available to individuals and families by stimulating investment of private capital and encouraging public and private sector housing partnerships. To accomplish this, the FHFC uses federal and state resources to finance the development of safe, affordable homes and rental housing and to assist first-time homebuyers.³²

Disaster Recovery Housing Assistance Programs

The DEO, FHFC, counties, municipalities, and local housing finance agencies have various housing programs that are designed to assist those who have been impacted by a disaster. One such program, the Community Development Block Grant - Disaster Recovery Program (CDBG-DR) is funded by the U.S. Department of Housing and Urban Development (HUD) and supports communities following disasters by addressing long-term recovery needs. In response to a presidentially declared disaster, Congress may appropriate additional funding for the CDBG-DR Program as “grants to rebuild the affected areas and provide crucial seed money to start the recovery process.”³³

Rebuild Florida is program funded through HUD and the CDBG-DR Program which focuses on long-term recovery after all other assistance has been exhausted, including private insurance and other forms of federal assistance.³⁴ DEO administers the Rebuild Program which was approved by the HUD after the 2017 hurricane season. In 2017, following Hurricane Irma, HUD allocated a total of \$616 million in funding to support long-term recovery efforts via the CDBG-DR Program.³⁵

CDBG-DR funds are typically used for recovery efforts involving housing, economic development, infrastructure repair, and prevention of further damage to affected areas.³⁶ Eligible activities include, but are not limited to, the following:

- Purchasing damaged properties in a flood plain and relocating residents to safer areas;

²⁹ Section 20.60(9), F.S.

³⁰ Department of Economic Opportunity, *Office of Disaster Recovery*, <http://www.floridajobs.org/community-planning-anddevelopment/assistance-for-governments-and-organizations/disaster-recovery-initiative> (last visited Feb. 4, 2020).

³¹ Section 420.504(1), F.S.

³² See ss. 420.502 and 420.507, F.S.

³³ U.S. Department of Housing and Urban Development, *Community Development Block Grant Disaster Recovery Program*, <https://www.hudexchange.info/programs/cdbg-dr/> (last visited Feb. 4, 2020).

³⁴ Department of Economic Opportunity, *Rebuild Florida Housing Repair and Replacement Program Frequently Asked Questions*, <http://floridajobs.org/rebuildflorida/faqs> (last visited February 4, 2019).

³⁵ Department of Economic Opportunity, *Office of Disaster Recovery Policy Manual*, http://www.floridajobs.org/docs/default-source/office-of-disaster-recovery/office-of-disaster-recovery-main-page/odr-comprehensive-policies-and-procedures-11-21-19.pdf?sfvrsn=24e441b0_8 (last visited January 31, 2020).

³⁶ *Id.*

- Providing Relocation payments for people and businesses displaced by the disaster;
- Removing debris not covered by the Federal Emergency Management Agency;
- Rehabilitating homes and buildings damaged by the disaster; and
- Providing homeownership activities such as down payment assistance, interest rate subsidies and loan guarantees for disaster victims.³⁷

Applicants seeking assistance from DEO's CDBG-DR programs are required to provide personal information and supporting documentation. For example, damage assessment data collected during property inspections to determine remaining needed repairs may include the applicant's name, address, telephone numbers, photo identification, and interior and exterior photographs of their residence.³⁸ Other commonly needed personal identifying information includes, proof of home ownership, tax returns, and salary or wage statements. DEO maintains all files containing such personally identifiable information in a secure manner.³⁹

The Robert T. Stafford Disaster Relief Act and a Presidential Disaster Declaration

Congress enacted the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("Stafford Act")⁴⁰ "to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from disasters."⁴¹ The Stafford Act is triggered when the State Governor determines that State and local resources are insufficient to respond to a disaster, asks the President to declare an area a "major disaster," and the President does so.⁴² The President's declaration designates the areas within a State where Federal assistance may be made available and what specific types of Federal assistance are authorized.

III. Effect of Proposed Changes:

Section 1 amends s. 119.071, F.S., to make confidential and exempt from public disclosure property photographs and applicant financial documentation provided to the DEO, FHFC, a county, a municipality, or a local housing finance agency by or on behalf of an applicant for or a participant in a federal, state, or local housing assistance program for the purpose of disaster recovery assistance for a presidentially declared disaster.

The bill does not specify which federal, state, or local housing assistance programs to which the records and an information may pertain.

The bill provides that DEO, FHFC, a county, a municipality or a local finance agency may release the records made confidential and exempt to a governmental entity or its agents for the purpose of auditing federal, state, or local housing programs or housing assistance programs. The entities receiving such confidential information must maintain the confidential and exempt status

³⁷ *Id.*

³⁸ Department of Economic Opportunity, *Senate Bill 966 Analysis* (December 2, 2020)(on file with the Senate Committee on Governmental Oversight and Accountability).

³⁹ See *Supra* note 27 at 117.

⁴⁰ 42 U.S.C. §§ 5121 *et seq.*

⁴¹ 42 U.S.C. §§ 5121(b).

⁴² *Id.* at § 5171.

of such records. Such confidential and exempt records may be used in any administrative or judicial proceeding, provided such records are kept confidential and exempt unless otherwise ordered by a court.

The bill is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2025, unless reviewed and reenacted by the Legislature. The bill contains a public necessity statement as required by the Florida Constitution. Because this bill creates a new public records exemption, a two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

The bill contains a statement of public necessity, which includes:

- The Legislature finds that it is a public necessity that property photographs and applicant financial documentation provided to the Department of Economic Opportunity, the Florida Housing Finance Corporation, a county, a municipality, or a local housing finance agency by or on behalf of an applicant for or a participant in a federal, state, or local housing assistance program for the purpose of disaster recovery assistance for a presidentially declared disaster be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24 (a), Article I of the State Constitution; and
- In response to a disaster, in an effort to determine storm damage and ascertain the estimated cost of rehabilitation, an agency may conduct a property inspection to observe and record the presence of damage. The damage assessment data collected may include interior and exterior photographs of such individual's residence. This information may be used to locate the damaged property and identify and contact the property owner or tenant. If released, this information may be used by fraudulent contractors, predatory lenders, thieves, or individuals seeking to impose on the vulnerability of a distressed property owner or tenant following a disaster. Therefore, it is necessary that this information be protected to ensure that people impacted by a disaster do not have sensitive information released.

The bill has an effective date of July 1, 2020.

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:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for property photographs and applicant financial documentation provided to the DEO, FHFC, a county, a municipality, or a local housing finance agency by or on behalf of an applicant for or

participation in a federal, state, or local housing assistance program for the purpose of disaster recovery assistance for a presidentially declared disaster. Thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect property photographs and applicant financial documentation provided to the DEO, FHFC, a county, a municipality, or a local housing finance agency by or on behalf of an applicant for or a participant in a federal, state or local housing assistance program for the purpose of disaster recovery assistance for a presidentially declared disaster. This bill exempts only property photographs and applicant financial documentation and provides for their release to a governmental entity or its agents for the purpose of auditing federal, state, or local housing programs or housing assistance programs. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will be subject to the cost, to the extent one is imposed, associated with an agency making redactions in response to a public records requests.

C. Government Sector Impact:

Government agencies will incur costs related to the redaction of records in responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 119.071.

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 February 10, 2020:

The committee substitute defines the term “financial documentation” and narrows the exemption by making only property photographs and applicant financial documentation confidential and exempt. Specifies that the exemption relates only to disaster recovery assistance for a presidentially declared disaster. Additionally, it makes technical changes to the provisions providing for disclosure of the confidential and exempt information in certain circumstances.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/10/2020	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (1) is added to subsection (5) of
section 119.071, Florida Statutes, to read:

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

(5) OTHER PERSONAL INFORMATION.—

(1)1. For purposes of this paragraph, the term "financial



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documentation" means income statements, paystubs, bank statements, tax returns, public assistance information, disaster recovery benefits, social security disability benefits, and insurance information.

2. Property photographs and applicant financial documentation provided to the Department of Economic Opportunity, the Florida Housing Finance Corporation, a county, a municipality, or a local housing finance agency by or on behalf of an applicant for or a participant in a federal, state, or local housing assistance program for the purpose of disaster recovery assistance for a presidentially declared disaster are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

3. An agency provided such confidential and exempt records pursuant to paragraph 2. may disclose such confidential and exempt records to a governmental entity or its agents for the purpose of auditing federal, state, or local housing programs or housing assistance programs. The entities or agents receiving such confidential information must maintain the confidential and exempt status of such records. Such confidential and exempt records may be used in any administrative or judicial proceeding, provided such records are kept confidential and exempt unless otherwise ordered by a court.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that property photographs and applicant financial



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documentation provided to the Department of Economic Opportunity, the Florida Housing Finance Corporation, a county, a municipality, or a local housing finance agency by or on behalf of an applicant for or a participant in a federal, state, or local housing assistance program for the purpose of disaster recovery assistance for a presidentially declared disaster be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24 (a), Article I of the State Constitution. In response to a disaster an agency, in an effort to determine storm damage and ascertain the estimated cost of rehabilitation, may conduct a property inspection to observe and record the presence of damage. The damage assessment data collected may include interior and exterior photographs of such individual's residence. This information may be used to locate the damaged property and identify and contact the property owner or tenant. If released, this information may be used by fraudulent contractors, predatory lenders, thieves, or individuals seeking to impose on the vulnerability of a distressed property owner or tenant following a disaster. Therefore, it is necessary that this information be protected to ensure that people impacted by a disaster do not have sensitive information released.

Section 3. This act shall take effect July 1, 2020.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

An act relating to public records; amending s. 119.071, F.S.;
providing a definition for financial documentation; providing an



424964

69 exemption from public records requirements for property
70 photographs and financial documentation provided to the
71 Department of Economic Opportunity, the Florida Housing Finance
72 Corporation, a county, a municipality, or a local housing
73 finance agency by or on behalf of an applicant for or a
74 participant in a federal, state, or local housing assistance
75 program for the purpose of disaster recovery assistance;
76 authorizing access to such records and information for certain
77 purposes; providing for future legislative review and repeal of
78 the exemption; providing a statement of public necessity;
79 providing an effective date.

By Senator Gainer

2-00631B-20

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A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; providing an exemption from public records requirements for certain records and information provided to the Department of Economic Opportunity, the Florida Housing Finance Corporation, a county, a municipality, or a local housing finance agency by or on behalf of an applicant for or a participant in a federal, state, or local housing assistance program for the purpose of disaster recovery assistance; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (f) of subsection (5) of section 119.071, Florida Statutes, is amended to read:

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

(5) OTHER PERSONAL INFORMATION.—

(f) 1. Medical history records and information related to health or property insurance provided to the Department of Economic Opportunity, the Florida Housing Finance Corporation, a county, a municipality, or a local housing finance agency by an applicant for or a participant in a federal, state, or local housing assistance program are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

Page 1 of 3

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

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2. Records and information related to property photographs, financial documents, or financial information provided to the Department of Economic Opportunity, the Florida Housing Finance Corporation, a county, a municipality, or a local housing finance agency by or on behalf of an applicant for or a participant in a federal, state, or local housing assistance program for the purpose of disaster recovery assistance are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

3. Governmental entities or their agents shall have access to such confidential and exempt records and information for the purpose of auditing federal, state, or local housing programs or housing assistance programs. Such confidential and exempt records and information may be used in any administrative or judicial proceeding, provided such records are kept confidential and exempt unless otherwise ordered by a court.

Section 2. (1) The Legislature finds that it is a public necessity that records and information related to property photographs, financial documents, or financial information of an applicant for or a participant in a federal, state, or local housing assistance program provided to the Department of Economic Opportunity, the Florida Housing Finance Corporation, a county, a municipality, or a local housing finance agency for the purpose of disaster recovery assistance should be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24 (a), Article I of the State Constitution.

Page 2 of 3

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

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59 (2) In response to a disaster, in an effort to determine
60 storm damage and ascertain the estimated cost of rehabilitation,
61 an agency may conduct a property inspection to observe and
62 record the presence of damage. The damage assessment data
63 collected may include interior and exterior photographs of such
64 individual's residence. This information may be used to locate
65 the damaged property and identify and contact the property owner
66 or tenant. If released, this information may be used by
67 fraudulent contractors, predatory lenders, thieves, or
68 individuals seeking to impose on the vulnerability of a
69 distressed property owner or tenant following a disaster.
70 Therefore, it is necessary to protect this information to ensure
71 that sensitive information of people impacted by a disaster is
72 not released.

73 Section 3. This act shall take effect July 1, 2020.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Finance and Tax, *Chair*
Agriculture, *Vice Chair*
Appropriations
Appropriations Subcommittee on Criminal
and Civil Justice
Military and Veterans Affairs and Space

SENATOR GEORGE B. GAINER

2nd District

January 22, 2020

Re: SB 966

Dear Chair Hooper,

I am respectfully requesting Senate Bill 966, related to Public Records/Disaster Recovery Assistance, be placed on the agenda for the next meeting of the Committee on Governmental Oversight and Accountability.

I appreciate your consideration of this bill. If there are any questions or concerns, please do not hesitate to call my office at (850) 487-5002.

Thank you,

A handwritten signature in blue ink that reads "George B. Gainer". The signature is fluid and cursive.

Senator George Gainer
District 2

Cc. Joe McVaney, Tamra Redig, Brian Flaherty, Mari Riba, and Charles Smith

REPLY TO:

- ☐ 840 West 11th Street, Panama City, Florida 32401 (850) 747-5454
- ☐ 302 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5002
- ☐ Northwest Florida State College, 100 East College Boulevard, Building 330, Rooms 105 and 112, Niceville, Florida 32578 (850) 747-5454

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore



2019 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: DEPARTMENT OF ECONOMIC OPPORTUNITY

<u>BILL INFORMATION</u>	
BILL NUMBER:	<u>SB 966</u>
BILL TITLE:	<u>Public Records/Disaster Recovery Assistance</u>
BILL SPONSOR:	<u>Gainer</u>
EFFECTIVE DATE:	<u>July 1, 2020</u>

<u>COMMITTEES OF REFERENCE</u>
1) Infrastructure and Security
2) Governmental Oversight and Accountability
3) Rules
4) Click or tap here to enter text.
5) Click or tap here to enter text.

<u>CURRENT COMMITTEE</u>

<u>SIMILAR BILLS</u>	
BILL NUMBER:	HB 1035
SPONSOR:	Raschein

<u>PREVIOUS LEGISLATION</u>	
BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.
YEAR:	Click or tap here to enter text.
LAST ACTION:	Click or tap here to enter text.

<u>IDENTICAL BILLS</u>	
BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.

Is this bill part of an agency package?
Click or tap here to enter text.

<u>BILL ANALYSIS INFORMATION</u>	
DATE OF ANALYSIS:	December 2, 2019
LEAD AGENCY ANALYST:	Jamesha Cox, Office of Disaster Recovery
ADDITIONAL ANALYST(S):	Click or tap here to enter text.
LEGAL ANALYST:	Jon Morris, Assistant General Counsel
FISCAL ANALYST:	Susan Lincoln, Budget Manager

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Public Records/Disaster Recovery Assistance; Providing an exemption from public records requirements for certain records and information provided to the Department of Economic Opportunity, the Florida Housing Finance Corporation, a county, a municipality, or a local housing finance agency by or on behalf of an applicant for or a participant in a federal, state, or local housing assistance program for the purpose of disaster recovery assistance; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc..

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

The Florida Department of Economic Opportunity (DEO)'s Office of Disaster Recovery supports communities following disasters by addressing long-term recovery needs for housing, infrastructure and economic development. DEO is the governor-designated state authority responsible for administering all U.S. Department of Housing and Urban Development's (HUD) Community Development Block Grant – Disaster Recovery (CDBG-DR) funds awarded to the state.

The U.S. Department of Housing and Urban Development (HUD) guidelines currently default to state statute in the event of a public records request. Currently F.S. 119.071 only prohibits DEO from providing medical records and property insurance information in the course of a public records request. Applicants seeking assistance from DEO's CDBG-DR programs are required to provide personal information and documents. For instance, the Home Damage Assessment step of the application process for DEO's *Rebuild Florida* Housing Repair and Replacement Program involves an inspector conducting a property inspection to determine the remaining repairs needed to complete the damaged home. The damage assessment data collected may include the applicant's name, address, telephone numbers, and interior and exterior photographs of their residence.

2. EFFECT OF THE BILL:

There have been several public records requests where DEO, under law, is required to turn over documents related to CDBG-DR Program applicant records. This information could be used by fraudulent contractors, predatory lenders, thieves, or individuals seeking to impose on the vulnerability of a distressed homeowner or tenant following a disaster. This bill would exempt those documents and photographs from public disclosure.

Amending F.S. 119.071 would allow the citizens of Florida applying for disaster aid within DEO's CDBG-DR program to be exempted from public records for the following categories: (1) property insurance, (2) photographs, (3) financial documents, and (4) financial information.

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:	If this bill is passed, DEO would have to modify its Public Records policies and procedures.
Is the change consistent with the agency's core mission?	Y ☒ N ☐
Rule(s) impacted (provide references to F.A.C., etc.):	N/A

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

Proponents and summary of position:	It is expected that applicants for assistance would support the proposed legislation.
-------------------------------------	---

Opponents and summary of position:	Groups/entities that data mine the type of information currently collected by DEO's disaster recovery programs.
------------------------------------	---

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?Y ☐ N ☒

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?Y ☐ N ☒

Board:	Click or tap here to enter text.
Board Purpose:	Click or tap here to enter text.
Who Appoints:	
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?Y ☐ N ☒

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?Y ☐ N ☒

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

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.)? Y ☐ 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.)? Y ☐ 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:

None.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-10-2020

Meeting Date

9660

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Rebecca DeLaRosa

Job Title Leg. Director

Address 304 N Olive Ave #701

Street

Phone 850-284-7235

West Palm Beach, FL 33401

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Palm Beach County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-10-2020
Meeting Date

9660
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Tonnette [Tone-Net] Graham

Job Title Assoc. Director of Public Policy

Address 100 S. Monroe Street
Street

Phone 850.922.4300

Talahassee, FL 32301
City State Zip

Email tgrahame@flaunties.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Association of Counties

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-10-20

Meeting Date

966

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name JESS MCCARTY

Job Title ASSISTANT COUNTY ATTORNEY

Address 111 NW 1ST STREET, SUITE 2810

Phone 305-979-7110

Street

MIAMI

FL

33128

Email JMM2@MIAMIDADE.GOV

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing MIAMI-DADE COUNTY

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/CS/SB 1024

INTRODUCER: Governmental Oversight and Accountability Committee; Criminal Justice Committee
and Senator Bean

SUBJECT: Public Records/Postconviction Reinvestigative Information

DATE: February 10, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1024 creates a public records exemption for postconviction reinvestigative information in s. 119.071(2)(q), F.S. Postconviction reinvestigative information is defined in the bill as information compiled by a state attorney or other criminal justice agency at the request of the state attorney for the purpose of making an evidence-based determination as to whether a person is innocent of a crime for which he or she was convicted.

The information is made exempt from public inspection and copying when it is related to an ongoing, good faith investigation of a claim of actual innocence until the claim is no longer capable of further reasonable investigation or the relief sought is granted. This exemption appears to be no more broad than necessary to accomplish the purposes of furthering the pursuit of justice while safeguarding, preserving, and protecting personal information relating to a claim of actual innocence by a convicted person.

The bill provides the public necessity statement for the public records exemption. The bill makes legislative findings in support of the public necessity for the exemption.

The bill requires a two-thirds vote of the members present and voting for final passage. It will stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill's fiscal impact is indeterminate. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2020.

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.¹ 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.²

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.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 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.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ 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).

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

⁵ 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.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

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.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

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.¹⁰ 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.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

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.¹⁴ Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *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).

¹² *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).

¹³ *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).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

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

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

¹⁹ Section 119.15(3), F.S.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

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

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

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

Agency Investigations

Section 119.071(2), F.S., contains general exemptions from the public records law for agency investigations. For purposes of ch. 119, F.S., the term “agency” means:

“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

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

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

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

²⁵ See *generally* s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”²⁷

Conviction Integrity Review Units

Conviction Integrity Review (CIR) units are divisions of prosecutorial offices that work to prevent, identify, and correct false convictions. There were 44 CIR units in the United States in 2018, almost three times the number of just five years earlier. Fifty-eight CIR exonerations took place in 2018.²⁸

Currently, four state attorney’s offices in Florida have established CIR units within their offices. These offices are located in the:

- Fourth Circuit, covering Duval, Clay, and Nassau Counties;
- Ninth Circuit, covering Orange and Osceola Counties;
- Thirteenth Circuit, covering Hillsborough County; and
- Seventeenth Circuit, covering Broward County.²⁹

The first state attorney’s office to establish a CIR unit was the Fourth Circuit in early 2018. All four of the CIR units have essentially the same procedures in place which includes criteria a person must meet to warrant more than an initial screening. For example, the CIR units require that a person present a plausible claim of innocence, and some of the units report they rely upon an independent review panel of legal experts to work with the units to review and evaluate the cases under investigation.³⁰ Prior to 2018, Florida had 64 exonerations, including eight defendants who had been sentenced to death.³¹

The work of the Fourth Circuit’s CIR unit resulted in the 2019 exoneration of two men, Clifford Williams and Nathan Myers, who were sentenced to life in prison for the 1976 Jacksonville murder of Jeanette Williams.³² The CIR unit’s investigation confirmed multiple alibi witnesses for the whereabouts of the two men at the time of the murder, and further confirmed that another man, Nathaniel Lawson, admitted to committing the murder. The CIR unit’s investigation was able to independently confirm Lawson’s presence at the scene at the time of the shooting.³³ Prior

²⁷ Section 119.011(2), F.S.

²⁸ The National Registry of Exonerations, *Exonerations in 2018*, April 9, 2019, p. 2, available at <https://www.law.umich.edu/special/exoneration/Documents/Exonerations%20in%202018.pdf> (last visited January 24, 2020).

²⁹ Office of the State Attorney for the Fourth Judicial Circuit, *Conviction Integrity Review*, available at <https://www.sao4th.com/about/programs-and-initiatives/conviction-integrity-review/>; Office of the State Attorney for the Ninth Judicial Circuit, *Conviction Integrity Policy*, available at <https://www.sao9.net/conviction-integrity.html>; Section 119.011 Office of the State Attorney for the Thirteenth Circuit, *Conviction Review Unit*, available at <https://www.sao13th.com/conviction-review-unit-cru/>; Office of the State Attorney for the Seventeenth Circuit, *Conviction Review Unit*, available at <http://www.sao17.state.fl.us/conviction-review.html> (all sites last visited January 24, 2020).

³⁰ *Id.*

³¹ The National Registry of Exonerations, *Exonerations in 2018*, April 9, 2019, p. 13, available at <https://www.law.umich.edu/special/exoneration/Documents/Exonerations%20in%202018.pdf> (last visited January 24, 2020).

³² State Attorney’s Office of the Fourth Judicial Circuit of Florida, *Conviction Integrity Investigation, State of Florida v. Hubert Nathan Meyers, State of Florida v. Clifford Williams, Jr.*, March 28, 2019, p. 42, available at https://secureservercdn.net/198.71.233.254/9c2.a8b.myftpupload.com/wp-content/uploads/2019/03/CIR_Investigative_Report_FINAL_3.28.19_R.pdf (last visited January 24, 2020).

³³ *Id.*, at p. 4.

to Mr. Williams' and Mr. Myers' convictions and sentences being vacated by the 4th Circuit Court on March 28, 2019, they had served 42 years and 11 months in prison.³⁴

Currently, the information gathered by CIR units is not considered exempt from the public records law.

III. Effect of Proposed Changes:

The bill creates a public records exemption for postconviction reinvestigative information in s. 119.071(2)(q), F.S.

Postconviction reinvestigative information is defined in the bill as information compiled by a state attorney or other criminal justice agency at the request of the state attorney for the purpose of making an evidence-based determination as to whether a person is innocent of a crime for which he or she was convicted.

The bill makes postconviction reinvestigative information exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution when it is related to an ongoing, good faith investigation of a claim of actual innocence until the claim is no longer capable of further reasonable investigation or the relief sought is granted. This exemption appears to be no more broad than necessary to accomplish the purposes of furthering the pursuit of justice while safeguarding, preserving, and protecting postconviction reinvestigative information.

The bill provides a public necessity statement for the creation of the public records exemption stating:

The Legislature finds that it is a public necessity that postconviction reinvestigative information be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution if it is related to an ongoing, good faith investigation of a claim of actual innocence and remains exempt until the claim is no longer capable of further reasonable investigation or the relief sought is granted. Public release of postconviction reinvestigative information could result in the disclosure of sensitive information, such as the identity or location of an alternate suspect, a witness, or other evidence needed to exonerate a wrongfully convicted person, which could compromise the reinvestigation of a wrongfully convicted person's case. The Legislature further finds that it is necessary to protect this information in order to encourage witnesses, who might otherwise be reluctant to come forward, to be forthcoming with evidence of a crime. It is in the interest of pursuing justice for persons who may have been wrongfully convicted that all postconviction reinvestigative information be protected until investigation of the claim of actual innocence is concluded. The Legislature finds that the harm that may result from the release of such information outweighs any public benefit that may be derived from its disclosure, and it is in the interest of the public to safeguard, preserve, and protect

³⁴ The Florida Senate, *Senate Bill 28 Special Master's Final Report*, January 23, 2020, at p. 1-2, available at <http://www.flsenate.gov/Session/Bill/2020/28/Analyses/2020s00028.sm.PDF> (last visited January 25, 2020).

information relating to a claim of actual innocence by a person who may have been convicted of a crime he or she did not commit.

The bill requires a two-thirds vote of the members present and voting for final passage. It will stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds, nor does it reduce the authority of counties or municipalities to raise revenue.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill creates an exemption for postconviction reinvestigative information, as defined in the bill, in s. 119.071(2)(q), F.S., thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect postconviction investigative information relating to a claim of actual innocence by a convicted person which may be developed or gathered during the investigation of the claim. This bill exempts the information for only as long as it is related to an ongoing, good faith investigation of a claim of actual innocence until the claim is no longer capable of further reasonable investigation or the relief sought is granted. The exemption does not appear to be broader than necessary to accomplish the purpose of the exemption.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Florida Public Defender Association, Inc., suggests that any workload issues associated with public defenders obtaining documents or information in the postconviction innocence claims addressed by the bill are “indeterminate.”³⁵

The Florida Department of Law Enforcement does not mention any fiscal impact to the agency from this bill.³⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

³⁵ 2020 Bill Analysis, SB 1024, Florida Public Defender Association, Inc. (on file with the Senate Criminal Justice Committee).

³⁶ 2020 Agency Bill Analysis SB 1024, Florida Department of Law Enforcement, December 5, 2019 (on file with the Senate Criminal Justice Committee).

IX. Additional Information:

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

CS/CS by Governmental Oversight and Accountability on February 10, 2020:

The CS revises the bill to make the exemption simply “exempt” rather than “confidential and exempt.” The CS also slightly revises the definition given for postconviction reinvestigative information for clarity, and revises the public necessity statement to meet the constitutional requirement that the Legislature make findings to justify any new public records exemption.

CS by Criminal Justice on January 28, 2020:

The committee substitute:

- Creates a public records exemption for postconviction reinvestigative information in s. 119.071(2)(q), F.S., making postconviction reinvestigative information confidential and exempt from the public records law.
- Defines postconviction reinvestigative information.
- Provides that the information is only confidential and exempt for as long as it is related to an ongoing, good faith investigation of a claim of actual innocence until the claim is no longer capable of further reasonable investigation or the relief sought is granted, which makes the exemption no more broad than necessary to accomplish its purpose.
- Sets forth a public necessity statement for the exemption, that the exemption is in the public interest of safeguarding, preserving, and protecting information relating to a claim of actual innocence by a person who may have been convicted of a crime or crimes that he, she, or they did not commit.
- Provides Legislative findings supporting the public necessity, including that:
 - It is necessary to protect the information in order to encourage witnesses, who might otherwise be reluctant to come forward, to be forthcoming with evidence of a crime or crimes;
 - The information compiled during the reinvestigation could reveal the identity of the person or persons who actually committed the crime or crimes which have been identified as the perpetrator or perpetrators; and
 - It is in the interest of the pursuit of justice that all postconviction reinvestigation information be protected until such investigation is concluded.
- Requires a two-thirds vote of the members present and voting for final passage.
- Stands repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/10/2020	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (q) is added to subsection (2) of
section 119.071, Florida Statutes, to read:

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

(2) AGENCY INVESTIGATIONS.—

(q)1. As used in this paragraph, the term "postconviction



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reinvestigative information" means information compiled by a state attorney, or any other criminal justice agency at the request of the state attorney, for the purpose of making an evidence-based determination as to whether a person is innocent of a crime for which he or she was convicted.

2. Postconviction reinvestigative information is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if it is related to an ongoing, good faith investigation of a claim of actual innocence and remains exempt until the claim is no longer capable of further reasonable investigation or the relief sought is granted. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that postconviction reinvestigative information be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution if it is related to an ongoing, good faith investigation of a claim of actual innocence and remains exempt until the claim is no longer capable of further reasonable investigation or the relief sought is granted. Public release of postconviction reinvestigative information could result in the disclosure of sensitive information, such as the identity or location of an alternate suspect, a witness, or other evidence needed to exonerate a wrongfully convicted person, which could compromise the reinvestigation of a wrongfully convicted person's case. The Legislature further finds that it is necessary to protect this information in order to encourage witnesses, who might otherwise



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be reluctant to come forward, to be forthcoming with evidence of a crime. It is in the interest of pursuing justice for persons who may have been wrongfully convicted that all postconviction reinvestigative information be protected until investigation of the claim of actual innocence is concluded. The Legislature finds that the harm that may result from the release of such information outweighs any public benefit that may be derived from its disclosure, and it is in the interest of the public to safeguard, preserve, and protect information relating to a claim of actual innocence by a person who may have been convicted of a crime he or she did not commit.

Section 3. This act shall take effect July 1, 2020.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to public records; amending s.
119.071, F.S.; defining the term "postconviction
reinvestigative information"; providing an exemption
from public records requirements for certain
postconviction reinvestigative information; providing
for future review and repeal of the exemption;
providing a statement of public necessity; providing
an effective date.

By the Committee on Criminal Justice; and Senator Bean

591-02752-20

20201024c1

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; defining the term "postconviction reinvestigative information"; providing an exemption from public records requirements for certain postconviction reinvestigative information; providing for future review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (q) is added to subsection (2) of section 119.071, Florida Statutes, to read:

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

(2) AGENCY INVESTIGATIONS.—

(q)1. As used in this paragraph, the term "postconviction reinvestigative information" means information compiled by a state attorney or other criminal justice agency at the request of the state attorney for the purpose of making an evidence-based determination as to whether an identifiable person, identifiable persons, or a group of identifiable persons is innocent of the crime or crimes that he, she, or they have been convicted of committing.

2. Postconviction reinvestigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution when it is related to an ongoing, good faith investigation of a claim of actual innocence until the

591-02752-20

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claim is no longer capable of further reasonable investigation or the relief sought is granted. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that postconviction reinvestigative information be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature further finds that the information compiled by a state attorney's office, or another criminal justice agency upon the request of a state attorney, for the purpose of making an evidence-based determination as to whether an identifiable person or group of persons is innocent of the crime or crimes that he, she, or they have been convicted of committing be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature recognizes that it is in the public interest to safeguard, preserve, and protect information related to a claim of actual innocence by a person who may have been convicted of a crime or crimes that he, she, or they did not commit. It is necessary to protect this information in order to encourage witnesses, who might otherwise be reluctant to come forward, to be forthcoming with evidence of a crime or crimes. Further, the information compiled during the reinvestigation could reveal the identity of the person or persons who actually committed the crime or crimes which have been identified as the perpetrator or perpetrators. It is in the interest of the pursuit of justice that all

591-02752-20

20201024c1

59 postconviction reinvestigation information be protected until
60 such investigation is concluded.

61 Section 3. This act shall take effect July 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator Ed Hooper, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: January 29, 2020

I respectfully request that **Senate Bill # 1024**, relating to Public Records/Criminal Intelligence and Criminal Investigative Information, be placed on the:

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

A handwritten signature in blue ink that reads "Aaron Bean".

Senator Aaron Bean
Florida Senate, District 4

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 1030

INTRODUCER: Infrastructure and Security Committee and Senator Stargel

SUBJECT: Public Records/Vessel Title or Registration/Department of Highway Safety and Motor Vehicles

DATE: February 7, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Proctor</u>	<u>Miller</u>	<u>IS</u>	<u>Fav/CS</u>
2.	<u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	<u>Pre-meeting</u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1030 makes confidential and exempt from public disclosure personal information, including highly restricted personal information, contained in any record that pertains to a vessel title or vessel registration issued by the Department of Highway Safety and Motor Vehicles (DHSMV). This exemption applies to records held on or after the effective date of the bill.

Additionally, the bill makes exempt from public disclosure electronic mail addresses and cellular telephone numbers collected by the DHSMV or its agent tax collectors pursuant to chapters 319, 320, 322, 324 or 328, F.S. This exemption applies to electronic mail addresses and cellular telephone numbers held before, on or after the effective date of the bill.

The bill requires the DHSMV to disclose electronic mail addresses or cellular telephone numbers to its tax collector agents to send electronic communications for the purpose of providing information.

The bill is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2025, unless reviewed and reenacted by the Legislature. The bill contains a public necessity statement as required by the Florida Constitution. Because the bill creates a new public records exemption, a two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

The bill may have a minimal negative fiscal impact on the governmental and private sector.

The bill takes effect on July 1, 2020.

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.¹ 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.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (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.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ 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.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ 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)

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

⁵ 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.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

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.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

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.¹⁰ 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.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

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.¹⁴ Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *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).

¹² *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).

¹³ *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).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

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

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

¹⁹ Section 119.15(3), F.S.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

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

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

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

Driver Privacy Protection Act of 1994

Motorist personal information, when held by the DHSMV in motor vehicle records, is confidential pursuant to the Driver's Privacy Protection Act (DPPA) of 1994.²⁷ These restrictions on the disclosure of motorist personal information do not apply to vessel titles or vessel registrations. Because the personal information in vessel records comprises much of the same information contained in motor vehicle records, when personal information revealed in vessel

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

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

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

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ 18 U.S.C. ss. 2721 et seq., and s. 119.0712(2), F.S.

records is made available to the public, the protections afforded by the DPPA are undermined, eroding the privacy of motorist personal information.²⁸

Personal information covered by the DPPA includes: access to your social security number, driver license or identification card number, name, address, telephone number and medical or disability information, contained in your motor vehicle and driver license records. Additionally, emergency contact information and email addresses are restricted pursuant to section 119.0712(2), F.S.²⁹

Non-personal information contained in motor vehicle and driver license records such as vehicular crash records, driving violations and driver status information are not covered under the DPPA, and are considered public information.³⁰

Personal information in motor vehicle and driver license records can be released for the following purposes:^{31, 32}

- For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions;
- For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts and dealers; motor vehicle market research activities, including survey research; and removal of non-owner records from the original owner records of motor vehicle manufacturers;
- For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only -
 - to verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and
 - if such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual;
- For use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a Federal, State, or local court;
- For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals;

²⁸ See DHSMV Form 82040 (Rev. Nov. 2015), Application for Certificate of Title with/without Registration, *available at* <https://flhsmv.gov/pdf/forms/82040.pdf> (same form is used for titling of motor vehicles and vessels and includes various items of personal information).

²⁹ Florida Department of Highway Safety and Motor Vehicles, *Privacy Statement Driver Privacy Protection Act*, *available at* <https://www.flhsmv.gov/privacy-statement/driver-privacy-protection-act/> (last visited on January 16, 2020).

³⁰ *Id.*

³¹ *Supra*, note 27.

³² Florida Department of Highway Safety and Motor Vehicles forms HSMV 90511 (Revised 11/19) *available at* <https://www.flhsmv.gov/pdf/forms/90511.pdf> (last visited January 16, 2020) and HSMV 90510 (Revised 03/19) *available at* <https://www.flhsmv.gov/pdf/forms/90510.pdf> (last visited January 16, 2020).

- For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating or underwriting;
- For use in providing notice to the owners of towed or impounded vehicles;
- For use by any licensed private investigative agency or licensed security service for any purpose permitted under this subsection;
- For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license;
- For use in connection with the operation of private toll transportation facilities;
- For any other use in response to requests for individual motor vehicle records if the State has obtained the express consent of the person to whom such personal information pertains;
- For bulk distribution for surveys, marketing or solicitations if the State has obtained the express consent of the person to whom such personal information pertains;
- For use by any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains; and
- For any other use specifically authorized under the law of the State that holds the record, if such use is related to the operation of a motor vehicle or public safety.

III. Effect of Proposed Changes:

The bill makes confidential and exempt from public inspection and copying personal information, including highly restricted personal information, contained in any record that pertains to a vessel title or vessel registration issued by the DHSMV. This exemption applies to records held on or after the effective date of the exemption.

The bill exempts from public inspection and copying electronic mail addresses and cellular telephone numbers collected by the DHSMV or its agent tax collectors pursuant to chapter 319, chapter 320, chapter 322, chapter 324, or chapter 328. This exemption applies to electronic mail addresses and cellular telephone numbers held before, on or after the effective date of the bill.

The bill provides that the personal information in a vessel record may be released in the same manner provided for a motor vehicle record pursuant to the DPPA of 1994, 18 U.S.C. ss. 2721 et seq.

The bill requires the DHSMV to disclose electronic mail addresses or cellular telephone numbers to its tax collector agents to send electronic communications to such electronic mail addresses or cellular telephone numbers for the purpose of providing information about the issuance of titles, registrations, disabled parking permits, driver licenses, and identification cards; renewal notices; or the tax collector's office locations, hours of operation, contact information, driving skills testing locations, appointment scheduling information, or website information.

The bill is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2025, unless reviewed and reenacted by the Legislature. The bill contains a public necessity statement as required by the Florida Constitution. Because this bill creates a new public records exemption, a two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

The bill contains a statement of public necessity, which includes:

- The Legislature finds that it is a public necessity that personal information, including highly restricted personal information, contained in any record that pertains to a vessel title or vessel registration issued by the DHSMV be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.
- Motorist personal information, when held by the DHSMV in motor vehicle records, is confidential pursuant to the DPPA and s. 119.0712(2), F.S. These restrictions on the disclosure of motorist personal information do not apply to vessel titles or vessel registrations. Because the personal information in vessel records comprises much of the same information contained in motor vehicle records, when personal information revealed in vessel records is made available to the public, the protections afforded by the DPPA are significantly undermined, eroding the privacy and safety of motorists. Thus, the Legislature finds that it is a public necessity to make personal information contained in such vessel records confidential and exempt from public records requirements.
- The Legislature finds that it is a public necessity that electronic mail addresses and cellular telephone numbers collected by the DHSMV and its tax collector agents pursuant to chapter 319, chapter 320, chapter 322, chapter 324, or chapter 328, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and section 24(a), Article I of the State Constitution.
- In order to communicate more effectively with motorists through enhancements in information technology, including efforts of the Motorist Modernization project, the DHSMV seeks to increase communications with motorists through electronic mail and text messaging.
- If the electronic mail addresses or cellular telephone numbers of motorists are made available to the public, the impact on motorist privacy and risk of unsolicited commercial solicitation by electronic mail or text message would have an undesirable chilling effect on motorists' voluntary use of electronic portals to communicate with the department, thereby undermining the effective use of these enhancements in information technology. Thus, the Legislature finds that it is a public necessity to make such electronic mail addresses and cellular telephone numbers collected by the DHSMV confidential and exempt from public records requirements.
- The Legislature further finds that the public record exemptions for electronic mail addresses and cellular telephone numbers must be given retroactive application because it is remedial in nature.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. 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:***Vote Requirement***

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. The bill enacts a new exemption for personal information, including highly restricted personal information, contained in any record that pertains to a vessel title or vessel registration issued by the DHSMV, and electronic mail addresses and cellular telephone numbers collected by the DHSMV or its agent tax collectors, thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect personal information, including highly restricted personal information, contained in any record that pertains to a vessel title or vessel registration issued by the DHSMV, and electronic mail addresses and cellular telephone numbers collected by the DHSMV or its agent tax collectors. This bill exempts only personal information, including highly restricted personal information, contained in any record that pertains to a vessel title or vessel registration issued by the DHSMV, and electronic mail addresses and cellular telephone numbers collected by the DHSMV or its agent tax collectors from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

The private sector will be subject to the cost, to the extent imposed, associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

The bill may have a minimal negative fiscal impact on DHSMV associated with complying with public records requests and performing any necessary redactions before releasing a record. However, the costs could be absorbed by the agencies as part of their day-to-day responsibilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Currently, the DHSMV is authorized to collect electronic mail addresses and to use them in lieu of the United States Postal Service to send customers notifications and receive applications for title certificates.³³ Senate bill 636 extends such authorization to DHSMV's authorized agents, namely local tax collectors. SB 636 authorizes DHSMV and its agents to collect cellular telephone numbers, and to use the email addresses and cellular telephone numbers for broader business purposes. The portion of the bill providing an exemption for cellular telephone numbers should be linked in effective date to SB 636. Otherwise the DHSMV and its agents will have a public records exemption beyond the reasonable public necessity.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 119.0712.

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

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

CS by Infrastructure and Security on January 21, 2020:

- Changes the term “e-mail” to “electronic mail”; and
- Personal information, including highly restricted personal information, contained in any record that pertains to a vessel title or vessel registration issued by the DHSMV before the effective date of the CS is not covered by the public records exemption.

B. Amendments:

None.

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

³³ Sections 320.95, 322.08, 328.30, and 328.80, Florida Statutes.



843232

LEGISLATIVE ACTION

Senate

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.

House

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

Senate Amendment

Delete lines 117 - 124

and insert:

and text messaging. Electronic mail and cellular
telephones, rather than traditional postal mail, are
increasingly used as a means for communicating and conducting
business, including official state and local business.
Electronic mail addresses and cellular telephone numbers are
unique to the individual and, when combined with other personal



843232

11 identifying information, can be used for identity theft,
12 taxpayer scams, and other invasive contacts. The public
13 availability of personal electronic mail addresses and cellular
14 telephone numbers invites and exacerbates thriving and well-
15 documented criminal activities and puts citizens at increased
16 risk of harm. Such harm will be significantly curtailed by
17 allowing the DHSMV and tax collectors to preserve the
18 confidentiality of taxpayer e-mail addresses. Therefore, the
19 Legislature finds that it

By the Committee on Infrastructure and Security; and Senator Stargel

596-02446-20

20201030c1

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.0712, F.S.; creating public records exemptions for
 4 certain information contained in any record that
 5 pertains to a vessel title or vessel registration
 6 issued by the Department of Highway Safety and Motor
 7 Vehicles; providing exemptions from public records
 8 requirements for electronic mail addresses and
 9 cellular telephone numbers collected by the
 10 department; providing for retroactive application;
 11 requiring disclosure of confidential information under
 12 certain circumstances; providing for future
 13 legislative review and repeal of the exemptions;
 14 providing statements of public necessity; providing an
 15 effective date.
 16
 17 Be It Enacted by the Legislature of the State of Florida:
 18
 19 Section 1. Subsection (2) of section 119.0712, Florida
 20 Statutes, is amended to read:
 21 119.0712 Executive branch agency-specific exemptions from
 22 inspection or copying of public records.—
 23 (2) DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES.—
 24 (a) For purposes of this subsection, the term "motor
 25 vehicle record" means any record that pertains to a motor
 26 vehicle operator's permit, motor vehicle title, motor vehicle
 27 registration, or identification card issued by the Department of
 28 Highway Safety and Motor Vehicles.
 29 (b) Personal information, including highly restricted

Page 1 of 5

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

596-02446-20

20201030c1

30 personal information as defined in 18 U.S.C. s. 2725, contained
 31 in a motor vehicle record is confidential pursuant to the
 32 federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss.
 33 2721 et seq. Such information may be released only as authorized
 34 by that act; however, information received pursuant to that act
 35 may not be used for mass commercial solicitation of clients for
 36 litigation against motor vehicle dealers.
 37 (c) 1. Personal information, including highly restricted
 38 personal information, contained in any record that pertains to a
 39 vessel title or vessel registration issued by the Department of
 40 Highway Safety and Motor Vehicles is confidential and exempt
 41 from s. 119.07(1) and s. 24(a), Art. I of the State
 42 Constitution. Such information in a vessel record may be
 43 released only in the same manner provided for a motor vehicle
 44 record pursuant to the Driver's Privacy Protection Act of 1994,
 45 18 U.S.C. ss. 2721 et seq. This exemption applies to vessel
 46 records held on or after the effective date of this exemption.
 47 2. This paragraph is subject to the Open Government Sunset
 48 Review Act in accordance with s. 119.15 and shall stand repealed
 49 on October 2, 2025, unless reviewed and saved from repeal
 50 through reenactment by the Legislature.
 51 (d) 1. Electronic mail ~~E-mail~~ addresses and cellular
 52 telephone numbers collected by the Department of Highway Safety
 53 and Motor Vehicles or its agent tax collectors pursuant to
 54 chapter 319, chapter 320, chapter 322, chapter 324, or chapter
 55 328 s. 319.40(3), s. 320.95(2), or s. 322.08(9) are exempt from
 56 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.
 57 This exemption applies to electronic mail addresses and cellular
 58 telephone numbers held before, on, or after the effective date

Page 2 of 5

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

596-02446-20

20201030c1

59 of this exemption ~~retroactively~~.

60 2. The department shall disclose such electronic mail
 61 addresses or cellular telephone numbers to its tax collector
 62 agents to send electronic communications to such electronic mail
 63 addresses or cellular telephone numbers for the purpose of
 64 providing information, including, but not limited to, the
 65 issuance of titles, registrations, disabled parking permits,
 66 driver licenses, and identification cards; renewal notices; or
 67 the tax collector's office locations, hours of operation,
 68 contact information, driving skills testing locations,
 69 appointment scheduling information, or website information.

70 3. This paragraph is subject to the Open Government Sunset
 71 Review Act in accordance with s. 119.15 and shall stand repealed
 72 on October 2, 2025 2020, unless reviewed and saved from repeal
 73 through reenactment by the Legislature.

74 (e)(d)1. Emergency contact information contained in a motor
 75 vehicle record is confidential and exempt from s. 119.07(1) and
 76 s. 24(a), Art. I of the State Constitution.

77 2. Without the express consent of the person to whom such
 78 emergency contact information applies, the emergency contact
 79 information contained in a motor vehicle record may be released
 80 only to law enforcement agencies for purposes of contacting
 81 those listed in the event of an emergency.

82 Section 2. (1) The Legislature finds that it is a public
 83 necessity that personal information, including highly restricted
 84 personal information, contained in any record that pertains to a
 85 vessel title or vessel registration issued by the Department of
 86 Highway Safety and Motor Vehicles be made confidential and
 87 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),

596-02446-20

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88 Article I of the State Constitution. Motorist personal
 89 information, when held by the Department of Highway Safety and
 90 Motor Vehicles in motor vehicle records, is confidential
 91 pursuant to the Driver's Privacy Protection Act of 1994, 18
 92 U.S.C. ss. 2721 et seq., and s. 119.0712(2), Florida Statutes.
 93 These restrictions on the disclosure of motorist personal
 94 information do not apply to vessel titles or vessel
 95 registrations. Because the personal information in vessel
 96 records comprises much of the same information contained in
 97 motor vehicle records, when personal information revealed in
 98 vessel records is made available to the public, the protections
 99 afforded by the Driver's Privacy Protection Act of 1994, 18
 100 U.S.C. ss. 2721 et seq., are significantly undermined, eroding
 101 the privacy and safety of motorists. Therefore, the Legislature
 102 finds that it is a public necessity to make personal information
 103 contained in such vessel records confidential and exempt from
 104 public records requirements.

105 (2) The Legislature finds that it is a public necessity
 106 that electronic mail addresses and cellular telephone numbers
 107 collected by the Department of Highway Safety and Motor Vehicles
 108 and its tax collector agents pursuant to chapter 319, chapter
 109 320, chapter 322, chapter 324, or chapter 328, Florida Statutes,
 110 be made confidential and exempt from s. 119.07(1), Florida
 111 Statutes, and section 24(a), Article I of the State
 112 Constitution. In order to communicate more effectively with
 113 motorists through enhancements in information technology,
 114 including efforts of the Motorist Modernization project, the
 115 Department of Highway Safety and Motor Vehicles seeks to
 116 increase communications with motorists through electronic mail

596-02446-20

20201030c1

117 and text messaging. If the electronic mail addresses or cellular
118 telephone numbers of motorists are made available to the public,
119 the impact on motorist privacy and risk of unsolicited
120 commercial solicitation by electronic mail or text message would
121 have an undesirable chilling effect on motorists' voluntary use
122 of electronic portals to communicate with the department,
123 thereby undermining the effective use of these enhancements in
124 information technology. Therefore, the Legislature finds that it
125 is a public necessity to make such electronic mail addresses and
126 cellular telephone numbers collected by the Department of
127 Highway Safety and Motor Vehicles confidential and exempt from
128 public records requirements. The Legislature further finds that
129 this public records exemption must be given retroactive
130 application because it is remedial in nature.

131 Section 3. This act shall take effect July 1, 2020.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on
Education, *Chair*
Appropriations
Education
Ethics and Elections
Finance and Tax
Judiciary
Rules

JOINT COMMITTEE:
Joint Select Committee on Collective Bargaining

SENATOR KELLI STARGEL

22nd District

January 23, 2020

The Honorable Ed Hooper
Senate Committee on Governmental Oversight and Accountability, Chair
326 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Hooper:

I respectfully request that SB 1030, related to *Public Records/Vessel Title or Registration/Department of Highway Safety and Motor Vehicles*, be placed on the Governmental Oversight and Accountability meeting agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in dark ink that reads "Kelli Stargel". The signature is fluid and cursive, with a long horizontal stroke extending from the end.

Kelli Stargel
State Senator, District 22

Cc: Joe McVaney/Staff Director
Tamra Redig/AA

REPLY TO:

- ☐ 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803 (863) 668-3028
- ☐ 408 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
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: CS/SB 1260

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Albritton

SUBJECT: Florida Space Exploration Monument

DATE: February 10, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Caldwell	MS	Favorable
2.	Hackett	McVane	GO	Fav/CS
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1260 establishes a Florida Space Exploration Monument to recognize the importance of the role the state of Florida, and its past, current, and future contributions, in space exploration; to honor the state's residents for their role in humanity's most daring journey of space exploration; and to honor the contribution of all individuals and their families who have gone unrecognized for their contributions to the United States' achievements in space. The Department of Management Services (DMS) is to administer the monument. The DMS, in consultation with Space Florida, must establish a contest for individuals who wish to submit a design for the monument and must appoint a selection committee to choose the design. The DMS is required to develop a plan for the design, placement, and cost of the memorial. The plan must include the designation of an appropriate public area for the memorial on the premises of the Capitol Complex, not including the State Capital Circle Office Complex.

The bill also requires that any competition between sculptors or artists for the design or a monument must be limited to Floridian sculptors and artists.

The DMS will incur indeterminate costs to implement its responsibilities under the bill.

The bill takes effect July 1, 2020.

II. Present Situation:

Florida's Role in Space Exploration

The state of Florida has a long history connected to space exploration. President Dwight D. Eisenhower established the National Aeronautics and Space Administration (NASA) on October 1, 1958. Project Mercury was the first human spaceflight program of the United States. The goals of the program were to place a manned spacecraft in orbit around Earth, investigate man's performance capabilities and ability to function in space, and recover both man and spacecraft safely. Alan B. Shepard, Jr., was America's first man in space, launched in 1961 from Cape Canaveral, Florida. After consideration, Cape Canaveral was chosen by NASA in 1961 as the space launch center for the Apollo program which was tasked with putting a human on the moon. On July 20, 1969, Apollo 11, commanded by Neil Armstrong, along with Lunar Module Pilot Edwin "Buzz" Aldrin, Jr., landed on the moon, while Command Module Pilot Michael Collins orbited above in the command ship, *Columbia*.¹

Between the first launch on April 12, 1981, and the final landing on July 21, 2011, NASA's space shuttle fleet, *Columbia*, *Challenger*, *Discovery*, *Atlantis* and *Endeavour*, flew 135 missions and helped construct the International Space Station. From the launch of the first space shuttle, NASA continued to set high marks of achievement and endurance through 30 years of missions. Starting with *Columbia* and continuing with *Challenger*, *Discovery*, *Atlantis*, and *Endeavour*, the spacecraft has carried people into orbit repeatedly, launched, recovered and repaired satellites, conducted cutting-edge research and built the largest structure in space, the International Space Station. The final space shuttle mission, STS-135, ended July 21, 2011, when *Atlantis* rolled to a stop at its home port, NASA's Kennedy Space Center.²

While NASA will be working towards returning astronauts to the Moon, continuing the exploration of Mars, and developing new technology to make supersonic aircraft fly more quietly,³ private sector entrepreneurs are looking for opportunities in space.⁴

Space Florida

Space Florida was created under the Space Florida Act⁵ as an independent special district, a body politic and corporate and subdivision of state government in 2006 by the Governor and Legislature.⁶ Space Florida is directed to promote aerospace business development by facilitating business financing, spaceport operations, research and development, workforce development, and innovative education programs.⁷ Space Florida is governed by a 13 member independent board of directors, consisting of appointed members of the board of Enterprise Florida, Inc., by

¹ *NASA and the Space Program Change Florida*, Florida Memory, State library and Archives of Florida. Available at <https://www.floridamemory.com/onlineclassroom/nasa/photos/#> (Last visited Jan. 10, 2020).

² NASA Overview, *Space Shuttle Era*, Available at https://www.nasa.gov/mission_pages/shuttle/flyout/index.html, (Last visited Jan. 13, 2020).

³ *What's Next for NASA*; Available at https://www.nasa.gov/about/whats_next.html, (Last visited Jan. 13, 2020).

⁴ *See 10 Major Players in the Private Sector Space Race*, by Nicholas Gerbis; Available at <https://science.howstuffworks.com/10-major-players-in-private-sector-space-race.htm>, (Last visited Jan. 13, 2020).

⁵ Ch. 2006-60, L.O.F.; See ch. 331, F.S.

⁶ Section 331.302, F.S.

⁷ Section 331.302, F.S.

the Governor, the President of the Senate, and the Speaker of the House of Representatives, and the Governor, who shall serve ex officio, or appoint a designee to serve, as the chair and voting member.⁸ The mission statement of Space Florida is “[t]o drive Florida economic development across the global aerospace enterprise.”⁹

Managing Agency for the Capitol Center

Section 272.03(1), F.S., provides that the Capitol Center¹⁰ is under the general control and supervision of DMS,¹¹ which includes the management and maintenance of both the grounds and buildings.¹² Additionally, DMS has the authority to provide for the establishment of parks, walkways, and parkways on the grounds of the Capitol Center.¹³ This responsibility has historically included assistance in establishing and maintaining public memorials throughout the Capitol Center, including project management oversight of the design and construction of memorials.¹⁴ After an entity is assigned a designated space within the Capitol Center for an exhibit, the entity is the manager of the exhibit's content and display, in consultation with DMS.¹⁵

Capitol Complex Monuments

The construction and placement of a monument on the premises of the Capitol Complex¹⁶ is prohibited unless authorized by general law and unless the design and placement of the monument is approved by the DMS after considering the recommendations of the Florida Historical Commission.¹⁷ Additionally, the DMS must coordinate with the Division of Historical Resources of the Department of State regarding a monument's design and placement.¹⁸ The DMS, in consultation with the Florida Historical Commission, is required to set aside an area of the Capitol Complex to be dedicated as a memorial garden for the placement of authorized monuments. Monuments constructed on or after July 1, 2014, are required to be placed in the memorial garden.¹⁹ Among the statutorily authorized Capitol Complex memorials are:

- The Florida Veterans' Walk of Honor;²⁰

⁸ Section 331.3081, F.S.

⁹ *About Space Florida*, [https://www.spaceflorida.gov/about/\(last](https://www.spaceflorida.gov/about/(last) visited Feb. 4, 2020).

¹⁰ Section 272.12, F.S., describes the Tallahassee area bounded by South Martin Luther King, Jr. Boulevard, College Avenue, Franklin Boulevard, East Jefferson Street, and the Seaboard Coastline Railroad right-of-way as the Capitol Center.

¹¹ Section 272.03, F.S.

¹² Section 272.09, F.S.

¹³ Section 272.07, F.S.

¹⁴ The Florida Senate Bill Analysis and Fiscal Impact Statement (Apr. 10, 2014), Available at <http://www.flsenate.gov/Session/Bill/2014/608/Analyses/2014s0608.rc.PDF> (last visited Jan. 17, 2020).

¹⁵ *Id.*

¹⁶ Section 281.01, F.S. The term “Capitol Complex” includes that portion of Tallahassee, Leon County, Florida, commonly referred to as the Capitol, the Historic Capitol, the Senate Office Building, the House Office Building, the Knott Building, the Pepper Building, the Holland Building, and the curtilage of each, including the state-owned lands and public streets adjacent thereto within an area bounded by and including Monroe Street, Jefferson Street, Duval Street, and Gaines Street. The term shall also include the State Capital Circle Office Complex located in Leon County, Florida.

¹⁷ Section 265.111(2), F.S.

¹⁸ *Id.*

¹⁹ Section 265.111(1), F.S., defines the term “monument” to mean a permanent structure such as a marker, statue, sculpture, plaque, or other artifice, including living plant material, placed in remembrance or recognition of significant person or event in Florida history. The term does not include any “Official Florida Historical Marker” as defined in s. 267.021, F.S.

²⁰ Section 265.0031, F.S.

- The Florida Veterans' Memorial Garden;²¹
- The Florida Holocaust Memorial;²²
- The Florida Slavery Memorial;²³ and
- The POW-MIA Chair of Honor Memorial.²⁴

Division of Historical Resources

The Division of Historical Resources, within the Department of State, is charged with encouraging identification, evaluation, protection, preservation, collection, conservation, and interpretation of information about Florida's historic sites and properties or objects related to Florida's history and culture.²⁵ Their efforts include cooperating with, advising and assisting federal and state agencies in pursuit of historic preservation.²⁶

Florida Historical Commission

The Florida Historical Commission (commission) was established in 2001 to enhance public participation and involvement in the preservation and protection of the state's historic and archaeological sites and properties.²⁷ The commission is part of the Department of State and is tasked with advising and assisting the Division of Historical Resources in carrying out its programs, duties, and responsibilities.²⁸

The commission is required to provide assistance, advice, and recommendations to the Division of Historical Resources in a variety of areas. One of those areas involves providing recommendations to the DMS on the design and placement of monuments authorized by general law to be placed on the premises of the Capitol Complex pursuant to s. 265.111, F.S.²⁹

III. Effect of Proposed Changes:

Section 1 creates a Florida Space Exploration Monument to be administered by the DMS. In consultation with Space Florida, the DMS must create a contest for individuals who wish to submit a design for the monument. The DMS and Space Florida must appoint a selection committee to select the design of the monument.

The DMS must develop a plan for the design, placement, and cost of the monument. The plan must include the designation of an appropriate public area for the monument on the premises of the Capitol Complex, but does not include the State Capital Circle Office Complex. The DMS must consider the recommendations of the Florida Historical Commission.³⁰ The plan must also include the dates for the design contest and the timeframe for the selection committee to review

²¹ *Id.*

²² Section 265.005, F.S.

²³ Section 265.006, F.S.

²⁴ Section 265.00301, F.S.

²⁵ Section 20.1(2)(b), F.S.

²⁶ Section 267.031, F.S.

²⁷ Chapter 2001-199, L.O.F.

²⁸ Section 267.0612, F.S.

²⁹ Section 267.0612(9), F.S.

³⁰ As required pursuant to ss. 265.111 and 267.0612(9), F.S.

and select a design. The plan must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by March 9, 2021.

Section 2 creates subsection (4) of s. 265.111, F.S., which provides that any competition between sculptors or artists for the right to design a monument to be placed at the Capitol Complex or any other state building must be limited to Florida residents.

Section 3 provides that the bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by section 18 of Article VII of the State Constitution.

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:

None.

C. Government Sector Impact:

Under the bill, the cost to construct the memorial is indeterminate, as the design for the monument has not been completed. The DMS is required to provide cost information in the plan that is to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by March 9, 2021.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 265.008 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 February 10, 2020:

The CS provides that any competition between sculptors or artists for the right to design a monument to be placed at the Capitol Complex or any other state building must be limited to Florida residents.

- B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/10/2020	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 74 and 75
insert:

Section 2. Subsection (4) is added to section 265.111,
Florida Statutes, to read:

265.111 Capitol Complex; monuments.—

(4) The Department of Management Services shall limit
participation in any competitions between sculptors or artists
for the design of a monument on the Capitol Complex, or at any



503060

other state buildings where a similar competition is being
conducted, to sculptors and artists who are domiciled in this
state.

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

And the title is amended as follows:

Delete lines 2 - 11

and insert:

An act relating to monuments; creating s. 265.008,
F.S.; providing legislative intent; establishing the
Florida Space Exploration Monument; providing for
administration of the monument by the Department of
Management Services; providing for the creation of a
design contest and selection committee; requiring the
department to develop a plan regarding the monument;
requiring the plan to be submitted to the Governor and
the Legislature by a specified date; amending s.
265.111, F.S.; requiring the department to limit
participation in design competitions for monuments on
the Capitol Complex or at other state-owned buildings
to artists and sculptors who are domiciled in this
state; providing an

By Senator Albritton

26-01141-20

20201260__

1 A bill to be entitled
 2 An act relating to the Florida Space Exploration
 3 Monument; creating s. 265.008, F.S.; providing
 4 legislative intent; establishing the Florida Space
 5 Exploration Monument; providing for administration of
 6 the monument by the Department of Management Services;
 7 providing for the creation of a design contest and
 8 selection committee; requiring the department to
 9 develop a plan regarding the monument; requiring the
 10 plan to be submitted to the Governor and the
 11 Legislature by a specified date; providing an
 12 effective date.
 13
 14 WHEREAS, Florida's history with space exploration can be
 15 traced back to 1865, when Jules Verne envisioned the state as
 16 the launch site of the "Columbiad" cannon in his popular novel
 17 *From the Earth to the Moon*, and
 18 WHEREAS, in 1950, a rocket known as "Bumper 8" became the
 19 first rocket launched from Cape Canaveral, and
 20 WHEREAS, in 1969, the National Aeronautics and Space
 21 Administration (NASA) and the crew of Apollo 11 undertook the
 22 first mission that would land humans on the surface of the moon
 23 after launching from the John F. Kennedy Space Center, and
 24 WHEREAS, Florida continues to be home to the Cape Canaveral
 25 Spaceport, consisting of NASA's John F. Kennedy Space Center and
 26 the Cape Canaveral Air Force Station, and
 27 WHEREAS, the state maintains a robust commercial aerospace
 28 industry and highly trained workforce, which has helped
 29 contribute technical and scientific knowledge that has allowed

Page 1 of 3

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

26-01141-20

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30 Florida to continue to serve as the launch pad of the United
 31 States' achievements in space, and
 32 WHEREAS, the establishment of the Florida Space Exploration
 33 Monument would not only commemorate the past achievements and
 34 contributions of individuals who have made this state a leader
 35 in space exploration, but would also serve in the future to
 36 inspire individuals to help maintain this state's role, NOW,
 37 THEREFORE,
 38
 39 Be It Enacted by the Legislature of the State of Florida:
 40
 41 Section 1. Section 265.008, Florida Statutes, is created to
 42 read:
 43 265.008 Florida Space Exploration Monument.-
 44 (1) It is the intent of the Legislature to recognize the
 45 importance of the role of this state, and its past, current, and
 46 future contributions, in space exploration; to honor the state's
 47 residents for their role in humanity's most daring journey of
 48 space exploration; and to honor the contribution of all
 49 individuals and their families who have gone unrecognized for
 50 their impact on the United States' achievements in space.
 51 (2) There is established the Florida Space Exploration
 52 Monument.
 53 (a) The monument is administered by the Department of
 54 Management Services.
 55 (b) The Department of Management Services, in consultation
 56 with Space Florida, shall establish a contest for individuals
 57 who wish to submit a design for the monument. The department and
 58 Space Florida shall appoint a selection committee to choose the

Page 2 of 3

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

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59 design of the monument.

60 (c) The Department of Management Services shall develop a
61 plan for the design, placement, and cost of the monument. The
62 plan must include the designation of an appropriate public area
63 for the monument on the premises of the Capitol Complex, as
64 defined in s. 281.01, not including the State Capital Circle
65 Office Complex. The department shall consider the
66 recommendations of the Florida Historical Commission as required
67 pursuant to ss. 265.111 and 267.0612(9) and shall coordinate
68 with the Division of Historical Resources of the Department of
69 State in developing the plan. The plan must also include the
70 dates for the design contest and the timeframe for the selection
71 committee to review and select a design. The Department of
72 Management Services shall submit the plan to the Governor, the
73 President of the Senate, and the Speaker of the House of
74 Representatives by March 9, 2021.

75 Section 2. This act shall take effect July 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator Ed Hooper, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: January 22, 2020

I respectfully request that **Senate Bill #1260**, relating to Florida Space Exploration Monument, be placed on the:

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

A handwritten signature in blue ink, which appears to read "Ben Albritton".

Senator Ben Albritton
Florida Senate, District 26

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-10-2020

Meeting Date

SB1260

Bill Number (if applicable)

Topic FL Space Exploration Monument

Amendment Barcode (if applicable)

Name Lindsay Pierce

Job Title Manager of Gov. Relations & Ext. Affairs

Address 113 East College Ave Suite 206

Phone 334-268-8282

Street

Tallahassee

FL

32301

City

State

Zip

Email lpierce@spaceflorida.gov

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Space Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
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 1270

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Lee

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

DATE: February 10, 2020

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1270 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," and "governmental entity."

The bill establishes training requirements for each appointed public official and executive officer to begin on January 1, 2021. The bill specifies that a minimum of five hours of board governance training must be completed for each term served. The bill provides three exceptions to the training requirement for appointed public officials and executive officers (i) of governmental entities whose annual revenues are less than \$100,000; who hold elected office in another capacity; or (iii) 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 Department of Business and Professional Regulation (DBPR), by January 1, 2021, to either (i) contract for or approve a board governance training program that includes an affordable web-based electronic media option; or (ii) publish a list of approved Training providers. The bill grants rulemaking authority to the DBPR.

The bill requires the appointment of an executive officer or general counsel 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 interest and position of the governing body 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 will take effect on July 1, 2020.

II. Present Situation:

Chapter 112

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 In order 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:

¹ Sections 112.311 -112.3261, F.S.

² Section 112.320, F.S.

³ Section 112.3145(1)(a)1., F.S.

- a. The governing body of the political subdivision, if appointed;
- b. A community college or junior college district board of trustees;
- 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 In order 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 care to carry out its 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

Enforcement of Fiduciary Obligations owed by Public Officials

“Public officials inherently owe a fiduciary duty to the public to make governmental decisions in the public’s best interest.”¹⁵ Accordingly, a public official’s fiduciary duty is a general one rather

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

than a specific one.¹⁶ Stated differently, a public official owes a fiduciary to the constituents he or she serves generally, but not to each individual constituents he or she serves.¹⁷ Additionally, Florida recognizes that public officials occupy a fiduciary relationship with respect to public property in that such property is held in trust.¹⁸

It is well settled in Florida that – absent a constitutional challenge - a taxpayer may bring suit only upon a showing of special injury¹⁹ which is distinct from that suffered by other taxpayers.²⁰ 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.²¹ Thus, Florida law permits a very limited – if nonexistent- remedy 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 exploited his or her position for private benefit – that is the essence of a breach of fiduciary duty claim.

The Department of Business and Professional Regulation

The Florida 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.²²

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,

¹⁶ *Id.*

¹⁷ 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).

¹⁸ See e.g., *City of Coral Gables v. Hepkins*, 144 So. 385(Fla. 1932).

¹⁹ This has been termed the “Special injury rule” or “Rickman rule.”

²⁰ *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”).

²¹ *N. Broward Hosp. Dist. v. Fornes*, 476 So.2d 154 (Fla.1985); *Rickman v. Whitehurst*, 73 Fla. 152, 74 So. 205 (1917).

²² Section 20.165, F.S.

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.²³ 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.²⁴

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;
- That he or she will work to uphold such documents and policies to the best of his or ability; and
- That he or she will faithfully discharge his or her fiduciary responsibility to the association's members.²⁵

To meet the requirements of an educational curriculum for a condominium 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.²⁶

Each condominium association which operates more than two units must pay the Division an annual fee in the amount of \$4 for each residential unit in the condominiums operated by the association.²⁷ The association is assessed a penalty of 10 percent of the amount due, if the fee is not paid by March 1.²⁸ Additionally, until the amount due, plus any penalty, is paid, the association will not have standing to maintain or defend any action in the courts.²⁹

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."

²³ See Sections 718.501 and 719.501, F.S.

²⁴ Section 718.501(1)(j), F.S.

²⁵ Section 718.112(2)(d)4.b., F.S.

²⁶ Rule 61B-19.001, F.A.C.

²⁷ Section 718.501(2)(a), F.S.

²⁸ *Id.*

²⁹ *Id.*

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. or a “state officer” as defined in s. 112.3145(1)(c)2. and 3;³⁰
- “Department” means the DBPR;
- “Executive officer” means the chief executive officer of a governmental entity to which an appointed public official is appointed; and
- “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 director owed to the applicable entity in accordance with law he or she serves. 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 private business professionals 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 maintaining reasonable oversight includes (i) becoming reasonably informed in connection with any decision-making function and when devoting attention to any oversight function; and (ii) keeping reasonably informed concerning the affairs of the governmental entity concerning the performance of a 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.

³⁰ Approximately 16,785 individuals report under these provisions (approximately 15,195 reporting under subsection (1)(a)2.; approximately 1,415 reporting under subsection (1)(c)2., and approximately 175 under subsection (1)(c)3.) Telephone Interview with Steven Zuilkowski, Attorney, Florida Commission on Ethics (January 30, 2020).

Section 2 also establishes training requirements. Each appointed public official and executive officer, beginning January 1, 2021, must complete a minimum of 5 hours of board governance training (Training) for each term served. For those holding office or employed by a governmental entity on January 1, 2021, he or she is required to complete 5 hours of Training before the expiration of his or her term of service. If the appointed public official or appointed executive officer is appointed, reappointed, or hired after January 1, 2021, the bill specifies that he or she shall complete 5 hours of Training within 180 days of the appointment, reappointment or hire. If an appointed public official or executive officer is employed under a contract that does not specify a termination date for employment, the public official or executive officer shall complete the 5 hours of training by January 1, 2022, and once every 4 years, thereafter for the duration of their employment.

The bill requires DBPR, by January 1, 2021, to either (i) contract for or approve a Training program that includes an affordable web-based electronic media option; or (ii) publish a list of approved Training providers. The bill provides that the 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.

The bill allows governmental entities with annual revenues of less than \$300,000 to use in-house counsel or the unit of government that created the entity, to provide training as long as it comports with the minimum course content established by DBPR rule.

The bill sets forth Training compliance requirements. Each appointed public official and executive officer must certify, in writing or electronic form and under oath to DBPR that she or he has completed the Training, has read the laws and policies applicable to her position, will work to uphold such laws and policies, and will faithfully discharge his or her fiduciary responsibility. This certification must be submitted within 30 days of completing the Training.

The bill provides three exceptions to the training requirement for (i) appointed public officials and executive officers of governmental entities whose annual revenues are less than \$100,000; appointed officials who hold elected office in another capacity; or (iii) 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 interest and position 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. (emphasis added).

Section 3 provides that the bill will take effect on July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, subsection (a) of section 18 of the Florida 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, cities, and counties may incur costs relating to the board governance training. However, the mandate requirements do not apply to laws having an insignificant impact which, for impact, which, for Fiscal Year 2020-2021, is forecast at slightly over \$2.1 million.^{31,32,33} The impact of this bill on cities and counties is indeterminate.

If such costs are determined to exceed \$2.1 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.

C. Trust Funds Restrictions:

None.

³¹ FLA. CONST. art. VII, s. 18(d).

³² 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 Dec. 20, 2019).

³³ Based on the Florida Demographic Estimating Conference's December 3, 2019, population forecast for 2020 of 21,555,986. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Dec. 20, 2019).

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 DBPR contracts with private entities for the required Training.

C. Government Sector Impact:

The DBPR will experience a slightly negative fiscal impact as it uses resources to implement the provisions of the bill related to Training and processes the certification of completed Training. Additionally, governmental entities that fall under this bill will 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 the following section of the Florida Statutes: 112.89.

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 February 10, 2020:

The committee substitute:

- Revises the definition of “executive officer.”
- Clarifies the applicable fiduciary duty of care standard.

- Amends the provision regarding the duty to maintain reasonable oversight to provide that it be discharged with the care that reasonably prudent person in a like business position would believe appropriate under the circumstances.
- Provides for training requirements for appointed public officials or executive officers employed by a governmental entity under a contract without a termination date.
- Makes technical changes to the minimum education materials to be included in the training program.
- Makes those appointed public officials or executive offers who complete board governance training involving fiduciary duties or responsibilities as required under any other state law exempt from the training requirements under the bill.
- Amends the legal counsel standards provision.

B. Amendments:

None.



116502

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/10/2020	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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



116502

11 112.89 Fiduciary duty of care.—

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

22 (2) DEFINITIONS.—

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

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

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

31 (d) "Governmental entity" means the entity, or a board, a
32 council, a commission, an authority, or other body thereof, to
33 which an appointed public official or an executive officer is
34 appointed or hired.

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

39 (a) Act in accordance with the laws, ordinances, rules,



116502

policies, and terms governing his or her office or employment.

(b) Act with the care, competence, and diligence normally exercised by private business professionals in similar corporate and proprietary circumstances.

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

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

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

(f) 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, and must:

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

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

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

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

(4) TRAINING REQUIREMENT.—

(a) Beginning January 1, 2021, each appointed public official and executive officer shall complete a minimum of 5 hours of board governance training for each term served.

1. An appointed public official or executive officer holding office or employed by an entity on January 1, 2021, shall complete the 5 hours of board governance training before



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the expiration of his or her term of service. If an appointed public official or executive officer is employed under a contract that does not specify a termination date for employment, the public official or executive officer shall complete the 5 hours of training by January 1, 2022, and once every 4 years thereafter for the duration of their employment.

2. An appointed public official or executive officer who is appointed, reappointed, or hired after January 1, 2021, shall complete the 5 hours of board governance training within 180 days after the date of his or her appointment, reappointment, or hire.

(b) By January 1, 2021, the department shall:

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 board governance training providers on its website. A provider may include a Florida College System institution, a state university, a nationally recognized entity specializing in board governance education, or any other entity deemed qualified by the department as capable of providing the minimum training requirements specified in this subsection.

(c) The board governance training programs must provide, at a minimum, educational materials and instruction on the following:

1. 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



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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; and new governmental entity
member orientation.

2. The fiduciary duty of care and obligations imposed upon
appointed public officials and executive officers pursuant to
this section.

(d) A governmental entity complies with the training
requirement under this subsection by providing a department-
approved program or contracting with a provider listed by the
department under subparagraph (b)2. However, for governmental
entities with annual revenues of less than \$300,000, board
governance training may be provided by in-house counsel of the
governmental entity or the unit of government that created the
governmental entity, if applicable, so long as the training
complies with the minimum course content established by
department rule.

(e) Within 30 days after completion of the board governance
training, each appointed public official and executive officer
shall certify, in writing or electronic form and under oath, to
the department that he or she:

1. Has completed the training required by this subsection;
2. Has read the laws and relevant policies applicable to
his or her position;

3. Will work to uphold such laws and policies to the best
of his or her ability; and

4. Will faithfully discharge his or her fiduciary



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responsibility, as imposed by this section.

(f) The department shall adopt rules to implement this subsection.

(g) This subsection does not apply to:

1. Appointed public officials and executive officers of governmental entities whose annual revenues are less than \$100,000 or to appointed public officials who hold elected office in another capacity; or

2. An appointed public official or executive officer who completes board governance training involving fiduciary duties or responsibilities which is required under any other state law.

(5) APPOINTMENT OF EXECUTIVE OFFICERS AND GENERAL COUNSELS.—The appointment of any executive officer or general counsel is subject to approval by a majority vote of the governmental entity.

(6) STANDARDS FOR LEGAL COUNSEL.—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. This act shall take effect July 1, 2020.

===== T I T L E A M E N D M E N T =====
And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to the fiduciary duty of care for
appointed public officials and executive officers;



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providing a directive to the Division of Law Revision to create part IX of ch. 112, F.S.; creating s. 112.89, F.S.; providing legislative findings and purpose; defining terms; 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 such training programs or publish a list of approved training providers; specifying requirements for such training; authorizing training to be provided by in-house counsel for certain governmental entities; requiring appointed public officials and executive officers to certify their completion of the annual training; requiring the department to adopt rules; providing exceptions to the training requirement; specifying requirements for the appointment of executive officers and general counsels of governmental entities; specifying standards for legal counsel; providing an effective date.

By Senator Lee

20-01665E-20

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1 A bill to be entitled
 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 such training programs 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 an exception to
 21 the training requirement; specifying requirements for
 22 the appointment of executive officers and general
 23 counsels of governmental entities; specifying
 24 standards for legal counsel; providing an effective
 25 date.
 26
 27 Be It Enacted by the Legislature of the State of Florida:
 28
 29 Section 1. The Division of Law Revision is directed to

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30 create part IX of chapter 112, Florida Statutes, consisting of
 31 s. 112.89, Florida Statutes, to be entitled "Fiduciary Duty of
 32 Care for Appointed Public Officials and Executive Officers."
 33 Section 2. Section 112.89, Florida Statutes, is created to
 34 read:
 35 112.89 Fiduciary duty of care.—
 36 (1) LEGISLATIVE FINDINGS AND PURPOSE.—The Legislature finds
 37 that appointed public officials and executive officers acting on
 38 behalf of governmental entities owe a fiduciary duty to the
 39 entities they serve. The Legislature finds that codifying a
 40 fiduciary duty of care will require that appointed public
 41 officials and executive officers stay adequately informed of
 42 affairs, perform due diligence, perform reasonable oversight,
 43 and practice fiscal responsibility regarding decisions involving
 44 corporate and proprietary commitments on behalf of a
 45 governmental entity.
 46 (2) DEFINITIONS.—
 47 (a) "Appointed public official" means either a "local
 48 officer" as defined in s. 112.3145(1)(a)2. or a "state officer"
 49 as defined in s. 112.3145(1)(c)2. and 3.
 50 (b) "Department" means the Department of Business and
 51 Professional Regulation.
 52 (c) "Executive officer" means the chief executive officer
 53 of a governmental entity.
 54 (d) "Governmental entity" means the entity, or a board, a
 55 council, a commission, an authority, or other body thereof, to
 56 which an appointed public official or an executive officer is
 57 appointed or hired.
 58 (3) FIDUCIARY DUTY OF CARE.—Each appointed public official

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and executive officer owes a fiduciary duty of care to the governmental entity he or she serves and has a duty to:

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

(b) Act with the care, competence, and diligence normally exercised by private business professionals in similar corporate and proprietary circumstances.

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

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

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

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

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

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

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

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

(4) TRAINING REQUIREMENT.—

(a) Beginning January 1, 2021, each appointed public official and executive officer of a governmental entity shall complete a minimum of 5 hours of board governance training for

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each term served.

1. An appointed public official or executive officer holding office or employed by a governmental entity on January 1, 2021, shall complete the 5 hours of board governance training before the expiration of his or her term of service.

2. An appointed public official or executive officer who is appointed, reappointed, or hired after January 1, 2021, shall complete the 5 hours of board governance training within 180 days after the date of his or her appointment, reappointment, or hire.

(b) By January 1, 2021, the department shall:

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 board governance training providers on its website. A provider may include a Florida College System institution, a state university, a nationally recognized entity specializing in board governance education, or any other entity deemed qualified by the department as capable of providing the minimum training requirements specified in this subsection.

(c) The board governance training programs must provide, at a minimum, educational materials and instruction on the following:

1. 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;

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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; and new governmental entity member orientation.

2. The fiduciary duty of care and liabilities imposed upon appointed public officials and executive officers pursuant to this section.

(d) A governmental entity complies with the training requirement under this subsection by providing a department-approved program or contracting with a provider listed by the department under subparagraph (b)2. However, for governmental entities with annual revenues of less than \$300,000, board governance training may be provided by in-house counsel of the governmental entity or the unit of government that created the governmental entity, if applicable, so long as the training complies with the minimum course content established by department rule.

(e) Within 30 days after completion of the board governance training, each appointed public official and executive officer shall certify, in writing or electronic form and under oath, to the department that he or she:

1. Has completed the training required by this subsection;

2. Has read the laws and relevant policies applicable to his or her position;

3. Will work to uphold such laws and policies to the best of his or her ability; and

4. Will faithfully discharge his or her fiduciary responsibility, as imposed by this section.

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(f) The department shall adopt rules to implement this subsection.

(g) This subsection does not apply to appointed public officials and executive officers of governmental entities whose annual revenues are less than \$100,000 or to appointed public officials who hold elected office in another capacity.

(5) APPOINTMENT OF EXECUTIVE OFFICERS AND GENERAL COUNSELS.—The appointment of any executive officer or general counsel is subject to approval by a majority vote of the governing body of the governmental entity.

(6) STANDARDS FOR LEGAL COUNSEL.—All legal counsel employed by a governmental entity must represent the legal interest and position of the governing body of the governmental entity and not the interest of any individual or employee of the governmental entity.

Section 3. This act shall take effect July 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator Ed Hooper, Chair
Committee on Governmental Oversight & Accountability

Subject: Committee Agenda Request

Date: January 22, 2020

I respectfully request that **Senate Bill #1270**, relating to Fiduciary Duty of Care for Appointed Public Officials and Executive Officers, be placed on the:

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

A handwritten signature in blue ink that reads "Tom Lee".

Senator Tom Lee
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)

2/10/20

Meeting Date

1270

Bill Number (if applicable)

Topic Fiduciary Duty

Amendment Barcode (if applicable)

Name Rebecca O'Hara

Job Title Deputy General Counsel

Address PO Box 1757

Phone 222 9684

Street

Tallah

FL

32302

City

State

Zip

Email rohara@flcities.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Fla League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Feb 10 2020
Meeting Date

SB 1270
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 FL
City State Zip

Email _____

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

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

2-10-20
Meeting Date

SB 1270
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Greg Pound

Job Title _____

Address 9166 Sunrise Dr.
Street
Largo FL 33773
City State Zip

Phone _____

Email _____

Speaking: ☐ For ☐ Against ☒ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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 1312

INTRODUCER: Senator Montford

SUBJECT: Voting Systems

DATE: February 7, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Roberts	EE	Favorable
2.	Hackett	McVane	GO	Favorable
3.			AP	

I. Summary:

SB 1312 gives county canvassing boards and supervisors of elections the *option* to use State-certified, digital-imaging, automated tabulating equipment that is not part of the county’s voting system to conduct both machine and manual *recounts*. Currently, only nine counties — **Bay, Broward, Columbia, Hillsborough, Indian River, Leon, Nassau, Putnam, and St. Lucie** — are expected to use such equipment to conduct *post-certification*, automated *audits* for the 2020 election cycle.

The bill has an indeterminate fiscal impact. See Section V., Fiscal Impact Statement.

The bill takes effect upon becoming a law.

II. Present Situation:

Florida’s Voting Systems

Florida’s Electronic Voting Systems Act makes the Department of State responsible for developing and adopting standards for electronic voting and for certifying electronic voting systems for use in the state.¹ A “voting system” is a method of casting and processing votes that consists of electromechanical components and, in most instances, utilizes marksense² ballots.³ The voting system may also include things like procedures, operating manuals, supplies, printouts, and other software necessary for the system’s operation.

¹ See Sections 101.5601 – 101.5614, F.S.

² The term “marksense ballots” is defined to mean “that printed sheet of paper, used in conjunction with an electronic or electromechanical vote tabulation voting system, containing the names of candidates, or a statement of proposed constitutional amendments or other questions or propositions submitted to the electorate at any election, on which sheet of paper an elector casts his or her vote.” Section 97.021(5)(a), F.S.

³ Section 97.021(45), F.S.

The Division of Elections within the Department of State must approve all voting systems used in Florida elections. Florida's certification process is among the most comprehensive in the nation. The Electronic Voting Systems Act in the Florida Elections Code prescribes the general standards for the approval of voting systems; division rule further details the complex, technical certification requirements.⁴ The certification process tests the reliability of both the hardware and software components of the voting system to make sure that they meet rigorous standards.

Recounts

The preliminary results of an extremely close election may warrant a statutory *machine* and/or *manual* recount, depending on the margin of victory. The recount occurs *before* the election results are certified. The purpose of the recount is to determine *who won an election*. The State Elections Canvassing Commission, in the case of federal, state, and multicounty races, and the local county canvassing board in most other elections, must certify the results by the 9th day after a primary election and the 14th day after a general election.⁵

The current recount framework, with only a few minor modifications for peripheral issues, has been in effect since the Legislature enacted the Florida Election Reform Act of 2001 — which completely overhauled the State's outdated recount process after the 2000 U.S. presidential recount.

Machine Recounts

If the *first* set of unofficial results⁶ indicate that the margin of victory in any race is one-half of one percent or less, each canvassing board must run the marksense ballots through the *voting system's* automatic tabulating equipment for every affected precinct.⁷ During this machine recount process, the tabulators sort out the overvotes and undervotes, in case the results are close enough to warrant a manual recount of overvotes and undervotes. Touchscreen ballots for disabled voters are recounted by examining and reconciling discrepancies in the precinct tabulator counters. There are also requirements for canvassing boards to perform L & A ("logic-and-accuracy") tests on the tabulation equipment prior to re-tabulation, duplicating damaged ballots, and addressing voting discrepancies.

⁴ Sections 101.5605, 101.5606, F.S.; see, Florida Division of Elections, Bureau of Voting Systems Certification, Form DS-DE 101 (eff. Jan. 12, 2005) (incorporated by reference, Rule 1S-5.001, F.A.C.) (66-page **Florida Voting System Standards** document containing technical requirements for certification), available at <http://dos.myflorida.com/media/693718/dsde101.pdf>, (last accessed Jan. 8, 2020).

⁵ Section 102.111(2), F.S. County canvassing boards must submit final returns to the Department of State for races certified by the Elections Canvassing Commission no later than 5:00 p.m. on the 7th day after a primary election and by noon on the 12th day after a general election. Section 102.112(1),(2), F.S. (Prior to 2007, the deadline for the county canvassing board to submit general election results was even earlier — 5:00 p.m. on the 11th day after the election. Ch. 2007-30, § 32, LAWS OF FLA. (codified at § 102.112(2), F.S.))

⁶ County canvassing boards must report the first set of unofficial results in federal, statewide, state or multicounty office or ballot measure to the Department of State by noon of the third day after a primary election and noon of the 4th day after a general election. Section 102.141(5), F.S.

⁷ Section 102.141(7), F.S. A losing candidate within one-half of one percent or less can waive the automatic recount in writing. *Id.*

Manual Recounts

If the machine recount results comprising the *second* set of unofficial results⁸ indicate a margin of victory of one-quarter of one percent or less, the county canvassing board generally must conduct a manual recount of the *overvotes* and *undervotes*.⁹

The majority of the manual recount process involves teams of two electors (preferably from opposing parties) reviewing marksense paper ballots to determine whether there is a “clear indication on the ballot that the voter has made a definite choice” — a very detailed process in the case of some markings.¹⁰ If a team cannot agree, the ballot is “bumped up” to the canvassing board for a final determination.¹¹

Recounts are governed by complex procedures and requirements designed to protect the integrity of the process, involving:

- Duplication of ballots;
- Security of ballots during the recount;
- Time and location of the recount;
- Opportunity for public observance;
- Objections to ballot determinations;
- Recordation of recount proceedings; and,
- Processes relating to affected candidates.¹²

The recount process — both machine and manual — creates numerous logistical and organizational challenges for county supervisors of elections; depending on the race and the number of ballots involved, it can be a very time-consuming and labor-intensive process. With rare exception,¹³ county canvassing boards and supervisors of elections have repeatedly risen to the challenge when a State-certified recount has been necessary.¹⁴

⁸ County canvassing boards must report the second set of unofficial results in federal, statewide, state or multicounty office or ballot measure to the Department of State by 3:00 p.m. of the 5th day after a primary election and 3:00 p.m. of the 9th day after a general election. Section 102.141(7)(c), F.S.

⁹ Section 102.166(1), F.S. A manual recount is not required if the losing candidate waives the recount or if the number of overvotes and undervotes to be recounted is fewer than the number of votes needed to change the election outcome. *Id.*

¹⁰ Section 102.166(4)(b), F.S. The division has a 14-page rule detailing which ballot markings constitute a valid vote in the context of how a voter filled out a particular ballot. Rule 1S-2.027, F.A.C. There are also some relatively straightforward rules for counting touchscreen ballots cast on disability voting equipment. *Id.*

¹¹ Section 102.166(5)(c), F.S.

¹² Section 102.166(5)(b),(d), F.S.; Rule 1S-2.031 (Recount Procedures).

¹³ In the 2018 General Election, Broward, Hillsborough, Miami-Dade, and Palm Beach counties were reported to have missed an interim deadline for submitting **unofficial** results to the State. Frances Robles, New York Times, Nearly 3,000 Votes Disappeared from Florida’s Recount. That’s Not Supposed to Happen (Nov. 16, 2018) (available at <https://www.nytimes.com/2018/11/16/us/voting-machines-florida.html>) (last accessed Jan. 8, 2020). Notwithstanding, all but Palm Beach County, because of its antiquated voting system hardware, were able to certify **final** results to the State in all recount races by the deadline on the 12th day following the election.

¹⁴ For 8+ election cycles beginning in 2002, county canvassing boards conducted **recounts in 37 elections (37 machine; 15 manual)** (review of primary, general and special election results from 2002-2018, excluding the 2018 General Election). See generally, Florida Division of Elections, Election Results Archive web site, available at <https://results.elections.myflorida.com/> (last accessed Jan. 8, 2020). Some of these recounts may have involved multiple counties, effectively increasing the total numbers (assuming each county’s recount constitutes a separate event). In the 2018 General Election, canvassing boards and supervisors simultaneously conducted an additional **204 countywide machine recounts and 137 countywide manual recounts** in three separate statewide races (U.S. Senate, Governor, and Commissioner

Voting System Audits

Voting system audits, as distinct from recounts, are conducted *after* the final canvassing board certifies the election results for the purposes of *confirming* the accuracy of the *voting system tabulation* and *identifying problems and recommending cures for future elections*.

Section 101.591(1), F.S., provides:

Immediately following the certification of each election, the county canvassing board... shall conduct a manual audit or an automated, independent audit of the voting systems used in randomly selected precincts (emphasis added).

Manual random audits consist of a public, hand tally of a 1%-2% of precincts in a single race on the ballot.¹⁵ The audit includes a tally of Election Day, vote-by-mail, early voting, provisional, and overseas ballots.

Automated audits are much more extensive, tallying votes cast across every race that appears on the ballot.¹⁶ The tally includes all election day, vote-by-mail, early voting, provisional, and overseas ballot in at least of 20 percent of the precincts chosen at random by the canvassing board.

The division “approves” the independent audit equipment pursuant to both statutory and rule standards. The automated audit equipment must be:¹⁷

- Completely independent of the primary voting system;

of Agriculture), one Florida Senate race (District 18), and two Florida House races (District 26 and District 89). *See generally*, Florida Division of Elections, Election Results Archive website, available at <https://results.elections.myflorida.com/> (last accessed Jan.8, 2020).

¹⁵ Section 101.591(2)(a), F.S.

¹⁶ Section 101.591(2)(b), F.S. In 2013, Florida became the first state to give counties the option of conducting post-certification audits either manually or through an automated, independent method. Ch. 2013-57, § 10, LAWS OF FLA. (codified at § 101.591, F.S.); Hillary Lincoln, Marketing and Communications Manager, Clear Ballot, Clear Ballot's Audit of Florida's Presidential Election Results a Success (Dec. 14, 2016) (press release), available at <http://www.prnewswire.com/news-releases/clear-ballots-audit-of-floridas-presidential-election-results-a-success-300378422.html> (last accessed Jan. 8, 2020) [hereinafter, Clear Ballot, 2016 Press Release]. Division of Elections indicates that the *ClearAudit* digital imaging system from Clear Ballot Group of Boston, MA, was the only system approved to conduct automated audits for the 2016 and 2018 general election cycles. *See*, Florida Division of Elections, Approvals and Technical Advisories (identifying Democracy Live, Inc.'s, *LiveBallot* electronic ballot delivery/duplication [non-audit] system as the only other system that the division “approved”), available at <http://dos.myflorida.com/elections/voting-systems/approvals-and-technical-advisories/> (last accessed Jan. 8, 2020); Maria Matthews, Director, Florida Division of Elections, ClearAudit 1.4.4. Approval Letter (July 27, 2018, available at <https://dos.myflorida.com/media/699784/clearaudit-144-approval-7272018.pdf> (approving *ClearAudit* as alternative to manual audit process provided in s. 101.591, F.S. for 2018 election cycle) (last accessed Jan. 8, 2020); Maria Matthews, Director, Florida Division of Elections, ClearAudit Interim Approval Extension Letter (Jan. 25, 2016) (approving *ClearAudit* as alternative to manual audit process provided in s. 101.591, F.S. for 2016 election cycle), available at <http://dos.myflorida.com/media/695954/clearaudit-106-interim-approval-extension-1252016.pdf> (last accessed Jan. 8, 2020). Seven of Florida's 67 counties — **Bay, Broward, Columbia, Leon, Nassau, Putnam, and St. Lucie** — used the Clear Ballot product to audit nearly 14% of the ballots cast in the Florida 2016 general election. Clear Ballot, 2016 Press Release. For more information on *ClearAudit* (last visited Jan. 8, 2020). Since that time, staff understands that Hillsborough and Indian River counties have also purchased the equipment, and plan to use it to conduct the legally required, post-election-certification audits in the 2020 election cycle.

¹⁷ Section 101.591(2)(c), F.S.

- Fast enough to produce audit results no later than midnight of the 7th day following election certification; and,
- Capable of demonstrating that the audit system has accurately tallied the ballots.

Division Rule 1S-5.026, F.A.C., contains additional “approval” requirements and procedures, which are not as comprehensive as the requirements for certifying full voting systems.¹⁸

The canvassing board must complete the audit no later than midnight of the 7th day after it certifies the election results.¹⁹ The canvassing board must provide a report to the Department of State by the 15th day after completing the audit that addresses:²⁰

- The overall accuracy of the audit;
- A description of any problems or discrepancies encountered;
- The likely cause of such problems or discrepancies; and,
- Recommended corrective action with respect to avoiding or mitigating such circumstances in future elections.

If a manual recount takes place, the affected canvassing board is not required to conduct an audit.²¹

III. Effect of Proposed Changes:

The bill grants county canvassing boards and supervisors of elections the *option* to use digital imaging, automated tabulating equipment that is not part of the voting system to conduct *pre-certification* machine *and* manual recounts.

In the machine recount process, the ballots are run through the digital imaging tabulators and not the voting system’s tabulators that performed the original tally. Overvotes and undervotes may be sorted physically or digitally, in case the results are close enough to require a manual recount.

To facilitate faster manual recounts of overvotes and undervotes, the bill specifically allows for the counting of the actual paper ballots *or* the digital image of the ballots.

Further, the bill directs the division to adopt by rule “procedures relating to the certification, and the use thereof, of automatic tabulating equipment that is not part of a voting system.” Use of the word “certification” suggests a higher threshold for authorization than the current “approval” process for automated *audit* systems, something more akin to the *voting systems* certification standards.

The bill takes effect upon becoming a law.

¹⁸ Rule 1S-5.026 (Post-Election Certification Voting System Audit); *see also, infra* note 2 and accompanying text (discussing voting system certification requirements).

¹⁹ Section 101.591(4), F.S.

²⁰ Section 101.591(5), F.S.

²¹ Section 101.591(6), F.S.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

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:

To the extent a county chooses to purchase digital imaging, automated tabulating equipment for recounts, private sector companies that manufacture, sell, or lease such systems may benefit.

C. Government Sector Impact:

The bill makes the use of digital imaging systems for recounts permissive. To the extent a county elects to use such equipment that is not part of the voting system, that county may incur additional costs to purchase the equipment. However, to the extent a county uses such equipment to conduct automated audits, those counties may realize cost savings in the event of a recount.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The legislature may wish to consider changing the effective date to January 1, 2021 (after the 2020 election cycle), to allow the Department of State sufficient time to formally adopt new rules

for certifying the digital imaging equipment for recount purposes, modifying recount rules/procedures as necessary, and certifying the systems (should the new rules provide additional requirements beyond the current “approval” process governing the use of the equipment for post-certification audits). Further, Florida’s recent electoral history and experience suggest that it may be desirable to roll-out these type of election administration system changes in a *non-presidential* election cycle when Florida is under less national media scrutiny.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 97.021, 101.5614, 102.141, and 102.166.

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 Montford

3-01197A-20

20201312__

1 A bill to be entitled
 2 An act relating to voting systems; amending s. 97.021,
 3 F.S.; defining the term "automatic tabulating
 4 equipment" for purposes of the Florida Election Code;
 5 amending s. 101.5614, F.S.; revising procedures
 6 governing the canvassing of returns to specify usage
 7 of a voting system's automatic tabulating equipment;
 8 amending s. 102.141, F.S.; clarifying the
 9 circumstances under which ballots must be processed
 10 through automatic tabulating equipment in a recount;
 11 amending s. 102.166, F.S.; specifying the manner by
 12 which a manual recount may be conducted; revising
 13 requirements for hardware or software used in a manual
 14 recount; authorizing overvotes and undervotes to be
 15 identified and sorted physically or digitally in a
 16 manual recount; revising minimum requirements for
 17 Department of State rules to require procedures
 18 regarding the certification and use of automatic
 19 tabulating equipment for manual recounts; providing an
 20 effective date.
 21
 22 Be It Enacted by the Legislature of the State of Florida:
 23
 24 Section 1. Present subsections (5) through (46) of section
 25 97.021, Florida Statutes, are renumbered as subsections (6)
 26 through (47), respectively, and a new subsection (5) is added to
 27 that section, to read:
 28 97.021 Definitions.—For the purposes of this code, except
 29 where the context clearly indicates otherwise, the term:

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

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30 (5) "Automatic tabulating equipment" means an apparatus
 31 that automatically examines, counts, and records votes.
 32 Section 2. Paragraph (a) of subsection (4) and subsections
 33 (6) and (7) of section 101.5614, Florida Statutes, are amended
 34 to read:
 35 101.5614 Canvass of returns.—
 36 (4) (a) If any vote-by-mail ballot is physically damaged so
 37 that it cannot properly be counted by the voting system's
 38 automatic tabulating equipment, a true duplicate copy shall be
 39 made of the damaged ballot in the presence of witnesses and
 40 substituted for the damaged ballot. Likewise, a duplicate ballot
 41 shall be made of a vote-by-mail ballot containing an overvoted
 42 race or a marked vote-by-mail ballot in which every race is
 43 undervoted which shall include all valid votes as determined by
 44 the canvassing board based on rules adopted by the division
 45 pursuant to s. 102.166(4). Upon request, a physically present
 46 candidate, a political party official, a political committee
 47 official, or an authorized designee thereof, must be allowed to
 48 observe the duplication of ballots. All duplicate ballots shall
 49 be clearly labeled "duplicate," bear a serial number which shall
 50 be recorded on the defective ballot, and be counted in lieu of
 51 the defective ballot. After a ballot has been duplicated, the
 52 defective ballot shall be placed in an envelope provided for
 53 that purpose, and the duplicate ballot shall be tallied with the
 54 other ballots for that precinct.
 55 (6) Vote-by-mail ballots may be counted by the voting
 56 system's automatic tabulating equipment if they have been marked
 57 in a manner which will enable them to be properly counted by
 58 such equipment.

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(7) The return printed by the voting system's automatic tabulating equipment, to which has been added the return of write-in, vote-by-mail, and manually counted votes and votes from provisional ballots, shall constitute the official return of the election upon certification by the canvassing board. Upon completion of the count, the returns shall be open to the public. A copy of the returns may be posted at the central counting place or at the office of the supervisor of elections in lieu of the posting of returns at individual precincts.

Section 3. Paragraph (a) of subsection (7) of section 102.141, Florida Statutes, is amended to read:

102.141 County canvassing board; duties.—

(7) If the unofficial returns reflect that a candidate for any office was defeated or eliminated by one-half of a percent or less of the votes cast for such office, that a candidate for retention to a judicial office was retained or not retained by one-half of a percent or less of the votes cast on the question of retention, or that a measure appearing on the ballot was approved or rejected by one-half of a percent or less of the votes cast on such measure, a recount shall be ordered of the votes cast with respect to such office or measure. The Secretary of State is responsible for ordering recounts in federal, state, and multicounty races. The county canvassing board or the local board responsible for certifying the election is responsible for ordering recounts in all other races. A recount need not be ordered with respect to the returns for any office, however, if the candidate or candidates defeated or eliminated from contention for such office by one-half of a percent or less of the votes cast for such office request in writing that a recount

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not be made.

(a) Each canvassing board responsible for conducting a recount shall put each marksense ballot through automatic tabulating equipment and determine whether the returns correctly reflect the votes cast. If any marksense ballot is physically damaged so that it cannot be properly counted by the automatic tabulating equipment during the recount, a true duplicate shall be made of the damaged ballot pursuant to the procedures in s. 101.5614(4). Immediately before the start of the recount, a test of the tabulating equipment shall be conducted as provided in s. 101.5612. If the test indicates no error, the recount tabulation of the ballots cast shall be presumed correct and such votes shall be canvassed accordingly. If an error is detected, the cause therefor shall be ascertained and corrected and the recount repeated, as necessary. The canvassing board shall immediately report the error, along with the cause of the error and the corrective measures being taken, to the Department of State. No later than 11 days after the election, the canvassing board shall file a separate incident report with the Department of State, detailing the resolution of the matter and identifying any measures that will avoid a future recurrence of the error. If the automatic tabulating equipment used in a recount is not part of the voting system and the ballots have already been processed through such equipment, the canvassing board is not required to put each ballot through any automatic tabulating equipment again.

Section 4. Subsections (1), (2), and (5) of section 102.166, Florida Statutes, are amended to read:

102.166 Manual recounts of overvotes and undervotes.—

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(1) If the second set of unofficial returns pursuant to s. 102.141 indicates that a candidate for any office was defeated or eliminated by one-quarter of a percent or less of the votes cast for such office, that a candidate for retention to a judicial office was retained or not retained by one-quarter of a percent or less of the votes cast on the question of retention, or that a measure appearing on the ballot was approved or rejected by one-quarter of a percent or less of the votes cast on such measure, a manual recount of the overvotes and undervotes cast in the entire geographic jurisdiction of such office or ballot measure shall be ordered unless:

(a) The candidate or candidates defeated or eliminated from contention by one-quarter of 1 percent or fewer of the votes cast for such office request in writing that a recount not be made; or

(b) The number of overvotes and undervotes is fewer than the number of votes needed to change the outcome of the election.

The Secretary of State is responsible for ordering a manual recount for federal, state, and multicounty races. The county canvassing board or local board responsible for certifying the election is responsible for ordering a manual recount for all other races. A manual recount consists of a recount of marksense ballots or of digital images of those ballots by a person.

(2) Any hardware or software used to identify and sort overvotes and undervotes for a given race or ballot measure must be certified by the Department of State ~~as part of the voting system pursuant to s. 101.015.~~ Any such hardware or software

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must be capable of simultaneously identifying and sorting overvotes and undervotes in multiple races while simultaneously counting votes. Overvotes and undervotes must be identified and sorted while recounting ballots pursuant to s. 102.141. Overvotes and undervotes may be identified and sorted physically or digitally.

(5) Procedures for a manual recount are as follows:

(a) The county canvassing board shall appoint as many counting teams of at least two electors as is necessary to manually recount the ballots. A counting team must have, when possible, members of at least two political parties. A candidate involved in the race shall not be a member of the counting team.

(b) Each duplicate ballot prepared pursuant to s. 101.5614(4) or s. 102.141(7) shall be compared with the original ballot to ensure the correctness of the duplicate.

(c) If a counting team is unable to determine whether the ballot contains a clear indication that the voter has made a definite choice, the ballot shall be presented to the county canvassing board for a determination.

(d) The Department of State shall adopt detailed rules prescribing additional recount procedures for each certified voting system which shall be uniform to the extent practicable. The rules shall address, at a minimum, the following areas:

1. Security of ballots during the recount process;
2. Time and place of recounts;
3. Public observance of recounts;
4. Objections to ballot determinations;
5. Record of recount proceedings; ~~and~~
6. Procedures relating to candidate and petitioner

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representatives; and

7. Procedures relating to the certification and the use of
automatic tabulating equipment that is not part of a voting
system.

Section 5. This act shall take effect upon becoming a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Environment and Natural Resources, *Chair*
Education, *Vice Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Education
Rules

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR BILL MONTFORD

Minority Leader Pro Tempore
3rd District

January 24, 2020

Senator Ed Hooper, Chair
Senate Governmental Oversight and Accountability Committee
326 Senate Office Building
Tallahassee, Florida 32399-1100

Dear Chair Hooper,

I respectfully request that the following bills be placed on the next Governmental Oversight and Accountability Committee Agenda.

SB 1312 – A bill relating to Voting Systems.

Your consideration is greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Bill Montford".

William J. Montford III

WJM:rm

REPLY TO:

- ☐ 410 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
- ☐ 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/10/2020
Meeting Date

1312
Bill Number (if applicable)

Topic VOTING SYSTEMS

Amendment Barcode (if applicable)

Name DAVID RAMBA

Job Title _____

Address 120 S. MONROE ST
Street

Phone _____

TALLAHASSEE, FL 32301
City State Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLORIDA SUPERVISORS OF ELECTIONS

Appearing at request of Chair: ☒ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/10/20

Meeting Date

SB 1312

Bill Number (if applicable)

Topic Voting Systems

Amendment Barcode (if applicable)

Name FRENCH BROWN

Job Title lobbyist

Address 110 S. MARION ST. Suite 815

Phone 850-455-0552

TALLAHASSEE FL 32301
City State Zip

Email fbrown@deanhead.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Verified Voting

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/10/20
Meeting Date

1312
Bill Number (if applicable)

Topic NOTING SYSTEMS / RECOUNTS

Amendment Barcode (if applicable)

Name MARK EARLEY

Job Title SUPERVISOR OF ELECTIONS

Address 2990-1 APALACHEE PKWY

Phone 850-606-8683

TALLAHASSEE FL 32301
City State Zip

Email earley.m@leoncounty
fl.gov

Speaking: ☒ For ☐ Against ☐ Information

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

Representing VOTERS OF LEON CO. + FL SUPERVISORS OF ELECTIONS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-10-20
Meeting Date

1312
Bill Number (if applicable)

Topic Voting System

Amendment Barcode (if applicable)

Name Barbara DeBane

Job Title MS

Address 625 E Bernard

Phone 251-4280

Street Tall State FL Zip 32308

Email barb@debane.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL NOW

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 1466

INTRODUCER: Governmental Oversight and Accountability Committee and Senators Baxley and Broxson

SUBJECT: Government Accountability

DATE: February 11, 2020

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1466 excludes certain acts or omissions by board members or employees of special districts or community development districts from being considered abuse of public position under Article II, section 8(h)(2) of the Florida Constitution if such acts or omissions are authorized under specific provisions of the Florida Code of Ethics.

CS/SB 1466 alters current required reporting of information on a special district's official website. Specifically, the bill allows a special district to satisfy the required posting of its most recent final, complete audit report on its own website by providing a link to this report maintained on the Auditor General's website. In addition, the bill removes the requirement for online posting of a special district's public facilities report and any of a special district's meeting or workshop materials. Required postings of a special district meeting or workshop, and the agendas of such events, remain.

II. Present Situation:

Special Districts

A "special district" is "a unit of local government created for a special purpose... operat[ing] within a limited geographic boundary and is created by general law, special act, local ordinance,

or rule of the Governor and Cabinet.”¹ Special districts are created to provide a wide variety of services, such as mosquito control,² beach facilities,³ children’s services,⁴ fire control and rescue,⁵ and drainage and water control.⁶

Special districts can be classified as “dependent special districts” or “independent special districts.” For a special district to be classified as a “dependent special district,” the district must meet at least one of the following criteria:

- Membership of its governing body is identical to that of the governing body of a single county or a single municipality;
- All members of its governing body are appointed by the governing body of a single county or a single municipality;
- The members of its governing body are subject to removal at will by the governing body of a single county or single municipality, during their unexpired terms; or
- The district has a budget that requires approval or can be vetoed by the governing body of a single county or a single municipality.⁷

An “independent special district” is any special district that does not meet the definition of “dependent special district.”⁸ Additionally, any special district that includes territory in more than one county is an independent special district, unless the district lies entirely within the borders of a single municipality.⁹

According to the Department of Economic Opportunity (DEO) Special District Accountability Program Official List of Special Districts, the state currently has 1,756 active special districts. Specifically, there are:

- 633 dependent special districts; and
- 1,123 independent special districts.¹⁰

In 1989, the Legislature enacted the Uniform Special District Accountability Act (Act) which governs special districts and reformed and consolidated laws relating to special districts.¹¹ In 2014, the Legislature extensively revised and reorganized the Act into eight parts. The revision made significant changes to provisions concerning independent special districts and special district oversight and accountability.¹²

¹ Section 189.012(6), F.S.

² Section 388.021(1), F.S.

³ See s. 189.011, F.S.

⁴ Section 125.901(1), F.S.

⁵ Section 191.002, F.S.

⁶ Section 298.01, F.S.

⁷ Section 189.012(2), F.S.

⁸ Section 189.012(3), F.S.

⁹ *Id.*

¹⁰ See Department of Economic Opportunity, Division of Community Development, Special District Accountability Program, *Official List of Special Districts Online – Directory*, available at <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited Jan. 19, 2020).

¹¹ Section 189.06, F.S.

¹² Chapter 2014-22, L.O.F.

Reporting Requirements

Special districts are subject to oversight and review by state and local governments to better determine the need for the continued existence of a district, the appropriate future role and focus of a district, improvements to the function or service by a district, and the need for any transition, adjustment, or special implementation periods or provisions.¹³

Special districts created by special act are subject to review by the Joint Legislative Auditing Committee (JLAC) at a public meeting for not complying with reporting requirements under ch. 189, F.S., as well as oversight matters in general.¹⁴ Special districts created by local ordinance or resolution are subject to review by the chair, or the equivalent, of the local governing body.¹⁵ Special districts created or established by rule of the Governor and Cabinet may be reviewed as directed by the Governor and Cabinet.¹⁶ Special districts not subject to other oversight may be reviewed as directed by the President of the Senate and the Speaker of the House of Representatives.¹⁷

State agencies administering funding programs to eligible special districts oversee the use of such funds by the special districts. The state agencies must report the existence of programs as well as an annual list of special districts participating in state funding programs to the DEO Special District Accountability Program.¹⁸

Special District Websites

Each special district is required to maintain an official website containing essential information about the district.¹⁹ Each independent special district is required to maintain a separate website.²⁰ Each dependent district is, at a minimum, required to be prominently displayed on the home page of the website of the local general-purpose government upon which it is dependent.²¹ However, a dependent special district may maintain a separate website.²² A special district shall post the following information, at a minimum, on the district's official website:²³

- The full legal name of the special district.
- The public purpose of the special district.
- The name, official address, official e-mail address, and, if applicable, term and appointing authority for each member of the governing body of the special district.

¹³ Section 189.068(1), F.S. Any final recommendations from the oversight review process which are adopted and implemented by the appropriate level of government may not be implemented in a manner that would impair the obligation of contracts.

¹⁴ Section 189.0651(2), F.S.

¹⁵ Section 189.0652(2), F.S. Dependent special districts, not created by special act, may be reviewed by the local general-purpose government upon which it is dependent; see s. 189.068(2)(c), F.S.

¹⁶ Section 189.068(2)(d), F.S.

¹⁷ Section 189.068(2)(e), F.S.

¹⁸ Sections 189.065(1)-(2), F.S. The list of participating special districts must indicate if a district is not in compliance with state funding program requirements.

¹⁹ Section 189.069(1), F.S.

²⁰ Section 189.069(1)(a), F.S.

²¹ Section 189.069(1)(b), F.S.

²² *Id.*

²³ Section 189.069(2)(a), F.S.

- The fiscal year of the special district.
- The full text of the special district's charter, the date of establishment, the establishing entity, and the statute or statutes under which the special district operates, if different from the statute or statutes under which the special district was established. Community development districts may reference ch. 190, F.S., as the uniform charter but must include information relating to any grant of special powers.
- The mailing address, e-mail address, telephone number, and website uniform resource locator of the special district.
- A description of the boundaries or service area of, and the services provided by, the special district.
- A listing of all taxes, fees, assessments, or charges imposed and collected by the special district, including the rates or amounts for the fiscal year and the statutory authority for the levy of the tax, fee, assessment, or charge. For purposes of this subparagraph, charges do not include patient charges by a hospital or other health care provider.
- The primary contact information for the special district for purposes of communication from the department.
- A code of ethics adopted by the special district, if applicable, and a hyperlink to generally applicable ethics provisions.
- The budget of the special district and any amendments thereto in accordance with s. 189.016, F.S.
- The final, complete audit report for the most recent completed fiscal year and audit reports required by law or authorized by the governing body of the special district.
- A listing of its regularly scheduled public meetings as required by s. 189.015(1), F.S.
- The public facilities report,²⁴ if applicable.
- The link to the Department of Financial Services website as set forth in s. 218.32(1)(g), F.S.
- At least 7 days before each meeting or workshop, the agenda of the event, along with any meeting materials available in an electronic format, excluding confidential and exempt information. The information must remain on the website for at least 1 year after the event.

Noncomplying Special Districts

If an independent special district fails to file required reports or information regarding registered agents,²⁵ public meetings,²⁶ public facilities,²⁷ or its budget²⁸ with the local general-purpose government in which it is located, the local government notifies the district's registered agent.²⁹ If the governing body of the local general-purpose government determines that there has been an unjustified failure to file reports or information it must notify DEO.³⁰ This notification triggers a

²⁴ Section 189.08(2)(a), F.S., states that a public facilities report shall provide a description of existing public facilities owned or operated by the special district, and each public facility that is operated by another entity, except a local general-purpose government, through a lease or other agreement with the special district.

²⁵ Section 189.014, F.S.

²⁶ Section 189.015, F.S.

²⁷ Section 189.08, F.S.

²⁸ Section 189.016(9), F.S.

²⁹ Section 189.066(1), F.S. An extension of up to 30 days for filing the required reports or information is possible.

³⁰ *Id.* This notification triggers a series of steps taken by DEO to assist a special district in complying with its financial reporting requirements pursuant to s. 189.067, F.S.

series of steps taken by DEO to assist a special district in complying with its financial reporting requirements pursuant to s. 189.067, F.S.

If a dependent special district fails to file such reports with the local governing authority to which it is dependent, the local governing authority is obligated to take the necessary steps to enforce the special district's accountability.³¹ These may include withholding funds, removing the governing body members, vetoing the special district's budget, conducting the oversight review process, or amending, merging, or dissolving the special district in accordance with the provisions contained in the ordinance that created the dependent special district.³²

The oversight and accountability provisions in s. 189.067, F.S., are also initiated by special district noncompliance related to noticing of bond issues, state agency actuarial reports, annual financial reports, and annual financial audit reports.³³ If a special district fails to comply after DEO has exhausted its attempt to assist under s. 189.067, F.S., the failure is deemed final action by the district.³⁴ The district is subject to the oversight process headed by either the JLAC³⁵ or the local governing body,³⁶ as appropriate.

Federal and State Laws Regulating Access to Records by Disabled Individuals

The Americans with Disabilities Act³⁷

The Americans with Disabilities Act (ADA) was signed into law on July 26, 1990, by President George H.W. Bush. The legislation prohibits discrimination and guarantees that people with disabilities have the same opportunities as persons without disabilities. Modeled after the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, religion, sex, or national origin -- and Section 504 of the Rehabilitation Act of 1973 -- the ADA is considered an "equal opportunity" law for people with disabilities.

To be protected by the ADA, one must have a disability, which is defined by the ADA as a physical or mental impairment that substantially limits one or more major life activities; a person who has a history or record of such an impairment; or a person who is perceived by others as having such an impairment. The ADA does not specifically name all of the impairments that are covered. Title I of the ADA applies to employment, Title II applies to public services and Title III applies to public accommodations and services operated by private entities.

Title II: Public Entities

Title II of the ADA prohibits public entities from excluding the participation in or denying the benefits of their services, programs, or activities to qualified individuals with a disability,³⁸ or

³¹ Section 189.066(2), F.S.

³² *Id.*

³³ See s. 189.066, F.S.

³⁴ Section 189.067(2), F.S.

³⁵ Sections 189.067(2) and 189.0651, F.S.

³⁶ Sections 189.067(2) and 189.0652, F.S.

³⁷ United States Department of Justice, Civil Rights Division, *Information and Technical Assistance on the Americans with Disabilities Act*, available at https://www.ada.gov/ada_intro.htm (last visited Jan. 19, 2020).

³⁸ A person is a 'qualified' individual with a disability with respect to licensing if he or she, with or without reasonable modifications, 'meets the essential requirements' for the receipt of services or the participation in programs or activities

otherwise discriminating against such individuals, because of the disability.³⁹ “Public entities” includes state and local governments, state and local agencies, and special districts.⁴⁰ To meet the definition of a qualified individual with a disability, the person must be eligible for receipt of the public benefit with or without a reasonable modification.⁴¹

If the need is obvious or upon request,⁴² a public entity must:

- Make reasonable modifications to its rules, policies, or practices;
- Remove architectural, communication, or transportation barriers; or
- Provide auxiliary aids and services when necessary to accommodate an individual with a disability.⁴³

A public entity must provide auxiliary aids and services in a timely manner and in an accessible format, and must protect the privacy and independence of the individual.⁴⁴ An accommodation or modification that fundamentally alters the nature of the activity, service, or program, or that causes the public entity an undue financial or administrative burden is not reasonable or necessary.⁴⁵

Title III: Private Entities

Title III prohibits certain private entities⁴⁶ from discriminating against an individual on the basis of a disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation. A private entity may provide a different or separate benefit if necessary to effectively provide benefits.⁴⁷

A private entity must make reasonable modifications to its policies, practices, or procedures, or take any steps necessary to ensure individuals are not denied services, segregated or otherwise treated differently due to the absence of an aid or service. A modification or step that will fundamentally alter the nature of the product or service, or pose a direct danger to others is not required. When readily achievable,⁴⁸ a private entity must:

- Remove any existing architectural, structural communication, or transportation barrier; or
- Offer access to its product or service through alternative methods.⁴⁹

provided by a public entity. 42 U.S.C. s. 12131(2). *See also The Fla. Bar v. Clement*, 662 So. 2d 690, 700 (Fla. 1995), as amended (November 28, 1995).

³⁹ 42 U.S.C. s. 12132.

⁴⁰ 42 U.S.C. s. 12131(1).

⁴¹ 42 U.S.C. s. 12131(2).

⁴² *See McCullum v. Orlando Regional Healthcare*, No. 6:11-cv-1387-Orl-31GJK, 2013 WL 1212860, at *4 (M.D.Fla.2013); *see also Smith v. Rainey*, 747 F.Supp.2d 1327, 1338 (M.D.Fla.2010).

⁴³ *See* 42 U.S.C. s. 12131(2).

⁴⁴ 28 C.F.R. s. 35.160(b).

⁴⁵ *See Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 603, 119 S. Ct. 2176 (1999).

⁴⁶ 42 U.S.C. s. 12181(6). A private entity is defined as any entity other than a public entity. Private entities that own, lease, or operate places of public accommodation fall under Title III.

⁴⁷ *See* 42 U.S.C. s. 12182.

⁴⁸ 42 U.S.C. s. 12181(9). Readily achievable means easily accomplishable and able to be carried out without much difficulty or expense.

⁴⁹ 42 U.S.C. s. 12182. *See also A.L. by & through D.L. v. Walt Disney Parks & Resorts US, Inc.*, 900 F.3d 1270 (11th Cir. 2018)(holding that the Defendant’s blanket accommodation for all cognitively disabled theme park guests was not per se ADA violation).

ADA Internet Website Access Administration

The Department of Justice (DOJ) is responsible for administering Title II and Title III of the ADA.⁵⁰ In 2010, DOJ took the position that internet website access fell within the scope of the ADA, even in the absence of explicit language. Therefore, public entities communicating through web-based applications or otherwise providing internet services must ensure that individuals with disabilities have equal access to such services or information unless it would alter the nature of the product or cause the entity an undue burden. To date, the DOJ has promulgated no regulations on this issue.⁵¹

From December 2006 to June 2007, the Civil Rights Division of DOJ released a Best Practices Tool Kit for State and Local Governments.⁵² Chapter 5 addresses web accessibility under Title II. DOJ provides suggestions for how governments may design their websites and recommends referencing the Worldwide Web Consortium's (W3C) Web Content Accessibility Guidelines 2.0 (WCAG 2.0), an internationally accepted resource, for conformance standards.

State and local governments are not required to use the Tool Kit. However, DOJ intends to provide a reasonable approach to achieve compliance through the Tool Kit. Among the common basic challenges to website accessibility cited in the Tool Kit are images without text equivalents. According to the Tool Kit, screen readers and refreshable Braille displays utilized by persons who are visually impaired cannot interpret photographs, charts, color-coded information, or other graphic elements on a webpage. The suggested solution for this challenge is the addition of HTML⁵³ code to provide text for each image and graphic to enable a user with a vision disability to understand what it is. For documents posted online, DOJ suggests governments posting documents online in Portable Document Format (PDF), or other image-based format, also post a version in Rich Text Format (RTF), or other text-based format, to allow compatibility with assistive technologies. The Tool Kit includes a checklist to help local governments assess the accessibility of their websites.

Section 508 of the Rehabilitation Act of 1973

Federal agency website accessibility is not regulated under the ADA but primarily under section 508 of the Rehabilitation Act of 1973 (Section 508).⁵⁴ Public entities are not required to follow these guidelines. However, Florida requires its state agencies, which includes the executive,

⁵⁰ See 28 CFR parts 35 (Title II) and 36 (Title III).

⁵¹ DOJ stated in its 2010 comments, "The Department expects to engage in rulemaking relating to website accessibility under the ADA in the near future." Department of Justice, *2010 Guidance and Section-by-Section Analysis (Attorney General's Comments)*, available at https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm#a35102 (last visited Jan. 20, 2020).

⁵² Department of Justice, *ADA Best Practices Tool Kit for State and Local Governments, Chapter 5*, available at <https://www.ada.gov/pcatoolkit/chap5toolkit.htm> (last visited Jan. 20, 2020). The Tool Kit contains a notice that some chapters may not fully reflect the current ADA.

⁵³ Hypertext mark-up language is a common mark-up language used to present webpages. It tells the web browser how information should be structured and accessed.

⁵⁴ See 29 U.S.C. s. 794d, s. 508 of the Rehabilitation Act; 47 U.S.C. s. 255, and s. 255 of the Telecommunications Act. There is proposed legislation currently in the U.S. Congress that would research the best guidance for state and local governments providing website access. See H.R. 4099 (2019).

legislative, and judicial branches, to follow Section 508 when providing public and employee access to electronic information and data.⁵⁵

Under Section 508, when federal agencies develop, procure, maintain, or use electronic and information technology, they must give employees and members of the public with disabilities access to that information that is comparable to the access available to those without disabilities. The U.S. Access Board (Access Board) is responsible for developing federal accessibility standards.⁵⁶ The Access Board updated its rules in 2018 and currently incorporates the WCAG 2.0 into its regulation.⁵⁷

Florida Statutes Related to Accessibility of Electronic Information

Chapter 282, F.S., regulates the accessibility of electronic information among state agencies.⁵⁸ Executive, legislative, and judicial branches of state government must ensure that state employees with disabilities have access to and are provided with electronic information and data comparable to the access and use by state employees who do not have disabilities unless an undue burden would be imposed on the agency.⁵⁹ Similarly, individuals with disabilities who are members of the public must be provided with access to and use of electronic information and data comparable to that provided to nondisabled members of the public, unless an undue burden would be imposed on the agency.⁶⁰

Each state agency must develop, procure, maintain, and use accessible electronic information and information technology in conformance with federal law,⁶¹ absent an undue burden. If an agency claims compliance will impose an undue burden, it must provide proof an alternative method allows the individual to use the information and data.⁶² The statute does not extend its requirements to local governments.⁶³

Case Law Involving Access to Electronic Information

To establish a claim under Title II, a plaintiff must establish he or she had a disability, was denied a public benefit or other discrimination, and the denial of benefits or discrimination was by reason of the plaintiff's disability.⁶⁴ The scope of public entities subject to Title II of the ADA includes public prisons,⁶⁵ universities,⁶⁶ courts,⁶⁷ and legislative chambers.⁶⁸ Additionally, states

⁵⁵ See ss. 282.601-606, F.S.

⁵⁶ See 29 U.S.C. s. 794d; 36 CFR s. 1194. See also U.S. General Services Administration, *IT Accessibility Laws and Policies*, <https://www.section508.gov/manage/laws-and-policies> (last visited Jan. 20, 2020).

⁵⁷ See 36 CFR Part 1194, Appendix C. The WCAG guidelines are primarily intended for web content developers.

⁵⁸ Sections 282.601-606, F.S.

⁵⁹ Section 282.601(1), F.S.

⁶⁰ Section 282.601(2), F.S.

⁶¹ Including Section 508 and 36 C.F.R. part 1194.

⁶² Section 282, 603, F.S.

⁶³ See ch. 282, F.S.

⁶⁴ *Kornblau v. Dade Cty.*, 86 F.3d 193 (11th Cir. 1996).

⁶⁵ *Pennsylvania Dep't of Corr. v. Yeskey*, 524 U.S. 206 (1998); *Edison v. Douberly*, 604 F.3d 1307 (11th Cir. 2010).

⁶⁶ *Bd. of Trustees of Univ. of Alabama v. Garrett*, 531 U.S. 356 (2001).

⁶⁷ *Tennessee v. Lane*, 541 U.S. 509 (2004).

⁶⁸ *Nat'l Ass'n of Deaf v. State*, 318 F. Supp. 3d 1338, Case no. 18-cv-21232-UU (S.D. Fla. 2018).

may be held accountable for discrimination by private entities that lease government-owned property.⁶⁹

While currently there appears to be no Florida appellate court decision resolving a challenge to state agency website accessibility, there have been a number of federal cases in recent years. In *Nat'l Assn. of Deaf v. State*, hearing impaired individuals sued the Florida Senate and House of Representatives claiming the failure to put closed captions on live and archived videos of Florida legislative sessions violates the ADA.⁷⁰ The case survived a motion to dismiss because the Court found the right to participate in the democratic process is a fundamental right that properly abrogates the state's Eleventh Amendment sovereign immunity.⁷¹

Local governments are facing continued federal litigation in the absence of official rules on ADA compliance for government website and electronic document access. The case law is new and unsettled, but there are two emerging legal theories currently being used to determine if a case is viable. Some courts have relied on the standing analysis in Title III (Private Entities) website access cases to resolve Title II cases.⁷² Other courts have adopted a new Title II rubric based, in part, on the connection the plaintiff has with the defendant-government.⁷³

Some governments argue that these cases are not ripe for adjudication because DOJ has not yet promulgated regulations. Courts have generally dismissed this argument, with one court emphasizing that DOJ has had eight years to comment further or promulgate rules on website accessibility compliance but failed to do so.⁷⁴

Community Development Districts

Community Development Districts (CDDs) are special-purpose units of local government established to help Florida development and growth “pay for itself” by providing infrastructure and services for new and existing communities when such infrastructure and services would not otherwise be available from other local, general-purpose governments like counties and municipalities.⁷⁵ CDDs serve as an alternative means of financing, constructing, acquiring, operating, and maintaining public infrastructure improvements to communities throughout Florida such as roads, utilities, hardscaping, landscaping, streetlights, stormwater infrastructure, conservation and mitigation areas, recreation facilities, and various other improvements allowed by statute.⁷⁶

⁶⁹ See *Haas v. Quest Recovery Servs., Inc.*, 549 U.S. 1163 (2007).

⁷⁰ *Nat'l Ass'n of Deaf v. State*, 318 F. Supp. 3d 1338, Case no. 18-cv-21232-UU (S.D. Fla. 2018)(aff'd *Nat'l Ass'n of Deaf v. State*, 945 F.3d 1339 (11th Cir. 2020).

⁷¹ “Order of Motion to Dismiss Based on Sovereign Immunity,” *Id.* (June 18, 2018).

⁷² See *Gil v. Broward Cty.*, No. 18-60282-CIV, 2018 WL 4941108 (S.D. Fla. 2018)

⁷³ See *Price v. City of Ocala*, 375 F. Supp. 3d 1264 (M.D. Fla. 2019)(reasoning Title III analysis is the wrong standard to apply to Title II website access cases because Title III requires a nexus between a physical place and the alleged violation), and *Gil v. City of Pensacola, Fla.*, 392 F. Supp. 3d 1493 (N.D. Fla. 2019).

⁷⁴ See *Open Access for All, Inc. v. Town of Juno Beach, Fla.*, “Order Denying Defendant’s Motion to Dismiss,” Case no. 9:19-CV-80518-ROSENBERG/REINHART, 2019 WL 3425090 (S.D. Fla. July 29, 2019)(case dismissed on other grounds August 15, 2019).

⁷⁵ Jere L. Earlywine and Katie S. Buchanan, *The Role of Community Development Districts In Florida*, Florida Environmental and Land Use Law Treatise 25.10-1 (2015).

⁷⁶ *Id.*

Powers of a Community Development District

A Community Development District (CDD) is a local unit of special-purpose government that has limited authority, subject to the powers and duties enumerated in ch. 190, F.S.⁷⁷

A CDD's general powers⁷⁸ include:

- The power to sue and be sued;
- The ability to contract for specific services, pursuant to the public bidding requirements of s. 190.033, F.S.;
- The authority to adopt rules and orders pursuant to ch. 120, F.S., that describe the powers, duties, and functions of the district's officers; the conduct of the district's business; the maintenance of records; and the form of certificates that evidence tax liens and all of the CDD's other documents and records;
- The right to raise user charges or fees, subject to board approval, in instances in which the money is necessary for the conduct of the district's activities and services, to assess ad valorem taxes pursuant to ch. 190, F.S., and to levy special assessments pursuant to ch. 170, F.S.; and
- To cooperate with, or contract with, other governmental agencies, in connection with any of the powers, duties, or purposes authorized by ch. 190, F.S.

If a CDD wants any of the special powers enumerated in s. 190.012, F.S.,⁷⁹ it must request such powers from the local general-purpose government within the jurisdiction of which they are to be exercised. A CDD's special powers⁸⁰ include the powers to finance, construct, acquire, operate and maintain the following:

- Water management and control;
- Road and roadway improvements, such as street lights, landscaping, and placement of electric utility lines underground;
- Construction of parks and facilities for recreational, cultural, and educational uses;
- Fire prevention and control;
- School buildings and related structures and site improvements;
- Security, including, but not limited to, construction of guardhouses, fences and gates, electronic intrusion-detection systems, and patrol cars.

Specifically, s. 190.007(1) authorizes a community development district board of supervisors to employ and fix the compensation of a district manager. The statute further provides that:

- The district manager has charge and supervision of the works of the district and is responsible for:
 - Preserving and maintaining any improvement or facility constructed or erected pursuant to the provisions of the Uniform Community Development District Act of 1980;

⁷⁷ See, e.g., ss. 190.03(6), 190.011, and 190.012, F.S.

⁷⁸ Section 190.011, F.S.

⁷⁹ Such powers include the ability to finance, construct, acquire, operate, and maintain parks and facilities for certain uses; fire prevention and control; school buildings and related structures; security; control and elimination of mosquitoes; and waste collection and disposal. Section 190.012(2), F.S.

⁸⁰ Section 190.012, F.S.

- Maintaining and operating the equipment owned by the district; and
- Performing such other duties as may be prescribed by the board;
- It is not a conflict of interest under ch. 112, F.S., for a board member or the district manager or another employee of the district to be a stockholder, officer, or employee of a landowner or of an entity affiliated with a landowner; and
- The district manager may hire or otherwise employ and terminate the employment of such persons, including, without limitation, professional, supervisory, and clerical employees, as may be necessary and authorized by the board.⁸¹

Implementation of Amendment 12, Lobbying and Abuse of Office by Public Officers

Amendment 12 of the 2018 Constitution Revision Commission was adopted during the 2018 election with 78.92% support.⁸²

Effective December 31, 2020,⁸³ Amendment 12 prohibits a public officer or public employee from abusing his or her public position in order to obtain a “disproportionate benefit.”

“Disproportionate benefit” may not be obtained by the public officer or public employee for:

- Himself or herself;
- His or her spouse, children, or employer; or
- For any business:
 - With which he or she contracts;
 - In which he or she is an officer, a partner, a director, or a proprietor; or
 - In which he or she owns an interest.⁸⁴

Amendment 12 further provides that by October 1, 2019,⁸⁵ the Florida Commission on Ethics (Commission) is required, by rule in accordance with statutory procedures governing administrative rulemaking, to define “disproportionate benefit” and prescribe the requisite intent for finding a violation of the prohibition against abuse of public position.⁸⁶

Following adoption of the Commission’s rules, Amendment 12 requires the Legislature to enact implementing legislation establishing penalties for violations of the prohibition against abuse of public position to take effect December 31, 2020.⁸⁷ CS/SB 7006 is proposed as the implementing legislation that establishes penalties for violations of the prohibition.

Rulemaking by the Florida Commission on Ethics

The Commission has adopted Rule 34-18.001 of the Florida Administrative Code, effective September 30, 2019. The rule defines the term “disproportionate benefit” and prescribes the requisite intent for finding a violation of the prohibition against abuse of public position by a

⁸¹ Section 190.007, F.S.

⁸² Div. of Elections, Fla. Dep’t of State, *November 6, 2018 General Election*, available at <https://results.elections.myflorida.com/Index.asp?ElectionDate=11/6/2018&DATAMODE> = (last visited Feb. 11, 2020).

⁸³ FLA. CONST. art. XII, s. 38.

⁸⁴ FLA. CONST. art. II, s. 8. See Note.

⁸⁵ FLA. CONST. art. XII, s. 38.

⁸⁶ FLA. CONST. art. II, s. 8. See Note.

⁸⁷ FLA. CONST. art. XII, s. 38.

public officer or public employee in order to obtain a disproportionate benefit, both required by Amendment 12.

The rule defines “disproportionate benefit” as a benefit, privilege, exemption or result arising from an act or omission by a public officer or public employee inconsistent with the proper performance of his or her public duties.⁸⁸

The rule prescribes that the public officer or public employee acted, or refrained from acting, with the requisite intent for finding a violation of the prohibition against abuse of public position if the public officer or public employee acted, or refrained from acting, with a wrongful intent for the purpose of obtaining any benefit, privilege, exemption, or result from the act or omission which is inconsistent with the proper performance of his or her public duties.⁸⁹

The Florida Code of Ethics

The Code of Ethics for Public Officers and Employees (Code of Ethics) contains standards of ethical conduct and disclosures applicable to public officers, employees, candidates, lobbyists, and others in State and local government, with the exception of judges.⁹⁰

The Florida Constitution was revised in 1968 to require a code of ethics, prescribed by law, for all state employees and nonjudicial officers prohibiting conflict between public duty and private interests. Florida’s first successful constitutional initiative following adoption of the 1968 Constitution resulted in the adoption of the Sunshine Amendment in 1976, providing additional constitutional guarantees concerning ethics in government. In the area of enforcement, the Sunshine Amendment requires that there be an independent commission (the Commission on Ethics) to investigate complaints concerning breaches of public trust by public officers and employees other than judges. The Code of Ethics has been adopted by the Legislature as Part III of Chapter 112, Florida Statutes. Foremost among the goals of the Code is to promote the public interest and maintain the respect of the people for their government. The Code is also intended to ensure that public officials conduct themselves independently and impartially, not using their offices for private gain other than compensation provided by law. While seeking to protect the integrity of government, the Code also seeks to avoid the creation of unnecessary barriers to public service. Criminal penalties, which initially applied to violations of the Code, were eliminated in 1974 in favor of administrative enforcement. The Legislature created the Commission on Ethics that year “to serve as guardian of the standards of conduct” for public officials, state and local. Five of the Commission’s nine members are appointed by the Governor, and two each are appointed by the President of the Senate and Speaker of the House of Representatives. No more than five Commission members may be members of the same political party, and none may be lobbyists, or hold any public employment during their two-year terms of

⁸⁸ Fla. Admin. Code R. 34-18.001(2)(2019).

⁸⁹ Fla. Admin. Code R. 34-18.001(4)(2019).

⁹⁰ Florida Commission on Ethics, *Ethics Laws*, available at <http://www.ethics.state.fl.us/Research/EthicsLaws.aspx> (last visited Feb. 11, 2020).

office. A chair is selected from among the members to serve a one-year term and may not succeed himself or herself.⁹¹

The Code of Ethics contains several provisions that provide exemptions from what is otherwise prohibited conduct:

- Section 112.313(7), F.S., prohibits conflicting employment or contractual relationships, but provides that where a special tax district is created by general or special law and limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which an agency has jurisdiction, or when the agency has been organized pursuant to chapter 298 (water control districts), then employment with, or entering into a contractual relationship with, such business entity by a public officer or employee of such agency shall not be prohibited by this subsection or be deemed a conflict per se.
- Section 112.313(12), F.S., contains exemptions from the prohibitions in subsections (3) (prohibition on doing business with one's agency) and (7) of the section by providing that:
 - The prohibitions may be waived for a person serving on an advisory board by the body which appointed the person to the advisory board; and
 - No person is in violation of those subsections if:
 - Within a city or county the business is transacted under a rotation system;
 - The business is awarded under a system of sealed, competitive bidding to the lowest or best bidder who meet certain additional criteria;
 - The purchase or sale is for legal advertising in a newspaper, for any utilities service, or for passage on a common carrier;
 - An emergency purchase or contract must be made in order to protect the health, safety, or welfare of the citizens of the state or political subdivision of the state;
 - The business entity is the sole source of supply;
 - The total amount of transactions do not exceed \$500 per calendar year; and
 - Several other conditions exist related to bank officers, university transactions and purchases by public officers or employees in a private capacity.
- Section 112.313(15), F.S., provides that elected public officers are not in violation of subsection (7) of the section, dealing with conflict of interest, for maintaining an employment relationship with a tax-exempt organization as long as certain condition.
- Section 112.313(16), F.S., provides certain exemptions from the prohibitions of subsections (3) and (7) of the section for local government attorneys.
- Section 112.3143, F.S., prohibits a state public officer from voting on any matter that the officer knows would inure to his or her special private gain or loss; however paragraph (3)(b) of the section provides that a commissioner of a community redevelopment agency or an officer of an independent special tax district elected on a one-acre, one-vote basis, is not prohibited from voting.

III. Effect of Proposed Changes:

Section 1 amends s. 189.031, F.S., to provide that board members or public employees of special districts do not abuse their public position under Article II, section 8(h)(2) of the Florida

⁹¹ Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, 1 (2020), available at <http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf?cp=2020211> (last visited Feb. 11, 2020).

Constitution if they commit acts or omissions authorized under s. 112.313(7), (12), (15), or (16), F.S., or s. 112.3143(3)(b), F.S., and board members do not abuse their public position if they commit acts or omissions in connection with a vote if they follow the procedures required by s. 112.3143, F.S.

Section 2 amends s. 189.069, F.S., to allow a special district to satisfy the required posting of its most recent final, complete audit report and other statutorily required audit reports on its own website by providing a link to the most recent audit report maintained on the Auditor General's website. In addition, amending provisions remove the requirement for online posting of a special district's public facilities report and any of a special district's meeting or workshop materials. Required posting of a special district meeting or workshop, and the agendas of such events, remains.

Section 3 amends s. 190.007, F.S., to provide that board members or public employees of community development districts do not abuse their public position under Article II, section 8(h)(2) of the Florida Constitution if they commit acts or omissions authorized under s. 112.313(7), (12), (15), or (16), F.S., s. 112.3143(3)(b), F.S., or s. 190.007(1), F.S. and board members do not abuse their public position if they commit acts or omissions in connection with a vote if they follow the procedures required by s. 112.3143, F.S.

Section 4 provides an effective date of July 1, 2020.

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.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

The bill's removal of certain required website reports and documents may have a negative impact on private companies that provide specific ADA compliant website development and maintenance for special districts.

C. Government Sector Impact:

Special districts may realize a positive financial impact if they are no longer required to post certain reports and documents on their websites.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 189.031, 189.069, and 190.007 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 February 10, 2020:

The CS adds language to chs. 189 and 190, F.S., regarding special districts and community development districts, respectively, that excludes certain acts or omissions by board members or employees of special districts or community development districts from being considered abuse of public position under Article II, section 8(h)(2) of the Florida Constitution if such acts or omissions are authorized under specific provisions of the Florida Code of Ethics.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/10/2020	.	
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	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Effective January 1, 2021, subsection (6) is
added to section 189.031, Florida Statutes, to read:

189.031 Legislative intent for the creation of independent
special districts; special act prohibitions; model elements and
other requirements; local general-purpose government/Governor
and Cabinet creation authorizations.—



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(6) GOVERNANCE.—For purposes of s. 8(h)(2), Art. II of the State Constitution, a board member or a public employee of a special district does not abuse his or her public position if the board member or public employee commits an act or omission that is authorized under s. 112.313(7), (12), (15), or (16) or s. 112.3143(3)(b), and an abuse of a board member's position does not include any act or omission in connection with a vote when the board member has followed the procedures required by s. 112.3143.

Section 2. Paragraph (a) of subsection (2) of section 189.069, Florida Statutes, is amended to read:

189.069 Special districts; required reporting of information; web-based public access.—

(2)(a) A special district shall post the following information, at a minimum, on the district's official website:

1. The full legal name of the special district.
2. The public purpose of the special district.
3. The name, official address, official e-mail address, and, if applicable, term and appointing authority for each member of the governing body of the special district.
4. The fiscal year of the special district.
5. The full text of the special district's charter, the date of establishment, the establishing entity, and the statute or statutes under which the special district operates, if different from the statute or statutes under which the special district was established. Community development districts may reference chapter 190 as the uniform charter but must include information relating to any grant of special powers.
6. The mailing address, e-mail address, telephone number,



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and website uniform resource locator of the special district.

7. A description of the boundaries or service area of, and the services provided by, the special district.

8. A listing of all taxes, fees, assessments, or charges imposed and collected by the special district, including the rates or amounts for the fiscal year and the statutory authority for the levy of the tax, fee, assessment, or charge. For purposes of this subparagraph, charges do not include patient charges by a hospital or other health care provider.

9. The primary contact information for the special district for purposes of communication from the department.

10. A code of ethics adopted by the special district, if applicable, and a hyperlink to generally applicable ethics provisions.

11. The budget of the special district and any amendments thereto in accordance with s. 189.016.

12. The final, complete audit report for the most recent completed fiscal year and audit reports required by law or authorized by the governing body of the special district. If the special district has submitted its most recent final, complete audit report to the Auditor General, this requirement may be satisfied by providing a link to the audit report on the Auditor General's website.

13. A listing of its regularly scheduled public meetings as required by s. 189.015(1).

~~14. The public facilities report, if applicable.~~

~~15.~~ The link to the Department of Financial Services' website as set forth in s. 218.32(1)(g).

~~15.16.~~ At least 7 days before each meeting or workshop, the



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69 agenda of the event, ~~along with any meeting materials available~~
70 ~~in an electronic format, excluding confidential and exempt~~
71 ~~information.~~ The information must remain on the website for at
72 least 1 year after the event.

73 Section 3. Effective January 1, 2021, subsection (1) of
74 section 190.007, Florida Statutes, is amended to read:

75 190.007 Board of supervisors; general duties.—

76 (1) The board shall employ, and fix the compensation of, a
77 district manager. The district manager shall have charge and
78 supervision of the works of the district and shall be
79 responsible for preserving and maintaining any improvement or
80 facility constructed or erected pursuant to the provisions of
81 this act, for maintaining and operating the equipment owned by
82 the district, and for performing such other duties as may be
83 prescribed by the board. It shall not be a conflict of interest
84 under chapter 112 for a board member or the district manager or
85 another employee of the district to be a stockholder, officer,
86 or employee of a landowner or of an entity affiliated with a
87 landowner. The district manager may hire or otherwise employ and
88 terminate the employment of such other persons, including,
89 without limitation, professional, supervisory, and clerical
90 employees, as may be necessary and authorized by the board. The
91 compensation and other conditions of employment of the officers
92 and employees of the district shall be as provided by the board.
93 For purposes of s. 8(h)(2), Art. II of the State Constitution, a
94 board member or a public employee of a district does not abuse
95 his or her public position if the board member or public
96 employee commits an act or omission that is authorized under
97 this subsection, s. 112.313(7), (12), (15), or (16), or s.



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112.3143(3)(b), and an abuse of a board member's public position
does not include any act or omission in connection with a vote
when the board member has followed the procedures required by s.
112.3143.

Section 4. Except as otherwise expressly provided in this
act, this act shall take effect July 1, 2020.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to government accountability; amending
s. 189.031, F.S.; specifying conditions under which
board members and public employees of special
districts do not abuse their public positions;
amending s. 189.069, F.S.; revising the list of items
required to be included on the websites of special
districts; amending s. 190.007, F.S.; specifying
conditions under which board members and public
employees of community development districts do not
abuse their public positions; providing effective
dates.

By Senator Baxley

12-01146-20

20201466__

1 A bill to be entitled
 2 An act relating to special districts; amending s.
 3 189.069, F.S.; revising the list of items required to
 4 be included on the websites of special districts;
 5 providing an effective date.
 6
 7 Be It Enacted by the Legislature of the State of Florida:
 8
 9 Section 1. Paragraph (a) of subsection (2) of section
 10 189.069, Florida Statutes, is amended to read:
 11 189.069 Special districts; required reporting of
 12 information; web-based public access.-
 13 (2)(a) A special district shall post the following
 14 information, at a minimum, on the district's official website:
 15 1. The full legal name of the special district.
 16 2. The public purpose of the special district.
 17 3. The name, official address, official e-mail address,
 18 and, if applicable, term and appointing authority for each
 19 member of the governing body of the special district.
 20 4. The fiscal year of the special district.
 21 5. The full text of the special district's charter, the
 22 date of establishment, the establishing entity, and the statute
 23 or statutes under which the special district operates, if
 24 different from the statute or statutes under which the special
 25 district was established. Community development districts may
 26 reference chapter 190 as the uniform charter but must include
 27 information relating to any grant of special powers.
 28 6. The mailing address, e-mail address, telephone number,
 29 and website uniform resource locator of the special district.

Page 1 of 3

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

12-01146-20

20201466__

30 7. A description of the boundaries or service area of, and
 31 the services provided by, the special district.
 32 8. A listing of all taxes, fees, assessments, or charges
 33 imposed and collected by the special district, including the
 34 rates or amounts for the fiscal year and the statutory authority
 35 for the levy of the tax, fee, assessment, or charge. For
 36 purposes of this subparagraph, charges do not include patient
 37 charges by a hospital or other health care provider.
 38 9. The primary contact information for the special district
 39 for purposes of communication from the department.
 40 10. A code of ethics adopted by the special district, if
 41 applicable, and a hyperlink to generally applicable ethics
 42 provisions.
 43 11. The budget of the special district and any amendments
 44 thereto in accordance with s. 189.016.
 45 12. The final, complete audit report for the most recent
 46 completed fiscal year and audit reports required by law or
 47 authorized by the governing body of the special district. If the
 48 special district has submitted its most recent final, complete
 49 audit report to the Auditor General, this requirement may be
 50 satisfied by providing a link to the audit report on the Auditor
 51 General's website.
 52 13. A listing of its regularly scheduled public meetings as
 53 required by s. 189.015(1).
 54 14. ~~The public facilities report, if applicable.~~
 55 ~~15-~~ The link to the Department of Financial Services'
 56 website as set forth in s. 218.32(1)(g).
 57 15.16- At least 7 days before each meeting or workshop, the
 58 agenda of the event, ~~along with any meeting materials available~~

Page 2 of 3

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

12-01146-20

20201466__

59 ~~in an electronic format, excluding confidential and exempt~~
60 ~~information.~~ The information must remain on the website for at
61 least 1 year after the event.
62 Section 2. This act shall take effect July 1, 2020.

THE FLORIDA SENATE

COMMITTEES:

Ethics and Elections, *Chair*
Appropriations Subcommittee on Education
Education
Finance and Tax
Health Policy
Judiciary

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR DENNIS BAXLEY

12th District

January 28, 2020

The Honorable Chair Ed Hooper
326 Senate Office Building
Tallahassee, Florida 32399

Dear Chair Hooper,

I would like to request that SB 1466 Special Districts be heard in the next Governmental Oversight and Accountability Committee meeting.

This good bill will allow special districts to satisfy the statutory requirement to post the most recent financial audit by providing a link to the report maintained on the state's Auditor General's website. The bill also removes the requirement for districts to post facility reports and meeting materials online, only requiring the district to post a meeting or event agenda. The facility reports and meeting materials will continue to be available for inspection and copying.

Thank you for your favorable consideration.

Onward & Upward,



Senator Dennis K. Baxley
Senate District 12

DKB/dd

cc: Joe McVaney, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012
Email: baxley.dennis@flsenate.gov

Bill Galvano
President of the Senate

David Simmons
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/10/20
Meeting Date

1466
Bill Number (if applicable)

642110
Amendment Barcode (if applicable)

Topic _____

Name Chris Lynn

Job Title _____

Address 315 S. Calhoun St., Suite 830
Street
Tallahassee FL 32309
City State Zip

Phone 222-5702

Email chrynellw@law.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Association of Special Districts

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/10/20

Meeting Date

1466

Bill Number (if applicable)

642110

Amendment Barcode (if applicable)

Topic Special Districts

Name Michael C. Eckert

Job Title Attorney; Hoppings Green & Sams PA

Address 119 S. Monroe St., Suite 300

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-222-7500

Email micheale@hgsllaw.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Association of Florida Community Developers (AFCD)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/10/20

Meeting Date

1466

Bill Number (if applicable)

Topic Special Districts

Amendment Barcode (if applicable)

Name Michael C. Eckert

Job Title Attorney ; Hoppins Green + Sans PA

Address 119 S. Monroe St., Suite 300

Phone 850-222-7500

Street

Tallahassee

FL

32301

City

State

Zip

Email michael@bgslaw.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Association of Florida Community Developers (AFCD)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/10/20
Meeting Date

1466
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Chris Lyon

Job Title _____

Address 315 S. Calhoun St., Suite 830
Kaldersee FL 32309
City State Zip

Phone 222-5702

Email clyon@llw-law.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Association of Special Districts

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/10/20

Meeting Date

1466

Bill Number (if applicable)

Topic Special Districts

Amendment Barcode (if applicable)

Name Jim Millican

Job Title Division Chief

Address 4360-55 Ave N
Street

Phone 721-526-5650

St. Pete FL 33714
City State Zip

Email jmillica@leelmanfire.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Leelman Fire District

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

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 1632

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Rouson

SUBJECT: Cultural Affairs

DATE: February 10, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ponder	McVaney	GO	Fav/CS
2.			CM	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1632 designates the Secretary of State as “Florida’s Chief Arts and Cultural Officer” rather than the chief cultural officer. The bill also renames the Division of Cultural Affairs within the Department of State as the Division of Arts and Culture and makes conforming changes.

The bill will have an indeterminate effect on the government sector. See Section V., Fiscal Impact Statement.

The bill takes effect on July 1, 2020.

II. Present Situation:

Department of State

The Department of State (department), created in s. 20.10, F.S., is composed of six divisions: Elections, Historical Resources, Corporations, Library and Information Services, Cultural Affairs and Administration. The head of the department is the Secretary of State (Secretary).¹ The Secretary is appointed by the Governor, subject to confirmation by the Senate, and serves at the pleasure of the Governor. The Secretary performs functions conferred by the State Constitution upon the custodian of records.

¹ Section 20.10, F.S.

The Division of Cultural Affairs

The Division of Cultural Affairs is Florida's designated state arts agency. The division promotes arts and culture as essential to the quality of life for all Floridians. To promote excellence and encourage access to cultural opportunities, the division provides funding, programs and resources, including grants for: arts in education, local arts agencies, state service organizations, museums, theater, dance, folk arts, literature, media arts, multidisciplinary, music, sponsor/presenter, and visual arts programs and projects. The Division of Cultural Affairs also administers the Museum of Florida History and has its offices in the historic Brokaw-McDougall House.²

Section 15.18, F.S., provides that the Divisions of Cultural Affairs, Historical Resources, and Library and Information Services of the Department of State promote programs having substantial cultural, artistic, and indirect economic significance that emphasize American creativity. The Secretary of State, as the head administrator of these divisions, is designated as "Florida's Chief Cultural Officer." The Secretary of State is encouraged to initiate and develop relationships between the state and foreign governmental officials in order to promote Florida as the center of American creativity. The Secretary of State shall coordinate international activities as they relate to international and cultural relations with the Florida International Affairs Commission. To accomplish these purposes, the secretary has the power and authority to do the following:

- Disseminate any information pertaining to the State of Florida which promotes the state's cultural assets;
- Plan and carry out activities designed to cause improved cultural and governmental programs and exchanges with foreign countries;
- Plan and implement cultural and social activities for visiting foreign heads of state, diplomats, dignitaries, and exchange groups;
- Encourage and cooperate with other public and private organizations or groups in their efforts to promote the cultural advantages of Florida;
- Serve as the liaison with all foreign consular and ambassadorial corps, as well as international organizations, that are consistent with the purposes of expanding international and cultural relations; and
- Provide, arrange, and make expenditures for the achievement of any or all of the purposes specified in this section.

Florida Arts and Cultural Act

The Florida Arts and Cultural Act (the Act) is set forth in ss. 265.281-265.709, F.S. The Legislative intent of the Act is to provide state support for, and to gain national and international recognition of, the efforts, works, and performances of Florida artists, art agencies, museums and nonprofit organizations.³ The Act defines the term "division" to mean the Division of Cultural

² Florida Department of State, Division of Cultural Affairs, About Us, Mission, available at <https://dos.myflorida.com/cultural/about-us/mission/> (last visited on February 5, 2020).

³ Section 285.282, F.S.

Affairs of the Department of State.⁴ The division is charged with directly administering and overseeing all programs authorized by the Act. The division must:

- Accept and administer state and federal funds appropriated by the Legislature or funds received from other public or private sources.
- Advance funds for grants on a quarterly basis.
- Enter into agreements for awarding grants or other contracts.
- Consult with and advise other individuals, groups, organizations or state agencies and officials, particularly the Governor and the Cabinet, concerning the acquisition by gift or purchase of fine art works, the appropriate use and display of state-owned art treasures for maximum public benefit, and the suitability of any structures or fixtures, including framing, primarily intended for ornamental or decorative purposes in the interior of public buildings.
- Accept on behalf of the state donations of money, property, art objects, and antiquities.⁵
- Sponsor performances and exhibits; promote and encourage the study and appreciation of arts and culture; and collect, publish, and print pamphlets, papers, newsletters, and other materials related to arts and cultural programs available throughout the state.
- Conduct and support cultural programs and cultural exchanges by coordinating with the appropriate state agencies and other organizations.
- Accept funding and other forms of support for the purposes in this act.
- Notwithstanding s. 287.022 or s. 287.025(1)(e), enter into contracts to insure museum collections, artifacts, relics, and fine arts to which it holds title or which are on loan to the division.
- Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this subsection.⁶

Section 265.2865, F.S., establishes the Florida Artists Hall of Fame which recognizes persons, living or deceased, who have made significant contributions to the arts in Florida either as performing or practicing artists in individual disciplines. The Florida Artists Hall of Fame Wall is located on the Plaza level in the rotunda of the Capital building.⁷ The Florida Council on Arts and Culture accepts nominations annually for persons to be recommended as members of the Florida Artists Hall of Fame and then makes recommendations to the Secretary of those person who were born in Florida or adopted Florida as their home state and base of operation and made a significant contribution to the enhancement of the arts in this state.⁸ The Secretary must name no more than four members to the Florida Artists Hall of Fame in any one year.⁹ The department is authorized to adopt rules to implement the provisions of the Cultural Endowment Program.¹⁰

⁴ Section 285.283(4), F.S.

⁵ Such donations of money and any cash income may be received from the disposal of any donations of property, art objects, or antiquities, which shall be deposited into the Grants and Donations Trust Fund and are hereby appropriated for use by the division for the purposes authorized in the Act.

⁶ Section 265.284(3)(a) – (j), F.S.

⁷ *Florida Artists Hall of Fame*, <https://dos.myflorida.com/cultural/programs/florida-artists-hall-of-fame/> (last visited February 3, 2020).

⁸ Section 265.2865(3), F.S.

⁹ Section 265.2863(4), F.S.

¹⁰ Section 265.605(1), F.S.

Cultural Facilities – Grants for Acquisition

The division is permitted to accept and administer moneys appropriated to it for providing grants to counties, municipalities, and qualifying nonprofit corporations for the acquisition, renovation, or construction of cultural facilities.¹¹ A county, municipality or qualified corporation¹² may apply for a grant of state funds for the acquisition, renovation, or construction of a cultural facility.¹³ The Florida Council on Arts and Culture must review each application for a grant and must annually submit to the Secretary for approval lists of all applications recommended by the council for award of grants, arranged in order of priority.¹⁴

Any contract administered under s. 265.701, F.S., must require the recordation of a restrictive covenant by the grantee and property owner or purchase of a bond as prescribed by rule to ensure that the facility continues to be used as a cultural facility for a period of 10 years following the grant award.¹⁵

Division of Historical Resources

The Division of Historical Resources is responsible for preserving and promoting Florida's historical, archaeological, and folk culture resources. The Division Director's Office oversees a Historic Preservation Grants program to help preserve and maintain Florida's historic buildings and archaeological sites, coordinates outreach programs, such as the State Historical Markers program and Florida Folklife program which identifies and promotes the state's traditional culture. The division director serves as the State Historic Preservation Officer, acting as the liaison with the national historic preservation program conducted by the National Park Service.¹⁶

The Division of Historical Resources is comprised of the Bureau of Historic Preservation (BHP) and the Bureau of Archaeological Research (BAR). The BHP manages the Florida Main Street Program, and under federal and state laws, oversees the National Register of Historic Places program for Florida, maintains an inventory of the state's historical resources in the Florida Master Site File, assists applicants in federal tax benefit and local government ad valorem tax relief programs for historic buildings, and reviews the impact that development projects may have on significant historic resources. The BAR is responsible for the state's archaeological programs, including surveys and excavations throughout the state, maintenance of records on historical resources that have been recorded, and assistance to consultants and planners in protecting sites.¹⁷

¹¹ Section 265.701(1), F.S.

¹² For the purposes of this section, a "qualified corporation" is a corporation which is designated a not-for-profit corporation pursuant to s. 501(c)(3) or (4) of the Internal Revenue Code of 1954, and which is described in, and allowed to receive contributions pursuant to the provisions of, s. 170 of the Internal Revenue Code of 1954, and which is a corporation not for profit incorporated pursuant to chapter 617.

¹³ Section 265.701(2), F.S.

¹⁴ Section 265.701(3), F.S.

¹⁵ Section 265.701(4), F.S.

¹⁶ Florida Department of State, Division of Historical Resources, About, Program Areas, available at <https://dos.myflorida.com/historical/about/> (last visited on February 4, 2020).

¹⁷ *Id.*

Division of Library and Information Services

The Division of Library and Information Services manages the State Library and Archives, supports public libraries, directs record management services, and is the designated information resource provider for the state of Florida.¹⁸

The division may receive gifts of money, books, or other property and may purchase books, periodicals, furniture, and equipment it deems necessary to carry out its mission. The Division may also give aid and assistance to all school, state, academic, free, and public libraries, and to all communities in the state which may establish libraries. The division is required to maintain a library for state officials and employees and provide research and informational services for all state agencies. The division must also provide library services to blind and physically handicapped persons within the state.¹⁹

Secretary of State – Florida’s Chief Cultural Officer

The Divisions of Cultural Affairs, Historical Resources, and Library and Information Services of the Department promote programs having substantial cultural, artistic, and indirect economic significance that emphasize American creativity.²⁰ The Secretary is designated as “Florida’s Chief Cultural Officer” and is encouraged to initiate and develop relationships between the state and foreign governmental officials in order to promote Florida as the center of American creativity.²¹ As Florida’s Chief Cultural Officer, the Secretary must coordinate international activities with Enterprise Florida, Inc., and any other organization the Secretary deems to be appropriate.²² To accomplish these purposes, the secretary has the power and authority to do the following:

- Disseminate any information pertaining to the state which promotes the state's cultural assets;
- Plan and carry out activities designed to cause improved cultural and governmental programs and exchanges with foreign countries;
- Plan and implement cultural and social activities for visiting foreign heads of state, diplomats, dignitaries, and exchange groups;
- Encourage and cooperate with other public and private organizations or groups in their efforts to promote the cultural advantages of Florida;
- Serve as the liaison with all foreign consular and ambassadorial corps, as well as international organizations, that are consistent with the purposes of expanding international and cultural relations; and
- Provide, arrange, and make expenditures for the achievement of any or all of the purposes specified in this section.²³

¹⁸ Florida Department of State, Division of Library and Information Services, available at <https://dos.myflorida.com/library-archives/> (last visited on February 4, 2020).

¹⁹ Section 257.04, F.S.

²⁰ Section 15.18, F.S.

²¹ *Id.*

²² *Id.*

²³ *Id.*

III. Effect of Proposed Changes:

Section 1 amends s. 15.18, F.S., to provide that the Secretary of State will be known as “Florida’s Chief Arts and Cultural Officer” instead of the chief cultural officer.

Section 2 amends s. 20.10, F.S., to rename the Division of Cultural Affairs as the Division of Arts and Culture.

Sections 3 and 5 amend ss. 265.283 and 265.2865, F.S., respectively, to update references to the division.

Section 4 amends s. 265.284, F.S., to provide that the Secretary will be known as the “Chief Arts and Cultural Officer” instead of the chief cultural officer.

Section 6 and 8 amend ss. 265.603(2) and 265.7025(2), F.S., respectively, to update the definition of “[d]ivision” to mean the Division of Arts and Culture of the Department of State.

Section 7 amends s. 265.701, F.S., to update references to the division.

Sections 9 and 10 amend ss. 265.704 and 468.401, F.S., to update references to the division.

Section 11 provides the act takes effect on July 1, 2020.

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.

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 department will experience an indeterminate negative fiscal impact associated with the rebranding and re-naming of its Division of Cultural Affairs to the Division of Arts and Culture.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 15.18, 20.10, 265.283, 265.284, 265.2865, 265.603, 265.701, 265.7025, 265.704, and 468.401.

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 February 10, 2020:

The committee substitute removes the repeal of ss. 265.601, 265.602, 265.603 and 265.605, F.S., and updates the definition of the term “division” in s. 265.603, F.S.

B. Amendments:

None.



211178

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/10/2020	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 137 - 138

and insert:

Section 6. Subsection (2) of section 265.603, Florida
Statutes, is amended to read:

265.603 Definitions relating to Cultural Endowment
Program.—The following terms and phrases when used in ss.
265.601-265.606 shall have the meaning ascribed to them in this
section, except where the context clearly indicates a different



211178

meaning:

(2) "Division" means the Division of Arts and Culture
~~Cultural Affairs~~ of the Department of State.

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

And the title is amended as follows:

Delete lines 9 - 13

and insert:

ss. 265.283, 265.284, 265.2865, 265.603, 265.701,
265.7025, 265.704, and 468.401,

By Senator Rouson

19-01837-20

20201632__

1 A bill to be entitled
 2 An act relating to cultural affairs; amending s.
 3 15.18, F.S.; providing that the Secretary of State
 4 shall be known as "Florida's Chief Arts and Culture
 5 Officer"; conforming a provision to changes made by
 6 the act; amending s. 20.10, F.S.; renaming the
 7 Division of Cultural Affairs of the Department of
 8 State as the Division of Arts and Culture; amending
 9 ss. 265.283, 265.284, and 265.2865, F.S.; conforming
 10 provisions to changes made by the act; repealing ss.
 11 265.601, 265.602, 265.603, and 265.605, F.S., relating
 12 to the department's Cultural Endowment Program;
 13 amending ss. 265.701, 265.7025, 265.704, and 468.401,
 14 F.S.; conforming provisions to changes made by the
 15 act; providing an effective date.
 16
 17 Be It Enacted by the Legislature of the State of Florida:
 18
 19 Section 1. Section 15.18, Florida Statutes, is amended to
 20 read:
 21 15.18 International and cultural relations.—The Divisions
 22 of Arts and Culture ~~Cultural Affairs~~, Historical Resources, and
 23 Library and Information Services of the Department of State
 24 promote programs having substantial cultural, artistic, and
 25 indirect economic significance that emphasize American
 26 creativity. The Secretary of State, as the head administrator of
 27 these divisions, shall hereafter be known as "Florida's Chief
 28 Arts and Culture ~~Cultural~~ Officer." As this officer, the
 29 Secretary of State is encouraged to initiate and develop

Page 1 of 8

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

19-01837-20

20201632__

30 relationships between the state and foreign cultural officers,
 31 their representatives, and other foreign governmental officials
 32 in order to promote Florida as the center of American
 33 creativity. The Secretary of State shall coordinate
 34 international activities pursuant to this section with
 35 Enterprise Florida, Inc., and any other organization the
 36 secretary deems appropriate. For the accomplishment of this
 37 purpose, the Secretary of State shall have the power and
 38 authority to:
 39 (1) Disseminate any information pertaining to the State of
 40 Florida which promotes the state's cultural assets.
 41 (2) Plan and carry out activities designed to cause
 42 improved cultural and governmental programs and exchanges with
 43 foreign countries.
 44 (3) Plan and implement cultural and social activities for
 45 visiting foreign heads of state, diplomats, dignitaries, and
 46 exchange groups.
 47 (4) Encourage and cooperate with other public and private
 48 organizations or groups in their efforts to promote the cultural
 49 advantages of Florida.
 50 (5) Serve as the liaison with all foreign consular and
 51 ambassadorial corps, as well as international organizations,
 52 that are consistent with the purposes of this section.
 53 (6) Provide, arrange, and make expenditures for the
 54 achievement of any or all of the purposes specified in this
 55 section.
 56 Section 2. Paragraph (e) of subsection (2) of section
 57 20.10, Florida Statutes, is amended to read:
 58 20.10 Department of State.—There is created a Department of

Page 2 of 8

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

19-01837-20

20201632__

59 State.

60 (2) The following divisions of the Department of State are
61 established:

62 (e) Division of ~~Arts and Culture~~ Cultural Affairs.

63 Section 3. Subsections (3) and (4) of section 265.283,
64 Florida Statutes, are amended to read:

65 265.283 Definitions.—The following definitions shall apply
66 to ss. 265.281-265.709:

67 (3) "Director" means the Director of the Division of Arts
68 and Culture ~~Cultural Affairs~~ of the Department of State.

69 (4) "Division" means the Division of Arts and Culture
70 ~~Cultural Affairs~~ of the Department of State.

71 Section 4. Section 265.284, Florida Statutes, is amended to
72 read:

73 265.284 Chief arts and culture ~~cultural~~ officer; director
74 of division; powers and duties.—

75 (1) The Secretary of State is the chief arts and culture
76 ~~cultural~~ officer of the state.

77 (2) The division is the state arts administrative agency
78 and shall be headed by a director who shall serve at the
79 pleasure of the secretary.

80 (3) The division shall directly administer and oversee all
81 of the programs authorized by this act. In furtherance thereof,
82 the division shall:

83 (a) Accept and administer state and federal funds
84 appropriated by the Legislature or funds received from other
85 public or private sources.

86 (b) Advance funds for grants on a quarterly basis.

87 (c) Enter into agreements for awarding grants or other

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88 contracts with any person, firm, performing arts company,
89 educational institution, arts organization, corporation, or
90 governmental agency as may be necessary or advisable to carry
91 out its functions under this act.

92 (d) Upon request, or at its own initiative, consult with
93 and advise other individuals, groups, organizations, or state
94 agencies and officials, particularly the Governor and the
95 Cabinet, concerning the acquisition by gift or purchase of fine
96 art works, the appropriate use and display of state-owned art
97 treasures for maximum public benefit, and the suitability of any
98 structures or fixtures, including framing, primarily intended
99 for ornamental or decorative purposes in the interior of public
100 buildings.

101 (e) Accept on behalf of the state donations of money,
102 property, art objects, and antiquities. Such donations of money
103 and any cash income may be received from the disposal of any
104 donations of property, art objects, or antiquities, which shall
105 be deposited into the Grants and Donations Trust Fund and are
106 hereby appropriated for use by the division for the purposes
107 authorized in this act.

108 (f) Sponsor performances and exhibits; promote and
109 encourage the study and appreciation of arts and culture; and
110 collect, publish, and print pamphlets, papers, newsletters, and
111 other materials related to arts and cultural programs available
112 throughout the state.

113 (g) Conduct and support cultural programs and cultural
114 exchanges by coordinating with the appropriate state agencies
115 and other organizations.

116 (h) Accept funding and other forms of support for the

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purposes in this act.

(i) Notwithstanding s. 287.022 or s. 287.025(1)(e), enter into contracts to insure museum collections, artifacts, relics, and fine arts to which it holds title or which are on loan to the division.

(j) Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this subsection.

Section 5. Subsection (6) of section 265.2865, Florida Statutes, is amended to read:

265.2865 Florida Artists Hall of Fame.—

(6) The Division of Arts and Culture ~~Cultural Affairs~~ of the Department of State shall adopt rules necessary to carry out the purposes of this section, including, but not limited to, procedures for accepting nominations to, making recommendations for, selecting members of the Florida Artists Hall of Fame, and providing travel expenses for such recipients. Notwithstanding the provisions of s. 112.061, the Secretary of State may approve first-class travel accommodations for recipients of the Florida Artists Hall of Fame award and their representatives for health or security purposes.

Section 6. Sections 265.601, 265.602, 265.603, and 265.605, Florida Statutes, are repealed.

Section 7. Subsections (1) and (5) of section 265.701, Florida Statutes, are amended to read:

265.701 Cultural facilities; grants for acquisition, renovation, or construction; funding; approval; allocation.—

(1) The Division of Arts and Culture ~~Cultural Affairs~~ may accept and administer moneys appropriated to it for providing grants to counties, municipalities, and qualifying nonprofit

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corporations for the acquisition, renovation, or construction of cultural facilities.

(5) The Division of Arts and Culture ~~Cultural Affairs~~ shall adopt rules prescribing the criteria to be applied by the Florida Council on Arts and Culture in recommending applications for the award of grants and rules providing for the administration of the other provisions of this section.

Section 8. Subsection (2) of section 265.7025, Florida Statutes, is amended to read:

265.7025 Definitions relating to historic programs.—For the purposes of ss. 265.7025-265.709, the term:

(2) "Division" means the Division of Arts and Culture ~~Cultural Affairs~~ of the Department of State.

Section 9. Section 265.704, Florida Statutes, is amended to read:

265.704 Historical museums; powers and duties of the Division of Arts and Culture ~~Cultural Affairs~~.—

(1) The division shall adopt rules pursuant to ss. 120.536(1) and 120.54 to administer the provisions of ss. 265.7025-265.709.

(2) The division may make and enter into all contracts and agreements with other agencies, organizations, associations, corporations, and individuals or with federal agencies as it may determine are necessary, expedient, or incidental to the performance of its duties or the execution of its powers under ss. 265.7025-265.709.

(3) The division may accept gifts, grants, bequests, loans, and endowments for purposes not inconsistent with its responsibilities under this chapter. The division may also

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establish an endowment that is consistent with the responsibilities under ss. 265.7025-265.709.

(4) It is the duty of the division to:

(a) Promote and encourage throughout the state knowledge and appreciation of Florida history by encouraging the people of the state to engage in the preservation and care of artifacts, museum items, treasure troves, and other historical properties; the collection, research, fabrication, exhibition, preservation, and interpretation of historical materials; the publicizing of the state's history through public information media; and other activities in historical and allied fields.

(b) Encourage, promote, maintain, and operate historical museums, including, but not limited to, mobile museums, junior museums, and the Museum of Florida History in the state capital.

(c) Plan and develop, in cooperation with other state agencies and with municipalities, programs to promote and encourage the teaching of Florida's history and heritage in Florida schools and other educational institutions and other such educational programs as may be appropriate.

(d) Establish professional standards for the preservation, exclusive of acquisition, of historical resources in state ownership or control.

(e) Take such other actions as are necessary or appropriate to locate, acquire, protect, preserve, operate, interpret, and promote the location, acquisition, protection, preservation, operation, and interpretation of historical resources to foster an appreciation of Florida history and culture.

Section 10. Subsection (4) of section 468.401, Florida Statutes, is amended to read:

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

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468.401 Regulation of talent agencies; definitions.—As used in this part or any rule adopted pursuant hereto:

(4) "Engagement" means any employment or placement of an artist, where the artist performs in his or her artistic capacity. However, the term "engagement" shall not apply to procuring opera, music, theater, or dance engagements for any organization defined in s. 501(c)(3) of the Internal Revenue Code or any nonprofit Florida arts organization that has received a grant from the Division of Arts and Culture ~~Cultural Affairs~~ of the Department of State or has participated in the state touring program of the Division of Arts and Culture ~~Cultural Affairs~~.

Section 11. This act shall take effect July 1, 2020.

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



The Florida Senate

Committee Agenda Request

To: Senator Ed Hooper, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: January 22, 2020

I respectfully request that **Senate Bill # 1632**, relating to Cultural Affairs, be placed on the:

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

A handwritten signature in green ink that reads "Darryl Ervin Rouson".

Senator Darryl Ervin Rouson
Florida Senate, District 19



2019 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of State

<u>BILL INFORMATION</u>	
BILL NUMBER:	<u>SB 1632</u>
BILL TITLE:	<u>Cultural Affairs</u>
BILL SPONSOR:	<u>Senator Rouson</u>
EFFECTIVE DATE:	<u>July 1, 2020</u>

<u>COMMITTEES OF REFERENCE</u>
1) Oversight, Transparency & Public Management
2) Transportation & Tourism Subcommittee
3) State Affairs Committee
4) N/A
5) N/A

<u>CURRENT COMMITTEE</u>
Oversight, Transparency & Public Management

<u>SIMILAR BILLS</u>	
BILL NUMBER:	HB 757
SPONSOR:	Representative Raschein

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

<u>IDENTICAL BILLS</u>	
BILL NUMBER:	N/A
SPONSOR:	N/A

Is this bill part of an agency package?
N/A

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

POLICY ANALYSIS

1. **EXECUTIVE SUMMARY**

Cultural Affairs: Renames Division of Cultural Affairs as Division of Arts & Culture; provides that Secretary of State shall be known as "Florida's Chief Arts & Culture Officer"; repeals provisions relating to Cultural Endowment Program short title, legislative intent, definitions, & rulemaking. Effective Date: July 1, 2020

2. **SUBSTANTIVE BILL ANALYSIS**

1. **PRESENT SITUATION:**

- The National Endowment for the Arts recognizes the Department of State Division of Cultural Affairs as Florida's official State Arts Agency
 - State Arts Agencies were created by Federal mandate
 - 50 of the 56 State Arts Agencies include the word *arts* in their names
- The title of Chapter 265, F.S is Memorials, Museums, And **Arts and Culture**.
- The vast majority of the division's grantees are **Arts** organizations.
- The division struggles with visibility issues. Grantees know who the division is, but the stakeholders (which include grantees) are convinced that the impact of division programs is not widely known throughout the state.
- People don't understand what *culture* means in the division's current name. They often tell us that they think it's about the cultures of different ethnic groups.
- The name was suitable at the time of its creation because the division administered the Ringling Museum, the Stephen Foster Memorial and all historical commissions and preservation boards. Those activities have shifted to other agencies since then.
- The Cultural Endowment Program was established in 1985 to create an endowment matching funds program that will provide operating resources to participating cultural organizations. The Cultural Endowment Program is composed of:
 - Cultural Sponsoring Organization (CSO) designation
 - Award of a \$240,000 State Matching Share (SMS) and maintenance of matching funds in the amount of \$360,000 creating a corpus of \$600,000. The entire \$600,000 must be invested according to an investment plan established as part of a Trust Agreement. The organization must not willfully expend any portion of the corpus nor allow the market value to fall below the \$600,000 or the funds are subject to reversion to the State.
 - An annual audit of the organization's financial accounts by an independent certified public accountant must be submitted to the Division and auditor general for review within nine months after the expiration of the organization's fiscal year. The audit must specifically recognize the \$600,000 corpus as an asset of the CSO.
 - The current outstanding 133 shares require monitoring by the Division and reporting by the endowment owner in perpetuity. New Endowments applications for state shares have not been funded since 2016.
 - Constituent Issues with Program Requirements: Cost of Annual Audits to share owners; insufficient ROI from conservative investments to maintain corpus; reluctance by investment agents to manage funds fearing maintenance of corpus during market swings; desire to co-mingle funds with foundation funds.
 - As a result of these issues, some endowment shares have been declined or returned while other CSOs have reconsidered applying for the endowment state share.

2. **EFFECT OF THE BILL:**

- Aligns the division more closely with its advisory board, the Florida Council on **Arts and Culture**.
- A name change provides more consistent branding as well as greater alignment and clarity to the division's mission to advance, support and promote **arts and culture**.
- Deleting the Cultural Endowment program eliminates the need for annual rule revision, acceptance of applications and organization annual reporting. Current endowment share owners will continue to submit annual reports and audits to the Division of Cultural Affairs.

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:	1T-1.001, sections 1, 2 and 3 would be amended to reflect the changes reference in HB 757.
Is the change consistent with the agency's core mission?	Y ☒ N ☐

Rule(s) impacted (provide references to F.A.C., etc.):	1T-1.001
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4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?Y ☐ N ☒

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?Y ☐ N ☒

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?**Y ☐ N ☒

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?Y ☐ N ☒

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.)?** Y ☐ 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.)?** Y ☐ N ☒

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

N/A

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

Issues/concerns/comments:

None

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/10/20

Meeting Date

SB 1632

Bill Number (if applicable)

Topic Cultural Affairs

Amendment Barcode (if applicable)

Name Brittany Dover

Job Title legislative Affairs Director

Address 500 S. Bronough Street

Street

Tallahassee

FL

32399

City

State

Zip

Phone (850) 249-6509

Email brittany.dover@ds.

myflorida.com

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)

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 1636

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Baxley

SUBJECT: Repeal of Advisory Bodies and Councils

DATE: February 10, 2020

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1636 abolishes specific advisory bodies and programs that are no longer active, necessary, or beneficial to the furtherance of a public purpose. Specifically, this bill abolishes the following entities and the statutory references relating to:

- Citrus/Hernando Waterways Restoration Council;
- My Safe Florida Home Program Advisory Council;
- Ad hoc committee for the Great Floridian Program within the Department of State;
- Geneva Freshwater Lens Task Force;
- Brownfield Areas Loan Guarantee Council;
- Nonmandatory Land Reclamation Committee;
- Sturgeon Production Working Group;
- Trap Certificate Technical Advisory Appeals Board;
- Clean Fuel Florida Advisory Board;
- Technical advisory council for water and domestic wastewater operator certification;
- Technical advisory panels for Florida Health Choices, Inc.;
- Technical advisory panel relating to result-oriented accountability program within the Department of Children and Families;
- Learning Gateway steering committee;
- Department of Elderly Affairs Advisory Council;
- Florida Agricultural Promotion Campaign Advisory Council;
- Healthy Schools for Healthy Lives Council;

- Tropical Fruit Advisory Council;
- Board of Governors Advisory board relating to online baccalaureate degree programs; and
- Florida Early Learning Advisory Council.

The bill takes effect July 1, 2020.

II. Present Situation:

Advisory Bodies, Commissions, and Boards

Under the organizational structure of the executive branch of state government, a “council” or “advisory council” is

an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.¹

An advisory body, commission, board of trustees, or any other collegial body created by specific statutory authority as an adjunct to an executive agency must be established, evaluated, and maintained in accordance with the following provisions:²

- It may be created only when it is necessary and beneficial to the furtherance of a public purpose;
- It must be terminated when it is no longer necessary and beneficial to the furtherance of a public purpose;
- The Legislature and the public must be kept informed of the numbers, purposes, memberships, activities, and expenses of advisory bodies, commissions, boards of trustees, and other collegial bodies established as adjuncts to executive agencies; and
- It must meet a statutorily defined purpose and its power must conform to the definitions for governmental units.

Because these advisory bodies are codified in statute, the legislature must take an affirmative action to abolish the advisory bodies.

Citrus/Hernando Waterways Restoration Council

The Citrus/Hernando Waterways Restoration Council was established, in 2003, in response to regional concerns for the health of Citrus and Hernando county waterways.³ It is the council’s responsibility to review audits and all data specifically related to lake and river restoration techniques and sport fish population recovery strategies, evaluate whether additional studies are needed, explore all possible sources of funding to conduct restoration activities, and report to the Legislature on the progress made and any recommendations for the next fiscal year. The council last submitted an annual report in 2015.

¹ Section 20.03(6), F.S.

² Section 20.052, F.S.

³ Ch. 2003-28, Laws of Fla. In 2006, the Legislature expanded the council’s responsibilities to include all of the waterways in Citrus and Hernando Counties. Ch. 2006-43, Laws of Fla.

In 2014, the Southwest Florida Water Management District formed its Springs Coast Steering Committee, which performs the same work as the council.

My Safe Florida Home Program Advisory Council

The My Safe Florida Home Program is established within the Department of Financial Services (DFS) to develop and implement a comprehensive and coordinated approach for hurricane damage mitigation. The program provides trained and certified inspectors to perform inspections for owners of site-built, single-family, residential properties. It also provides grants to eligible applicants as funding allows.

In 2006, the My Safe Florida Home Program Advisory Council was established to advise DFS in its administration of the program.⁴ The program, after fulfilling its purpose, ceased operations in 2008. As such, the council has not been utilized.

The Great Floridian Program

The Great Floridian Program is a program administered under the Division of Historical Resources within the Department of State to recognize and record the achievements of Floridians, living and deceased, who have made major contributions to the progress and welfare of this state.⁵ Annually, the division must convene an ad hoc committee to nominate not fewer than two persons whose names must be submitted to the Secretary of State with the recommendation that they be honored with the designation “Great Floridian.”⁶

The last time Great Floridian recognitions were made was in 2013. In addition, a 2008 sunset review report by the Office of Program Policy Analysis and Government Accountability recommended abolishing the committee.⁷

Geneva Freshwater Lens Task Force

The Geneva Freshwater Lens Task Force was created in 1993 to provide a means by which representatives from state agencies, local government, water management districts, environmental organizations, industry, and the public at large could evaluate the management needs of the Geneva Freshwater Lens for the proper protection of the public interest and to recommend actions for addressing any deficiencies discovered.⁸ The task force was directed to present a report to the President of the Senate and the Speaker of the House of Representatives by December 1, 1993, which evaluated the adequacy of current planning, regulatory, and other programs and made recommendations for future management of the Geneva Freshwater Lens.⁹

⁴ Section 215.5586(4), F.S.

⁵ Section 267.0731, F.S.

⁶ *Id.*

⁷ Office of Program Policy Analysis and Government Accountability, *Department of State Advisory Committees Assessment*, The Florida Legislature Sunset Review, December 2008, at 7. Available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/08-S12.pdf>.

⁸ Ch. 93-273, Laws of Fla.

⁹ *Id.*

The task force submitted its report and in 1995, the Legislature directed the appropriate state agencies to implement the recommendations of the Geneva Freshwater Lens Task Force.¹⁰

Brownfield Areas Loan Guarantee Council

The Brownfield Areas Loan Guarantee Council was established in 1998 to support the Brownfield Areas Loan Guarantee Program, which provides tax credits for rehabilitation of brownfield sites in designated brownfield areas. The term “brownfield sites” means real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination.¹¹ The term “brownfield area” means a contiguous area of one or more brownfield sites, some of which may not be contaminated, and which has been designated by a local government by resolution. Brownfield areas may include all or portions of community redevelopment areas, enterprise zones, empowerment zones, other such designated economically deprived communities and areas, and Environmental Protection Agency-designated brownfield pilot projects.¹²

The Brownfield Areas Loan Guarantee Council reviews certain partnership agreements with local governments, financial institutions, and other entities associated with the redevelopment of brownfields for limited guarantees of loans or loss reserves.¹³ By 2006, the loan guarantee provisions had been used only once. As such, the council does not appear to be active.

Nonmandatory Land Reclamation Committee

The Nonmandatory Land Reclamation Committee was created within the Department of Environmental Protection (DEP) to advise the department on nonmandatory land reclamation and recommend approval, modification, or denial of reclamation grant applications submitted by landowners for lands disturbed by phosphate mining prior to July 1, 1975.¹⁴ According to DEP’s website, all projects for nonmandatory land reclamation have been identified and selected.¹⁵ No new applicants are being accepted as the funding program will end when the last of the projects are funded and released. As such, the committee appears to be inactive.

Sturgeon Production Working Group

The Sturgeon Production Working Group was created within the Department of Agriculture and Consumer Services (DACS) to coordinate the implementation of a state sturgeon production management plan to promote the commercial production and stock enhancement of sturgeon in the state.¹⁶ The group has not met since 2009.

¹⁰ Ch. 95-377, Laws of Fla.; codified at section 373.4597(3), F.S.

¹¹ Section 376.79(4), F.S.

¹² Section 376.79(5), F.S.

¹³ Section 376.86, F.S.

¹⁴ Section 378.033, F.S. See also Nonmandatory Land Reclamation Program, DEP website <https://floridadep.gov/water/mine-restoration-funding-program> (last visited Jan. 14, 2020).

¹⁵ Nonmandatory Land Reclamation Program, DEP website <https://floridadep.gov/water/mine-restoration-funding-program> (last visited Jan. 14, 2020).

¹⁶ Section 379.2524, F.S.

Trap Certificate Technical Advisory and Appeals Board

The Trap Certificate Technical Advisory and Appeals Board was established to consider and advise the Florida Fish and Wildlife Conservation Commission (FWC) on disputes and other problems arising from the implementation of the spiny lobster trap certificate program.¹⁷ Current law provides that, beginning July 1, 1994, the board will no longer consider and advise FWC on disputes and other problems arising from implementation of the trap certificate program or allotment of certificates.¹⁸ As such, the board no longer appears to be active or necessary.

Clean Fuel Florida Advisory Board

The Clean Fuel Florida Advisory Board was established within DEP to serve as a resource to the department and to provide the Governor, the Legislature, and the Secretary of DEP with private sector and other public agency perspectives on achieving the goal of increasing the use of alternative fuel vehicles in this state.¹⁹ Current law provides for termination of the board five years after the effective date of s. 403.42, F.S.²⁰ The board appears to have terminated in 2006.

Technical Advisory Council, Water and Domestic Wastewater Operator Certification

The Technical Advisory Council for Water and Domestic Wastewater Operator Certification was established in 1997 to advise DEP regarding the operator certification program and provide expertise on water and wastewater treatment.²¹ The council does not appear to be active. In addition, DEP has a separate water and domestic wastewater operator certification program and likely does not need an advisory council.

Florida Health Choices Corporation

The Florida Health Choices Corporation (corporation) was established in 2008 to create an online market for diverse health care coverage products, particularly for small businesses, as an Internal Revenue Code s. 125 cafeteria plan using pre-tax dollars.²² The corporation is governed by a 15-member board of directors made up of members appointed by the Speaker, President, and Governor, as well as state agency ex-officio members.²³ The board of directors may establish technical advisory panels consisting of interested parties, including consumers, health care providers, individuals with expertise in insurance regulation, and insurers.²⁴ The last appropriation of funding for the corporation was vetoed in 2017. As such, the corporation does not appear to be active and the authority to establish advisory panels no longer appears to be necessary.

Technical Advisory Panel, Child Welfare Results-Oriented Accountability Program

The child welfare results-oriented accountability program monitors and measures the use of resources, the quality and amount of services provided, and child and family outcomes in

¹⁷ Section 379.3671, F.S.

¹⁸ Section 379.3671(4)(i), F.S.

¹⁹ Section 403.42(3), F.S.

²⁰ Section 403.42(3)(b)7., F.S.

²¹ Section 403.87, F.S.

²² See section 408.910, F.S.

²³ Section 408.910(11)(a), F.S.

²⁴ Section 408.910(11)(h), F.S.

Florida's child welfare system.²⁵ Current law requires the Department of Children and Families (DCF) to establish a technical advisory panel to advise DCF on the implementation of the results-oriented accountability program.²⁶ It appears DCF is no longer using this technical advisory panel for advice on implementing the program.

Learning Gateway Steering Committee

In 2002, the Legislature authorized a three-year demonstration program called the Learning Gateway. The purpose of Learning Gateway is to provide parents access to information, referral, and services to lessen the effects of learning disabilities in children from birth to age 9.²⁷

The Learning Gateway Steering Committee was established within the Department of Education to provide policy development, consultation, oversight, and support for the implementation of the Learning Gateway Programs and to advise the agencies, the Legislature, and the Governor on statewide implementation of system components and issues and on strategies for continuing improvement to the system.²⁸ No appointments have been made to the steering committee since the original three-year term appointments, and the steering committee was marked as inactive in 2014.

Department of Elderly Affairs Advisory Council

The Department of Elderly Affairs Advisory Council was established within the Department of Elderly Affairs to serve in an advisory capacity to the Secretary of Elderly Affairs and to assist the secretary in carrying out the purpose, duties, and responsibilities of the department.²⁹ The advisory council is not required to submit any reports and only appears to serve as an advisor to the secretary, who may create an ad hoc group to advise him or her at any time. As such, the establishment of the advisory council in statute appears unnecessary.

Florida Agricultural Promotional Campaign Advisory Council

The Florida Agricultural Promotional Campaign Advisory Council is created within DACS³⁰ to review and make recommendations to the Commissioner of Agriculture regarding the Florida Agricultural Promotion Campaign.³¹ The council does not appear to be active as the last noticed meeting was in 2013.

Healthy Schools for Healthy Lives Council

The Healthy Schools for Healthy Lives Council is created within DACS to advise the department on matters relating to nutritional standards and the prevention of childhood obesity, nutrition education, anaphylaxis, and other needs to further the development of the various school nutrition programs.³² The council does not appear to be active.

²⁵ Section 409.997(2), F.S.

²⁶ Section 409.997(3), F.S.

²⁷ Section 411.226(1), F.S.

²⁸ Section 411.226(2), F.S.

²⁹ Section 430.05, F.S.

³⁰ Section 571.28(1), F.S.

³¹ Section 571.28, F.S.

³² Section 595.701(1), F.S.

Tropical Fruit Advisory Council

Current law creates the Tropical Fruit Advisory Council within DACS to provide necessary assistance, review, and recommendations to the Commissioner of Agriculture for drafting a South Florida Tropical Fruit Plan.³³ However, the council does not appear to be active.

Advisory Board, Preeminent State Research University Institute for Online Learning

Current law establishes a collaborative partnership between the Board of Governors (BOG) and the Legislature to elevate the academic and research preeminence of Florida's highest-performing state research universities. The partnership stems from the State University System Governance Agreement executed on March 24, 2010, wherein the Governor and leaders of the Legislature agreed to a framework for the collaborative exercise of their joint authority and shared responsibility for the State University System.³⁴

The preeminent state research universities program requires each state research university that meets all 12 academic and research excellence standards, as verified by the BOG, to establish an institute for online learning.

In 2013, the BOG was required to convene an advisory body to support the development of high-quality, fully online baccalaureate degree programs; advise the BOG on the release of funding to the university; and monitor, evaluate, and report on the implementation of the plan to the BOG, the Governor, the President of the Senate, and the Speaker of the House of Representatives.³⁵ The advisory board for the preeminent state research university institute for online learning has completed its statutory duties.

Florida Early Learning Advisory Council

The Florida Early Learning Advisory Council was created within the Agency for Workforce Innovation in 2004³⁶ and was moved within the Office of Early Learning in 2011.³⁷ The Office of Early Learning provides staff and administrative support for the council.³⁸

The Florida Early Learning Advisory Council is tasked with periodically analyzing and providing recommendations to the Office of Early Learning on the effective and efficient use of local, state, and federal funds; the content of professional development training programs; and best practices for the development and implementation of early learning coalition plans.³⁹ However, the advisory council does not appear to be active.

³³ Section 603.203, F.S.

³⁴ Section 1001.7065(1), F.S.

³⁵ Section 1001.7065(4), F.S.

³⁶ Section 1, ch. 2004-484, Laws of Fla.; codified at section 1002.77, F.S.

³⁷ Section 457, ch. 2011-142, Laws of Fla.

³⁸ Section 1002.77(5), F.S.

³⁹ Section 1002.77, F.S.

III. Effect of Proposed Changes:

Section 1 repeals chapters 2003-287 and 2006-43, L.O.F., relating to the membership, powers, and duties of the Citrus/Hernando Waterways Restoration Council.

Section 2 repeals s. 215.5586(4), F.S., relating to the advisory council for the My Safe Florida Home Program.

Section 3 amends s. 267.0731, F.S., to delete a requirement that the Division of Historical Resources of the Department of State convene an ad hoc committee to make recommendations for the Great Floridians Program.

Section 4 repeals s. 373.4597(3), F.S., relating to implementation of recommendations of the Geneva Freshwater Lens Task Force.

Section 5 repeals s. 376.86, F.S., to abolish the Brownfield Areas Loan Guarantee Council.

Section 6 repeals s. 378.032(3), F.S., to delete a definition referring to the Nonmandatory Land Reclamation Committee, which is abolished in section 10 of the bill.

Section 7 repeals s. 378.033, F.S., to abolish the Nonmandatory Land Reclamation Committee.

Section 8 amends s. 378.034, F.S., to modify the procedures governing reclamation program applications to conform to the abolition of the Nonmandatory Land Reclamation Committee by shifting duties of the committee to the either the Secretary of the Department of Environmental Protection or the department staff.

Section 9 repeals s. 379.2524, F.S., to abolish to the Sturgeon Production Working Group.

Section 10 amends s. 379.361, F.S., to delete cross-references to conform to the abolition of the Sturgeon Production Working Group.

Section 11 amends s. 379.367, F.S., to conform a cross-reference.

Section 12 repeals s. 379.3671(4), F.S., to abolish the Trap Certificate Technical Advisory and Appeals Board.

Section 13 repeals s. 403.42, F.S., to abolish the Clean Fuel Florida Advisory Board.

Section 14 repeals s. 403.87, F.S., to abolish the technical advisory council for water and domestic wastewater operator certification.

Section 15 repeals s. 408.910(11)(h), F.S., to delete statutory authority granted to the Florida Health Choices, Inc., to appoint technical advisory panels.

Section 16 repeals s. 409.997(3), F.S., to delete statutory authority granted to the Department of Children and Families to establish a technical advisory panel relating to the results-oriented accountability program.

Section 17 repeals s. 411.226, F.S., to delete the statutorily-defined goals of the Learning Gateway, to abolish the Learning Gateway steering committee, and to delete the statutory authority for the steering committee to approve demonstration projects.

Section 18 repeals s. 430.05, F.S., to abolish the Department of Elderly Affairs Advisory Council.

Section 19 repeals s. 571.24(7), F.S., to delete a duty of DACS to relating to the Florida Agricultural Promotional Campaign Advisory Council, which is abolished by section 24 of this bill.

Section 20 repeals s. 571.28, F.S., to abolish the Florida Agricultural Promotional Campaign Advisory Council.

Section 21 repeals s. 595.701, F.S., to abolish the Healthy Schools for Healthy Lives Council.

Section 22 repeals s. 603.203, F.S., to abolish the Tropical Fruit Advisory Council.

Section 23 amends s. 603.204, F.S., to delete a reference to the Tropical Fruit Advisory Council, which is abolish by section 26 of the bill.

Section 24 repeals s. 1001.7065(4)(a)–(f), F.S., to delete statutory authority granted to the Board of Governors to convene an advisory board relating to online baccalaureate degree programs.

Section 25 repeals s. 1002.77, F.S., to abolish the Florida Early Learning Advisory Council.

Section 26 amends s. 1002.83, F.S., to delete a reference to the Early Learning Advisory Council, which is abolished by section 29 of the bill.

Section 27 provides the bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 215.5586, 267.0731, 373.4597, 378.032, 378.033, 378.034, 379.361, 379.367, 379.3671, 403.87, 408.910, 409.997, 571.24, 603.204, 1001.7065, and 1002.83.

This bill repeals the following sections of the Florida Statutes: 376.86, 379.2524, 403.42, 411.226, 430.05, 571.28, 595.701, 603.203, and 1002.77.

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 February 10, 2020:
The CS deletes language abolishing the Florida Film and Entertainment Advisory Council and the Florida Young Farmer and Rancher Advisory Council.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/10/2020	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 103 - 420

and insert:

Section 4. Subsection (3) of section 373.4597, Florida
Statutes, is repealed.

Section 5. Section 376.86, Florida Statutes, is repealed.

Section 6. Subsection (3) of section 378.032, Florida
Statutes, is repealed.

Section 7. Section 378.033, Florida Statutes, is repealed.



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Section 8. Subsections (5), (6), (7), (9), and (10) of section 378.034, Florida Statutes, are amended to read:

378.034 Submission of a reclamation program request; procedures.—

(5)(a) The department staff shall, by February 1 of each year, present to the secretary ~~committee~~ for his or her ~~its~~ consideration those reclamation program applications received by the preceding November 1.

(b) The department staff shall recommend an order of priority for the reclamation program applications that is consistent with subsection (6).

(c) The recommendation of the department staff shall include an estimate of the cost of each reclamation program or land acquisition.

~~(6) The committee shall recommend approval, modification, or denial of the reclamation program applications, associated cost estimates, and the department staff's recommended prioritized list.~~ Recommendations on the order of priority shall be based, among other criteria, on the following criteria; however, department staff ~~the committee~~ may give greater weight to one or more of the criteria depending on the overall needs of the nonmandatory land reclamation program:

(a) Whether health and safety hazards exist; and, if so, such hazards shall be given the greatest weight;

(b) Whether the economic or environmental utility or the aesthetic value of the land will return naturally within a reasonable period of time;

(c) Whether there is a reasonable geographic and applicant diversity in light of previously awarded reclamation contracts,



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reclamation program applications before the committee, and the remaining eligible lands;

(d) Whether reclamation is in the public interest;

(e) Whether the land has been naturally reclaimed or is eligible for acquisition by the state for hunting, fishing, or other outdoor recreation purposes or for wildlife preservation;

(f) Whether the land is to be reclaimed for agricultural use and the applicant has agreed to maintain the land in agricultural use for at least 5 years after the completion of the reclamation;

(g) Whether the program, alone or in conjunction with other reclamation programs, will provide a substantial regional benefit;

(h) Whether the program, alone or in conjunction with other reclamation programs, will benefit regional drainage patterns;

(i) Whether the land is publicly owned and will be reclaimed for public purposes;

(j) Whether the program includes a donation or agreement to sell a portion of the program application area to the state for outdoor recreational or wildlife habitat protection purposes;

(k) Whether the program is cost-effective in achieving the goals of the nonmandatory land reclamation program; and

(l) Whether the program will reclaim lands described in subsection (2).

(7) The prioritized list developed by department staff ~~approved by the committee~~ may contain more reclamation program applications than there are funds available during the year.

(9) ~~The committee recommendations shall be submitted to the secretary by April 1 of each year for final agency action~~ By



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June 1 of each ~~that~~ year, ~~the~~ the secretary shall approve, in whole or in part, the list of reclamation program applications in the order of priority in which the applications are presented by department staff.

(10) Any approved reclamation program application that was not funded shall, at the request of the applicant, be considered by department staff ~~the committee at its next meeting called for that purpose~~, together with other reclamation program applications received by November 1 of the next year.

Section 9. Section 379.2524, Florida Statutes, is repealed.

Section 10. Paragraph (b) of subsection (4) of section 379.361, Florida Statutes, is amended to read:

379.361 Licenses.—

(4) SPECIAL ACTIVITY LICENSES.—

(b) The Fish and Wildlife Conservation Commission is authorized to issue special activity licenses in accordance with this section ~~and s. 379.2524~~, to permit the importation and possession of wild anadromous sturgeon. The commission is also authorized to issue special activity licenses, in accordance with this section ~~and s. 379.2524~~, to permit the importation, possession, and aquaculture of native and nonnative anadromous sturgeon until best management practices are implemented for the cultivation of anadromous sturgeon pursuant to s. 597.004. The special activity license shall provide for specific management practices to protect native populations of saltwater species.

Section 11. Paragraph (b) of subsection (2) of section 379.367, Florida Statutes, is amended to read:

379.367 Spiny lobster; regulation.—

(2)



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(b) Twenty-five dollars of the \$125 fee for a spiny lobster endorsement required under subparagraph (a)1. must be used only for trap retrieval as provided in s. 379.2424. The remainder of the fees collected under paragraph (a) shall be deposited as follows:

1. Fifty percent of the fees collected shall be deposited in the Marine Resources Conservation Trust Fund for use in enforcing the provisions of paragraph (a) through aerial and other surveillance and trap retrieval.

2. Fifty percent of the fees collected shall be deposited as provided in s. 379.3671(4) ~~s. 379.3671(5)~~.

Section 12. Subsection (4) of section 379.3671, Florida Statutes, is repealed.

Section 13. Section 403.42, Florida Statutes, is repealed.

Section 14. Section 403.87, Florida Statutes, is repealed.

Section 15. Paragraph (h) of subsection (11) of section 408.910, Florida Statutes, is repealed.

Section 16. Subsection (3) of section 409.997, Florida Statutes, is repealed.

Section 17. Section 411.226, Florida Statutes, is repealed.

Section 18. Section 430.05, Florida Statutes, is repealed.

===== T I T L E A M E N D M E N T =====
And the title is amended as follows:

Delete lines 12 - 48
and insert:

administering the Great Floridians program; repealing
s. 373.4597(3), F.S., relating to the Geneva
Freshwater Lens Task Force; repealing s. 376.86, F.S.,



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relating to the Brownfield Areas Loan Guarantee Council; repealing s. 378.032(3), F.S., relating to definitions; deleting a definition to conform to changes made by the act; repealing s. 378.033, F.S., relating to the Nonmandatory Land Reclamation Committee; amending s. 378.034, F.S.; modifying procedures governing reclamation program applications to conform to the repeal of the Nonmandatory Land Reclamation Committee; repealing s. 379.2524, F.S., relating to the Sturgeon Production Working Group; amending s. 379.361, F.S.; deleting cross-references to conform to changes made by the act; amending s. 379.367, F.S.; conforming a cross-reference to changes made by the act; repealing s. 379.3671(4), F.S., relating to the Trap Certificate Technical Advisory and Appeals Board; repealing s. 403.42, F.S., relating to the Clean Fuel Florida Advisory Board; repealing s. 403.87, F.S., relating to the technical advisory council for water and domestic wastewater operator certification; repealing s. 408.910(11)(h), F.S., relating to technical advisory panels of Florida Health Choices, Inc.; repealing s. 409.997(3), F.S., relating to the child welfare results-oriented accountability program technical advisory panel; repealing s. 411.226, F.S., relating to the Learning Gateway; repealing s. 430.05, F.S., relating to the Department of Elderly Affairs Advisory Council; repealing

By Senator Baxley

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1 A bill to be entitled
 2 An act relating to the repeal of advisory bodies and
 3 councils; repealing chapters 2003-287 and 2006-43,
 4 Laws of Florida, relating to the membership, powers,
 5 and duties of the Citrus/Hernando Waterways
 6 Restoration Council; repealing s. 215.5586(4), F.S.,
 7 relating to the advisory council for the My Safe
 8 Florida Home Program; amending s. 267.0731, F.S.;
 9 removing the requirement that the Division of
 10 Historical Resources of the Department of State
 11 annually convene an ad hoc committee for purposes of
 12 administering the Great Floridians program; amending
 13 s. 288.1251, F.S.; conforming a provision to changes
 14 made by the act; repealing s. 288.1252, F.S., relating
 15 to the Florida Film and Entertainment Advisory
 16 Council; amending s. 288.1254, F.S.; conforming a
 17 provision to changes made by the act; repealing s.
 18 373.4597(3), F.S., relating to the Geneva Freshwater
 19 Lens Task Force; repealing s. 376.86, F.S., relating
 20 to the Brownfield Areas Loan Guarantee Council;
 21 repealing s. 378.032(3), F.S., relating to
 22 definitions; deleting a definition to conform to
 23 changes made by the act; repealing s. 378.033, F.S.,
 24 relating to the Nonmandatory Land Reclamation
 25 Committee; amending s. 378.034, F.S.; modifying
 26 procedures governing reclamation program applications
 27 to conform to the repeal of the Nonmandatory Land
 28 Reclamation Committee; repealing s. 379.2524, F.S.,
 29 relating to the Sturgeon Production Working Group;

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30 amending s. 379.361, F.S.; deleting cross-references
 31 to conform to changes made by the act; amending s.
 32 379.367, F.S.; conforming a cross-reference to changes
 33 made by the act; repealing s. 379.3671(4), F.S.,
 34 relating to the Trap Certificate Technical Advisory
 35 and Appeals Board; repealing s. 403.42, F.S., relating
 36 to the Clean Fuel Florida Advisory Board; repealing s.
 37 403.87, F.S., relating to the technical advisory
 38 council for water and domestic wastewater operator
 39 certification; repealing s. 408.910(11)(h), F.S.,
 40 relating to technical advisory panels of Florida
 41 Health Choices, Inc.; repealing s. 409.997(3), F.S.,
 42 relating to the child welfare results-oriented
 43 accountability program technical advisory panel;
 44 repealing s. 411.226, F.S., relating to the Learning
 45 Gateway; repealing s. 430.05, F.S., relating to the
 46 Department of Elderly Affairs Advisory Council;
 47 repealing s. 570.843, F.S., relating to the Florida
 48 Young Farmer and Rancher Advisory Council; repealing
 49 s. 571.24(7), F.S., relating to duties of the
 50 Department of Agriculture and Consumer Services;
 51 repealing s. 571.28, F.S., relating to the Florida
 52 Agricultural Promotional Campaign Advisory Council;
 53 repealing s. 595.701, F.S., relating to the Healthy
 54 Schools for Healthy Lives Council; repealing s.
 55 603.203, F.S., relating to the Tropical Fruit Advisory
 56 Council; amending s. 603.204, F.S.; conforming a
 57 provision to changes made by the act; repealing s.
 58 1001.7065(4)(a)-(f), F.S., relating to the advisory

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board on online learning for preeminent state research universities; repealing s. 1002.77, F.S., relating to the Florida Early Learning Advisory Council; amending s. 1002.83, F.S.; conforming a provision to changes made by the act; providing an effective date.

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

Section 1. Chapters 2003-287 and 2006-43, Laws of Florida, are repealed.

Section 2. Subsection (4) of section 215.5586, Florida Statutes, is repealed.

Section 3. Subsection (1) of section 267.0731, Florida Statutes, is amended to read:

267.0731 Great Floridians Program.—The division shall establish and administer a program, to be entitled the Great Floridians Program, which shall be designed to recognize and record the achievements of Floridians, living and deceased, who have made major contributions to the progress and welfare of this state.

(1) (a) The division shall nominate present or former citizens of this state, living or deceased, who during their lives have made major contributions to the progress of the nation or this state and its citizens. Nominations shall be submitted to the Secretary of State who shall select from those nominated not less than two persons each year who shall be honored with the designation "Great Floridian," provided no person whose contributions have been through elected or appointed public service shall be selected while holding any

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such office.

(b) ~~(a)~~ To enhance public participation and involvement in the identification of any person worthy of being nominated as a Great Floridian, the division shall seek advice and assistance from persons qualified through the demonstration of special interest, experience, or education in the dissemination of knowledge about the state's history.

~~(b) Annually, the division shall convene an ad hoc committee composed of representatives of the Governor, each member of the Florida Cabinet, the President of the Senate, the Speaker of the House of Representatives, and the Secretary of State. This committee shall meet at least twice. The committee shall nominate not fewer than two persons whose names shall be submitted to the Secretary of State with the recommendation that they be honored with the designation "Great Floridian."~~

Section 4. Paragraph (a) of subsection (2) of section 288.1251, Florida Statutes, is amended to read:

288.1251 Promotion and development of entertainment industry; Office of Film and Entertainment; creation; purpose; powers and duties.—

(2) POWERS AND DUTIES.—

(a) The Office of Film and Entertainment, in performance of its duties, shall:

1. ~~In consultation with the Florida Film and Entertainment Advisory Council,~~ Update the strategic plan every 5 years to guide the activities of the Office of Film and Entertainment in the areas of entertainment industry development, marketing, promotion, liaison services, field office administration, and information. The plan shall:

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- 117 a. Be annual in construction and ongoing in nature.
- 118 b. Include recommendations relating to the organizational
- 119 structure of the office.
- 120 c. Include an annual budget projection for the office for
- 121 each year of the plan.
- 122 d. Include an operational model for the office to use in
- 123 implementing programs for rural and urban areas designed to:
- 124 (I) Develop and promote the state's entertainment industry.
- 125 (II) Have the office serve as a liaison between the
- 126 entertainment industry and other state and local governmental
- 127 agencies, local film commissions, and labor organizations.
- 128 (III) Gather statistical information related to the state's
- 129 entertainment industry.
- 130 (IV) Provide information and service to businesses,
- 131 communities, organizations, and individuals engaged in
- 132 entertainment industry activities.
- 133 (V) Administer field offices outside the state and
- 134 coordinate with regional offices maintained by counties and
- 135 regions of the state, as described in sub-sub-subparagraph (II),
- 136 as necessary.
- 137 e. Include performance standards and measurable outcomes
- 138 for the programs to be implemented by the office.
- 139 f. Include an assessment of, and make recommendations on,
- 140 the feasibility of creating an alternative public-private
- 141 partnership for the purpose of contracting with such a
- 142 partnership for the administration of the state's entertainment
- 143 industry promotion, development, marketing, and service
- 144 programs.
- 145 2. Develop, market, and facilitate a working relationship

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- 146 between state agencies and local governments in cooperation with
- 147 local film commission offices for out-of-state and indigenous
- 148 entertainment industry production entities.
- 149 3. Implement a structured methodology prescribed for
- 150 coordinating activities of local offices with each other and the
- 151 commissioner's office.
- 152 4. Represent the state's indigenous entertainment industry
- 153 to key decisionmakers within the national and international
- 154 entertainment industry, and to state and local officials.
- 155 5. Prepare an inventory and analysis of the state's
- 156 entertainment industry, including, but not limited to,
- 157 information on crew, related businesses, support services, job
- 158 creation, talent, and economic impact and coordinate with local
- 159 offices to develop an information tool for common use.
- 160 6. Identify, solicit, and recruit entertainment production
- 161 opportunities for the state.
- 162 7. Assist rural communities and other small communities in
- 163 the state in developing the expertise and capacity necessary for
- 164 such communities to develop, market, promote, and provide
- 165 services to the state's entertainment industry.
- 166 Section 5. Section 288.1252, Florida Statutes, is repealed.
- 167 Section 6. Paragraph (b) of subsection (4) of section
- 168 288.1254, Florida Statutes, is amended to read:
- 169 288.1254 Entertainment industry financial incentive
- 170 program.—
- 171 (4) TAX CREDIT ELIGIBILITY; TAX CREDIT AWARDS; QUEUES;
- 172 ELECTION AND DISTRIBUTION; CARRYFORWARD; CONSOLIDATED RETURNS;
- 173 PARTNERSHIP AND NONCORPORATE DISTRIBUTIONS; MERGERS AND
- 174 ACQUISITIONS.—

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(b) *Tax credit eligibility.*—

1. General production queue.—Ninety-four percent of tax credits authorized pursuant to subsection (6) in any state fiscal year must be dedicated to the general production queue. The general production queue consists of all qualified productions other than those eligible for the commercial and music video queue or the independent and emerging media production queue. A qualified production that demonstrates a minimum of \$625,000 in qualified expenditures is eligible for tax credits equal to 20 percent of its actual qualified expenditures, up to a maximum of \$8 million. A qualified production that incurs qualified expenditures during multiple state fiscal years may combine those expenditures to satisfy the \$625,000 minimum threshold.

a. An off-season certified production that is a feature film, independent film, or television series or pilot is eligible for an additional 5 percent tax credit on actual qualified expenditures. An off-season certified production that does not complete 75 percent of principal photography due to a disruption caused by a hurricane or tropical storm may not be disqualified from eligibility for the additional 5 percent credit as a result of the disruption.

b. If more than 45 percent of the sum of total tax credits initially certified and awarded after April 1, 2012, total tax credits initially certified after April 1, 2012, but not yet awarded, and total tax credits available for certification after April 1, 2012, but not yet certified has been awarded for high-impact television series, then no high-impact television series is eligible for tax credits under this subparagraph. Tax credits

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initially certified for a high-impact television series after April 1, 2012, may not be awarded if the award will cause the percentage threshold in this sub-subparagraph to be exceeded. This sub-subparagraph does not prohibit the award of tax credits certified before April 1, 2012, for high-impact television series.

c. Subject to sub-subparagraph b., first priority in the queue for tax credit awards not yet certified shall be given to high-impact television series and high-impact digital media projects. For the purposes of determining priority between a high-impact television series and a high-impact digital media project, the first position must go to the first application received. Thereafter, priority shall be determined by alternating between a high-impact television series and a high-impact digital media project on a first-come, first-served basis. However, if the Office of Film and Entertainment receives an application for a high-impact television series or high-impact digital media project that would be certified but for the alternating priority, the office may certify the project as being in the priority position if an application that would normally be the priority position is not received within 5 business days.

d. A qualified production for which at least 67 percent of its principal photography days occur within a region designated as an underutilized region at the time that the production is certified is eligible for an additional 5 percent tax credit.

e. A qualified production that employs students enrolled full-time in a film and entertainment-related or digital media-related course of study at an institution of higher education in

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this state is eligible for an additional 15 percent tax credit on qualified expenditures that are wages, salaries, or other compensation paid to such students. The additional 15 percent tax credit is also applicable to persons hired within 12 months after graduating from a film and entertainment-related or digital media-related course of study at an institution of higher education in this state. The additional 15 percent tax credit applies to qualified expenditures that are wages, salaries, or other compensation paid to such recent graduates for 1 year after the date of hiring.

f. A qualified production for which 50 percent or more of its principal photography occurs at a qualified production facility, or a qualified digital media project or the digital animation component of a qualified production for which 50 percent or more of the project's or component's qualified expenditures are related to a qualified digital media production facility, is eligible for an additional 5 percent tax credit on actual qualified expenditures for production activity at that facility.

g. A qualified production is not eligible for tax credits provided under this paragraph totaling more than 30 percent of its actual qualified expenses.

2. Commercial and music video queue.—Three percent of tax credits authorized pursuant to subsection (6) in any state fiscal year must be dedicated to the commercial and music video queue. A qualified production company that produces national or regional commercials or music videos may be eligible for a tax credit award if it demonstrates a minimum of \$100,000 in qualified expenditures per national or regional commercial or

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music video and exceeds a combined threshold of \$500,000 after combining actual qualified expenditures from qualified commercials and music videos during a single state fiscal year. After a qualified production company that produces commercials, music videos, or both reaches the threshold of \$500,000, it is eligible to apply for certification for a tax credit award. The maximum credit award shall be equal to 20 percent of its actual qualified expenditures up to a maximum of \$500,000. If there is a surplus at the end of a fiscal year after the Office of Film and Entertainment certifies and determines the tax credits for all qualified commercial and video projects, such surplus tax credits shall be carried forward to the following fiscal year and are available to any eligible qualified productions under the general production queue.

3. Independent and emerging media production queue.—Three percent of tax credits authorized pursuant to subsection (6) in any state fiscal year must be dedicated to the independent and emerging media production queue. This queue is intended to encourage independent film and emerging media production in this state. Any qualified production, excluding commercials, infomercials, or music videos, which demonstrates at least \$100,000, but not more than \$625,000, in total qualified expenditures is eligible for tax credits equal to 20 percent of its actual qualified expenditures. If a surplus exists at the end of a fiscal year after the Office of Film and Entertainment certifies and determines the tax credits for all qualified independent and emerging media production projects, such surplus tax credits shall be carried forward to the following fiscal year and are available to any eligible qualified productions

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under the general production queue.

4. Family-friendly productions.—A certified theatrical or direct-to-video motion picture production or video game determined by the Commissioner of Film and Entertainment, ~~with the advice of the Florida Film and Entertainment Advisory Council,~~ to be family-friendly, based on review of the script and review of the final release version, is eligible for an additional tax credit equal to 5 percent of its actual qualified expenditures. Family-friendly productions are those that have cross-generational appeal; would be considered suitable for viewing by children age 5 or older; are appropriate in theme, content, and language for a broad family audience; embody a responsible resolution of issues; and do not exhibit or imply any act of smoking, sex, nudity, or vulgar or profane language.

Section 7. Subsection (3) of section 373.4597, Florida Statutes, is repealed.

Section 8. Section 376.86, Florida Statutes, is repealed.

Section 9. Subsection (3) of section 378.032, Florida Statutes, is repealed.

Section 10. Section 378.033, Florida Statutes, is repealed.

Section 11. Subsections (5), (6), (7), (9), and (10) of section 378.034, Florida Statutes, are amended to read:

378.034 Submission of a reclamation program request; procedures.—

(5)(a) The department staff shall, by February 1 of each year, present to the secretary committee for his or her ~~its~~ consideration those reclamation program applications received by the preceding November 1.

(b) The department staff shall recommend an order of

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priority for the reclamation program applications that is consistent with subsection (6).

(c) The recommendation of the department staff shall include an estimate of the cost of each reclamation program or land acquisition.

~~(6) The committee shall recommend approval, modification, or denial of the reclamation program applications, associated cost estimates, and the department staff's recommended prioritized list.~~ Recommendations on the order of priority shall be based, among other criteria, on the following criteria; however, department staff ~~the committee~~ may give greater weight to one or more of the criteria depending on the overall needs of the nonmandatory land reclamation program:

(a) Whether health and safety hazards exist; and, if so, such hazards shall be given the greatest weight;

(b) Whether the economic or environmental utility or the aesthetic value of the land will return naturally within a reasonable period of time;

(c) Whether there is a reasonable geographic and applicant diversity in light of previously awarded reclamation contracts, reclamation program applications before the committee, and the remaining eligible lands;

(d) Whether reclamation is in the public interest;

(e) Whether the land has been naturally reclaimed or is eligible for acquisition by the state for hunting, fishing, or other outdoor recreation purposes or for wildlife preservation;

(f) Whether the land is to be reclaimed for agricultural use and the applicant has agreed to maintain the land in agricultural use for at least 5 years after the completion of

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the reclamation;

(g) Whether the program, alone or in conjunction with other reclamation programs, will provide a substantial regional benefit;

(h) Whether the program, alone or in conjunction with other reclamation programs, will benefit regional drainage patterns;

(i) Whether the land is publicly owned and will be reclaimed for public purposes;

(j) Whether the program includes a donation or agreement to sell a portion of the program application area to the state for outdoor recreational or wildlife habitat protection purposes;

(k) Whether the program is cost-effective in achieving the goals of the nonmandatory land reclamation program; and

(l) Whether the program will reclaim lands described in subsection (2).

(7) The prioritized list developed by department staff ~~approved by the committee~~ may contain more reclamation program applications than there are funds available during the year.

(9) ~~The committee recommendations shall be submitted to the secretary by April 1 of each year for final agency action~~ By June 1 of each ~~that~~ year, the secretary shall approve, in whole or in part, the list of reclamation program applications in the order of priority in which the applications are presented by department staff.

(10) Any approved reclamation program application that was not funded shall, at the request of the applicant, be considered by department staff ~~the committee at its next meeting called for that purpose~~, together with other reclamation program applications received by November 1 of the next year.

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Section 12. Section 379.2524, Florida Statutes, is repealed.

Section 13. Paragraph (b) of subsection (4) of section 379.361, Florida Statutes, is amended to read:

379.361 Licenses.—

(4) SPECIAL ACTIVITY LICENSES.—

(b) The Fish and Wildlife Conservation Commission is authorized to issue special activity licenses in accordance with this section ~~and s. 379.2524~~, to permit the importation and possession of wild anadromous sturgeon. The commission is also authorized to issue special activity licenses, in accordance with this section ~~and s. 379.2524~~, to permit the importation, possession, and aquaculture of native and nonnative anadromous sturgeon until best management practices are implemented for the cultivation of anadromous sturgeon pursuant to s. 597.004. The special activity license shall provide for specific management practices to protect native populations of saltwater species.

Section 14. Paragraph (b) of subsection (2) of section 379.367, Florida Statutes, is amended to read:

379.367 Spiny lobster; regulation.—

(2)

(b) Twenty-five dollars of the \$125 fee for a spiny lobster endorsement required under subparagraph (a)1. must be used only for trap retrieval as provided in s. 379.2424. The remainder of the fees collected under paragraph (a) shall be deposited as follows:

1. Fifty percent of the fees collected shall be deposited in the Marine Resources Conservation Trust Fund for use in enforcing the provisions of paragraph (a) through aerial and

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other surveillance and trap retrieval.

2. Fifty percent of the fees collected shall be deposited as provided in s. 379.3671(4) ~~s. 379.3671(5)~~.

Section 15. Subsection (4) of section 379.3671, Florida Statutes, is repealed.

Section 16. Section 403.42, Florida Statutes, is repealed.

Section 17. Section 403.87, Florida Statutes, is repealed.

Section 18. Paragraph (h) of subsection (11) of section 408.910, Florida Statutes, is repealed.

Section 19. Subsection (3) of section 409.997, Florida Statutes, is repealed.

Section 20. Section 411.226, Florida Statutes, is repealed.

Section 21. Section 430.05, Florida Statutes, is repealed.

Section 22. Section 570.843, Florida Statutes, is repealed.

Section 23. Subsection (7) of section 571.24, Florida Statutes, is repealed.

Section 24. Section 571.28, Florida Statutes, is repealed.

Section 25. Section 595.701, Florida Statutes, is repealed.

Section 26. Section 603.203, Florida Statutes, is repealed.

Section 27. Section 603.204, Florida Statutes, is amended to read:

603.204 South Florida Tropical Fruit Plan.—The Commissioner of Agriculture, ~~in consultation with the Tropical Fruit Advisory Council,~~ shall develop and update a South Florida Tropical Fruit Plan, which shall identify problems and constraints of the tropical fruit industry, propose possible solutions to such problems, and develop planning mechanisms for orderly growth of the industry, including:

(1) Criteria for tropical fruit research, service, and

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management priorities.

(2) Proposed legislation that may be required.

(3) Plans relating to other tropical fruit programs and related disciplines in the State University System.

(4) Potential tropical fruit products in terms of market and needs for development.

(5) Evaluation of production and fresh fruit policy alternatives, including, but not limited to, setting minimum grades and standards, promotion and advertising, development of production and marketing strategies, and setting minimum standards on types and quality of nursery plants.

(6) Evaluation of policy alternatives for processed tropical fruit products, including, but not limited to, setting minimum quality standards and development of production and marketing strategies.

(7) Research and service priorities for further development of the tropical fruit industry.

(8) Identification of state agencies and public and private institutions concerned with research, education, extension, services, planning, promotion, and marketing functions related to tropical fruit development, and delineation of contributions and responsibilities. The recommendations in the plan relating to education or research shall be submitted to the Institute of Food and Agricultural Sciences.

(9) Business planning, investment potential, financial risks, and economics of production and use.

Section 28. Paragraphs (a), (b), (c), (d), (e), and (f) of subsection (4) of section 1001.7065, Florida Statutes, are repealed.

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465 Section 29. Section 1002.77, Florida Statutes, is repealed.
466 Section 30. Subsection (11) of section 1002.83, Florida
467 Statutes, is amended to read:
468 1002.83 Early learning coalitions.—
469 (11) Each early learning coalition shall establish terms
470 for all appointed members of the coalition. The terms must be
471 staggered and must be a uniform length that does not exceed 4
472 years per term. Coalition chairs shall be appointed for 4 years
473 ~~in conjunction with their membership on the Early Learning~~
474 ~~Advisory Council~~ pursuant to s. 20.052. Appointed members may
475 serve a maximum of two consecutive terms. When a vacancy occurs
476 in an appointed position, the coalition must advertise the
477 vacancy.
478 Section 31. This act shall take effect July 1, 2020.

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/CS/SB 1718

INTRODUCER: Governmental Oversight and Accountability Committee; Criminal Justice Committee
and Senator Brandes

SUBJECT: Public Meetings and Records/Conditional Aging Inmate Release Program

DATE: February 10, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Fav/CS
2.	Hackett	McVane	GO	Fav/CS
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1718, which is linked to CS/CS/SB 574, adds a new subsection to s. 945.0912, F.S., as created in the linked bill, to exempt from public disclosure certain records and exempting from open meetings requirements portions of public meetings from the related the conditional aging inmate release (CAIR) program.

Specifically, the bill provides that the portion of a panel review hearing conducted in accordance with s. 945.0912, F.S., during which the panel determining release into or revocation from the CAIR program will discuss information that is exempt under state law or confidential under federal law is exempt from s. 286.011, F.S., and s. 24(b), Art. I of the Florida Constitution. The bill also provides that certain requirements must be met if the panel must discuss exempt information during the course of its meeting.

The bill also provides that the portion of the records the panel uses to determine the appropriateness of CAIR, which includes any of the inmate's protected information, is confidential and exempt from disclosure under s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution.

Further, the bill exempts from public disclosure any portion of the audio or video recording of, any transcript of, and any minutes and notes generated during, a closed hearing of the panel or

closed portion of a hearing of the panel. The bill requires that such audio or video recording and minutes and notes be retained pursuant to s. 119.021, F.S.

The bill authorizes certain persons to be present during the closed portion of the meeting and provides that any closure of the meetings must be limited so that the public meetings policy of the state is maintained.

The bill provides that the exemptions in the bill are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will be repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution.

Because the bill creates a new public meetings and public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill does not appear to have a fiscal impact on state or local governments. Costs incurred by the DOC in closing such meetings and responding to public records requests regarding these exemptions should be offset by savings realized through the CAIR program. See Section V. Fiscal Impact Statement.

The bill is effective on the same date that CS/CS/SB 574 or similar legislation takes effect if such legislation is enacted in the same legislative session or an extension thereof and becomes a law. At this point, CS/CS/SB 574 takes effect October 1, 2020.

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.¹ 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.²

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.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ 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).

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

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.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

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.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

General exemptions from the public records requirements are contained in the Public Records Act.¹⁰ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹¹

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.¹² Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹³

⁵ 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.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ *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).

¹¹ *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).

¹² *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹³ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.¹⁴ Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.¹⁵ This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.¹⁶

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the “Government in the Sunshine Law,”¹⁷ or the “Sunshine Law,”¹⁸ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.¹⁹ The board or commission must provide the public reasonable notice of such meetings.²⁰ Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public’s access to the facility.²¹ Minutes of a public meeting must be promptly recorded and open to public inspection.²² Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.²³ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.²⁴

Constitutional Requirements for Passage of Public Records or Open Meetings Exemptions

The Legislature may create an exemption for public records or open meetings requirements by passing a general law by a two-thirds vote of both the House and the Senate.²⁵ The exemption must state with specificity the public necessity justifying the exemption and must be no broader

¹⁴ FLA. CONST., art. I, s. 24(b).

¹⁵ *Id.*

¹⁶ FLA. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: “The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

¹⁷ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

¹⁸ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

¹⁹ Section 286.011(1)-(2), F.S.

²⁰ *Id.*

²¹ Section 286.011(6), F.S.

²² Section 286.011(2), F.S.

²³ Section 286.011(1), F.S.

²⁴ Section 286.011(3), F.S.

²⁵ FLA. CONST. art. I, s. 24(c).

than necessary to accomplish the stated purpose of the exemption.²⁶ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.²⁷

Open Government Sunset Review Act

The Open Government Sunset Review Act²⁸ (the Act) prescribes a legislative review process for newly created or substantially amended²⁹ public records or open meetings exemptions, with specified exceptions.³⁰ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.³¹

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.³² An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;³³
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;³⁴ or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.³⁵

²⁶ *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).

²⁷ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a public records statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

²⁸ Section 119.15, F.S.

²⁹ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

³⁰ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

³¹ Section 119.15(3), F.S.

³² Section 119.15(6)(b), F.S.

³³ Section 119.15(6)(b)1., F.S.

³⁴ Section 119.15(6)(b)2., F.S.

³⁵ Section 119.15(6)(b)3., F.S.

The Act also requires specified questions to be considered during the review process.³⁶ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.³⁷ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.³⁸

Special Health Considerations for Aging Inmates

Aging inmates are more likely to experience certain medical and health conditions, including, in part, dementia, impaired mobility, loss of hearing and vision, cardiovascular disease, cancer, osteoporosis, and other chronic conditions.³⁹ However, such ailments present special challenges within a prison environment and may result in the need for increased staffing levels and enhanced officer training.⁴⁰ Such aging inmates can also require structural accessibility adaptations, such as special housing and wheelchair ramps. For example, in Florida, four facilities serve relatively large populations of older inmates, which help meet special needs such as palliative and long-term care.⁴¹

Aging Inmate Statistics in Florida

The Department of Corrections (DOC) reports that the elderly inmate⁴² population has increased by 353 inmates or 1.5 percent from June 30, 2017 to June 30, 2018 and that this trend has been

³⁶ Section 119.15(6)(a), F.S. The specified questions are:

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

³⁷ See generally s. 119.15, F.S.

³⁸ Section 119.15(7), F.S.

³⁹ McKillop, M. and McGaffey, F., The PEW Charitable Trusts, *Number of Older Prisoners Grows Rapidly, Threatening to Drive Up Prison Health Costs*, October 7, 2015, available at <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/10/07/number-of-older-prisoners-grows-rapidly-threatening-to-drive-up-prison-health-costs> (hereinafter cited as “PEW Trusts Older Prisoners Report”); See also Jaul, E. and Barron, J., *Frontiers in Public Health, Age-Related Diseases and Clinical and Public Health Implications for the 85 Years Old and Over Population*, December 11, 2017, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5732407/>; HealthinAging.org, *A Guide to Geriatric Syndromes: Common and Often Related Medical Conditions in Older Adults*, available at <https://www.healthinaging.org/tools-and-tips/guide-geriatric-syndromes-common-and-often-related-medical-conditions-older-adults> (all sites last visited January 23, 2020).

⁴⁰ The PEW Charitable Trusts Older Prisoners Report.

⁴¹ *Id.*

⁴² Section 944.02(4), F.S., defines “elderly offender” to mean prisoners age 50 or older in a state correctional institution or facility operated by the DOC or the Department of Management Services.

steadily increasing over the last five years for an overall increase of 2,585 inmates or 12.5 percent.⁴³

The DOC further reports that during Fiscal Year 2017-18, there were 3,594 elderly or aging inmates admitted to Florida prisons, which was a 2.8 percent decrease from Fiscal Year 2017-18. The majority of such inmates were admitted for violent offenses, property crimes, and drug offenses. The oldest male inmate admitted was 92 years of age with a conviction of manslaughter and the oldest female inmate admitted was 77 years of age with a conviction of drug trafficking.⁴⁴

Aging Inmate Discretionary Release

Many states, the District of Columbia, and the federal government authorize discretionary release programs for certain inmates that are based on an inmate's age without regard to the medical condition of the inmate.⁴⁵ The National Conference of State Legislatures (NCSL) reports such discretionary release based on age has been legislatively authorized in 17 states.⁴⁶ The NCSL also reports that such statutes typically require an inmate to be of a certain age and to have served either a specified number of years or a specified percentage of his or her sentence. The NCSL reports that Alabama has the lowest age for aging inmate discretionary release, which is 55 years of age, whereas most other states set the age limit somewhere between 60 and 65. Additionally, some states do not set a specific age.⁴⁷

Most states require a minimum of 10 years of an inmate's sentence to be served before being eligible for consideration for aging inmate discretionary release, but some states, such as California, set the minimum length of time served at 25 years.⁴⁸ Other states, such as Mississippi and Oklahoma, provide a term of years or a certain percentage of the sentence to be served.⁴⁹

Inmates who are sentenced to death or serving a life sentence are typically ineligible for release. Some states specify that inmates must be sentenced for a non-violent offense or specify offenses which are not eligible for release consideration.

Florida does not currently address discretionary release based on an inmate's age alone.

⁴³ The DOC, *2017-18 Annual Report*, p. 19, available at http://www.dc.state.fl.us/pub/annual/1718/FDC_AR2017-18.pdf (last visited January 23, 2020).

⁴⁴ *Id.*, at p. 20.

⁴⁵ The National Conference of State Legislatures (NCSL), *State Medical and Geriatric Parole Laws*, August 27, 2018, available at <http://www.ncsl.org/research/civil-and-criminal-justice/state-medical-and-geriatric-parole-laws.aspx> (hereinafter cited as "The NCSL Aging Inmate Statistics"); Code of the District of Columbia, *Section 24-465 Conditions for Geriatric Release*, available at <https://code.dccouncil.us/dc/council/code/sections/24-465.html>; Section 603(b) of the First Step Act, codified at 18 USC s. 3582. See also U.S. Department of Justice, Federal Bureau of Prisons, *Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. Section 3582 and 4205(g)*, January 17, 2019, p. 6-7, available at https://www.bop.gov/policy/progstat/5050_050_EN.pdf (all sites last visited January 23, 2020).

⁴⁶ The NCSL Aging Inmate Statistics. Also, the NCSL states that at least 16 states have established both medical and aging inmate discretionary release programs legislatively and that Virginia is the only state that has aging inmate discretionary release but not medical discretionary release.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ The NCSL Aging Inmate Statistics.

Conditional Aging Inmate Release Program Created By PCS/CS/SB 574

PCS/CS/SB 574, to which this bill is linked, creates s. 945.0912, F.S., to establish a conditional aging inmate release (CAIR) program within the DOC with the purpose of determining whether such release is appropriate for specified eligible inmates, supervising the released inmates, and conducting revocation hearings.

The CAIR program must include a panel of at least three people appointed by the Secretary for the purpose of determining the appropriateness of CAIR and conducting revocation hearings on the inmate releases.

The DOC must identify inmates who may be eligible for CAIR and, upon such identification, the DOC must refer such inmate to the panel. In considering an inmate for the CAIR program, the DOC may require the production of additional evidence or any other additional investigations that the DOC deems necessary for determining the appropriateness of the eligible inmate's release. This production can cover protected or confidential information, such as medical records.

The bill requires the panel to conduct a hearing to determine, by a majority, whether CAIR is appropriate for the inmate and creates a process for an inmate who is denied CAIR by the panel to have the decision reviewed. Confidential records that are produced in the above-mentioned investigation may be discussed in the hearings by the panel members to aide in the determination of whether the inmate is appropriate for release.

Further, the bill provides that CAIR may be revoked for a violation of any release conditions the DOC establishes, and requires the panel to conduct a CAIR revocation hearing as prescribed by rule. A majority of the panel must agree that revocation is appropriate for the aging releasee's CAIR to be revoked. The panel may need to discuss confidential information in a similar manner during the revocation hearings as is possible during the original release hearing.

III. Effect of Proposed Changes:

The bill adds a new subsection to s. 945.0912, F.S., to create an exemption to the public records and public meetings requirements related to the hearings conducted for the CAIR program. Specifically, the bill provides that the portion of a panel review hearing conducted in accordance with s. 945.0912, F.S., during which the panel will discuss information that is exempt under state law or confidential under federal law, such as protected health information covered by the Health Insurance Portability and Protection Act, is exempt from s. 286.011, F.S., and s. 24(b), Art. I of the Florida Constitution. The bill also provides that certain requirements must be met if the panel must discuss exempt or confidential information during the course of its meeting, including that:

- The panel must announce at the public meeting that, in connection with the performance of the panel's duties, exempt or confidential information must be discussed;
- The panel must declare the specific reasons that it is necessary to close the meeting, or a portion thereof, in a document that is a public record and filed with the official records of the program; and
- The entire closed hearing must be recorded where the recording, which must be maintained by the DOC, includes the times of commencement and termination of the closed hearing or portion thereof, all discussion and proceedings, and the names of the persons present.

The bill also provides that the portion of the records the panel uses to determine the appropriateness of CAIR, which includes any of the inmate's exempt or confidential information, is confidential and exempt from disclosure under s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution.

Further, the bill provides that any audio or video recording of, any transcript of, and any minutes and notes generated during, a closed hearing of the panel or closed portion of a hearing of the panel are confidential and exempt from disclosure under s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution. The bill requires that such audio or video recording, transcript, and minutes and notes be retained pursuant to s. 119.021, F.S.

The bill authorizes certain persons to be present during the closed portion of the meeting, including members of the panel, staff supporting the panel's functions, the inmate for whom the panel has convened, and licensed medical personnel the panel has called to provide testimony. The panel must limit any closure of its meetings so that the public meetings policy of the state is maintained.

The bill provides that the exemptions in the bill are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will be repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

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

The Legislature finds that it is a public necessity that the hearings or portions of hearings during which exempt or confidential information is discussed by the review panel considering an inmate's conditional aging inmate release be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. The Legislature finds that the rights of an inmate afforded under other state or federal laws that deem certain personal information confidential, such as protected health information covered by the Health Insurance Portability and Protection Act, be upheld and that the inmate's personal information not be disclosed to the public during such hearings. The Legislature also finds that the recordings of a panel review hearing and the records used by the panel to make its determination be made confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Article I of the State Constitution. The inmate's exempt or confidential information, if publicly available, could be used to invade his or her personal privacy. Making these reports and discussions of such information confidential and exempt from disclosure will protect information of a sensitive personal nature, the release of which could cause unwarranted damage to the privacy rights of the inmate. The Legislature therefore finds that it is a public necessity that such information remain confidential and exempt.

The bill is effective on the same date that PCS/CS/SB 574 or similar legislation takes effect if such legislation is enacted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records or open meeting requirements. This bill enacts a new exemption for portions of a panel meeting that discusses confidential information related to an inmate being considered for release into the CAIR program from open meetings requirements as well as any records that are created in support of such exemptions. Thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires an exemption to the public records requirements and open meetings requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect confidential and exempt information of an inmate or aging releasee who is being considered for the program or for revocation of the release, respectively. This bill exempts only that portion of a panel meeting that discusses confidential information related to the inmate or releasee from open meetings requirements as well as any records that are created in support of such exemptions. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill does not appear to have a fiscal impact on state or local governments. Costs incurred by the DOC in closing such meetings and responding to public records requests regarding these exemptions should be offset by savings realized through the CAIR program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 945.0912 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Governmental Oversight and Accountability on February 10, 2020:

The CS:

- Revises the description of the information subject to the exemption to include all information exempt under state law or confidential under federal law.
- Adds to the public records portion an exemption for any transcript of the closed meeting produced.
- Revises the provision that the panel may authorize anyone they deem appropriate to remain in the closed meeting to be a list including the inmate for whom the panel has convened and licensed medical personnel called by the panel to provide testimony.
- Makes conforming changes to the public necessity statement and title.

CS by Criminal Justice on January 28, 2020:

The committee substitute provides the public records exempted by the bill are confidential and exempt, rather than just exempt, ensuring that the confidential status of protected health information that may be discussed in such hearings is maintained.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/10/2020	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Present subsection (7) of section 945.0912,
Florida Statutes, as created by SB 574 or other similar
legislation, 2020 Regular Session, is redesignated as subsection
(8), and a new subsection (7) is added to that section, to read:

945.0912 Conditional aging inmate release.—

(7) PUBLIC MEETINGS AND RECORDS EXEMPTIONS.—



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11 (a) That portion of a panel review hearing conducted in
12 accordance with this section during which the panel will discuss
13 information that is exempt from public inspection and copying
14 requirements under state law or confidential under federal law,
15 such as protected health information covered by the Health
16 Insurance Portability and Accountability Act, is exempt from s.
17 286.011 and s. 24(b), Art. I of the State Constitution. If the
18 panel must discuss exempt or confidential information during the
19 course of its meeting, the following requirements must be met:

20 1. The panel must announce at the public meeting that, in
21 connection with the performance of the panel's duties, exempt or
22 confidential information must be discussed;

23 2. The panel must declare the specific reasons that it is
24 necessary to close the meeting, or a portion thereof, in a
25 document that is a public record and filed with the official
26 records of the program; and

27 3. The entire closed hearing must be recorded. The
28 recording must include the times of commencement and termination
29 of the closed hearing or portion thereof, all discussion and
30 proceedings, and the names of the persons present.

31 (b)1. That portion of the records the panel uses to
32 determine the appropriateness of conditional aging inmate
33 release which includes any exempt or confidential information is
34 confidential and exempt from disclosure under s. 119.07(1) and
35 s. 24(a), Art. I of the State Constitution.

36 2. Any audio or video recording or transcript of, and any
37 minutes and notes generated during, a closed hearing of the
38 panel or closed portion of a hearing of the panel are
39 confidential and exempt from disclosure under s. 119.07(1) and



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s. 24(a), Art. I of the State Constitution. Such audio or video recording, transcript, minutes and notes must be retained pursuant to the requirements of s. 119.021.

(c) Only members of the panel, staff supporting the panel's functions, the inmate for whom the panel has convened, and licensed medical personnel called by the panel to provide testimony regarding exempt or confidential information shall be allowed to attend the closed portions of panel hearings. The panel shall ensure that any closure of its meetings as authorized by this section is limited so that the policy of the state in favor of public meetings is maintained.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the hearings or portions of hearings during which exempt or confidential information is discussed by the review panel considering an inmate's conditional aging inmate release be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. The Legislature finds that the rights of an inmate afforded under other state or federal laws that deem certain personal information confidential, such as protected health information covered by the Health Insurance Portability and Accountability Act, be upheld and that the inmate's exempt or confidential information not be disclosed to the public during such hearings. The Legislature also finds that the recordings and transcripts of a panel review hearing and the records used by the panel to make its determination be made



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confidential and exempt from disclosure under s. 119.07(1),
Florida Statutes, and s. 24(a), Article I of the State
Constitution. The inmate's exempt or confidential information,
if publicly available, could be used to invade his or her
personal privacy. Making these reports and discussions of such
information confidential and exempt from disclosure will protect
information of a sensitive personal nature, the release of which
could cause unwarranted damage to the privacy rights of the
inmate. The Legislature therefore finds that it is a public
necessity that such information be made confidential and exempt.

Section 3. This act shall take effect on the same date that
SB 574 or similar legislation relating to conditional aging
inmate release takes effect, if such legislation is adopted in
the same legislative session or an extension thereof and becomes
a law.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to public meetings and records;
amending s. 945.0912, F.S.; exempting from public
meetings requirements that portion of a meeting at
which the exempt or confidential information of
specified inmates being considered for the conditional
aging inmate release program are discussed; exempting
from public records requirements certain records used
by the reviewing panel to make a determination of the



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98 appropriateness of conditional aging inmate release
99 and the recordings and transcripts of closed panel
100 review hearings; providing for legislative review and
101 repeal of the exemption; providing a statement of
102 public necessity; providing a contingent effective
103 date.

By the Committee on Criminal Justice; and Senator Brandes

591-02749A-20

20201718c1

A bill to be entitled

An act relating to public meetings and records;
amending s. 945.0912, F.S.; exempting from public
meetings requirements the protected health information
of specified inmates being considered for the
conditional aging inmate release program; exempting
from public records requirements certain records used
by the reviewing panel to make a determination of the
appropriateness of conditional aging inmate release
and the recordings of closed panel review hearings;
providing for legislative review and repeal of the
exemption; providing a statement of public necessity;
providing a contingent effective date.

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

Section 1. Present subsection (7) of section 945.0912,
Florida Statutes, as created by SB 574 or other similar
legislation, 2020 Regular Session, is redesignated as subsection
(8), and a new subsection (7) is added to that section, to read:

945.0912 Conditional aging inmate release.—

(7) PUBLIC MEETINGS AND RECORDS EXEMPTIONS.—

(a) That portion of a panel review hearing conducted in
accordance with this section during which the panel will discuss
protected information that is confidential and exempt under
state or federal law, such as protected health information
covered by the Health Insurance Portability and Accountability
Act, is exempt from s. 286.011 and s. 24(b), Art. I of the State
Constitution. If the panel must discuss exempt information

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during the course of its meeting, the following requirements
must be met:

1. The panel must announce at the public meeting that, in
connection with the performance of the panel's duties, protected
information must be discussed;

2. The panel must declare the specific reasons that it is
necessary to close the meeting, or a portion thereof, in a
document that is a public record and filed with the official
records of the program; and

3. The entire closed hearing must be recorded. The
recording must include the times of commencement and termination
of the closed hearing or portion thereof, all discussion and
proceedings, and the names of the persons present. The
department shall maintain the recording.

(b)1. That portion of the records the panel uses to
determine the appropriateness of conditional aging inmate
release which includes any of the inmate's protected information
is confidential and exempt from disclosure under s. 119.07(1)
and s. 24(a), Art. I of the State Constitution.

2. Any audio or video recording of, and any minutes and
notes generated during, a closed hearing of the panel or closed
portion of a hearing of the panel are confidential and exempt
from disclosure under s. 119.07(1) and s. 24(a), Art. I of the
State Constitution. Such audio or video recording and minutes
and notes must be retained pursuant to the requirements of s.
119.021.

(c) Only members of the panel, staff supporting the panel's
functions, and other persons whose presence has been authorized
by the panel shall be allowed to attend the closed portions of

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59 panel hearings. The panel shall ensure that any closure of its
 60 meetings as authorized by this section is limited so that the
 61 policy of the state in favor of public meetings is maintained.

62 (d) This subsection is subject to the Open Government
 63 Sunset Review Act in accordance with s. 119.15 and shall stand
 64 repealed on October 2, 2025, unless reviewed and saved from
 65 repeal through reenactment by the Legislature.

66 Section 2. The Legislature finds that it is a public
 67 necessity that the hearings or portions of hearings during which
 68 an inmate's personal information is discussed by the review
 69 panel considering an inmate's conditional aging inmate release
 70 be made exempt from s. 286.011, Florida Statutes, and s. 24(b),
 71 Article I of the State Constitution. The Legislature finds that
 72 the rights of an inmate afforded under other state or federal
 73 laws that deem certain personal information confidential, such
 74 as protected health information covered by the Health Insurance
 75 Portability and Accountability Act, be upheld and that the
 76 inmate's personal information not be disclosed to the public
 77 during such hearings. The Legislature also finds that the
 78 recordings of a panel review hearing and the records used by the
 79 panel to make its determination be made confidential and exempt
 80 from disclosure under s. 119.07(1), Florida Statutes, and s.
 81 24(a), Article I of the State Constitution. The inmate's
 82 personal health information, if publicly available, could be
 83 used to invade his or her personal privacy. Making these reports
 84 and discussions of such information confidential and exempt from
 85 disclosure will protect information of a sensitive personal
 86 nature, the release of which could cause unwarranted damage to
 87 the privacy rights of the inmate. The Legislature therefore

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88 finds that it is a public necessity that such protected
 89 information remain confidential and exempt.

90 Section 3. This act shall take effect on the same date that
 91 SB 574 or similar legislation relating to conditional aging
 92 inmate release takes effect, if such legislation is adopted in
 93 the same legislative session or an extension thereof and becomes
 94 a law.



The Florida Senate

Committee Agenda Request

To: Senator Ed Hooper
Committee on Governmental Oversight and
Accountability

Subject: Committee Agenda Request

Date: January 28, 2020

I respectfully request that **Senate Bill #1718**, relating to **Public Records/Conditional Aging Inmate Release Program**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

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/CS/SB 1728

INTRODUCER: Governmental Oversight and Accountability Committee; Criminal Justice Committee
and Senator Brandes

SUBJECT: Public Meetings and Records/Conditional Medical Release Program

DATE: February 10, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Fav/CS
2.	Hackett	McVaney	GO	Fav/CS
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1728, which is linked to CS/SB 556, adds a new subsection to s. 945.0911, F.S., as created in the linked bill, exempting certain records and portions of public meetings from the related conditional medical release (CMR) program.

Specifically, the bill provides that the portion of a panel review hearing conducted in accordance with s. 945.0911, F.S., during which the panel determining release into or revocation from the CMR program will discuss information that is exempt under state law or confidential under federal law is exempt from s. 286.011, F.S., and s. 24(b), Art. I of the Florida Constitution. The bill also provides that certain requirements must be met if the panel must discuss exempt information during the course of its meeting.

The bill also provides that the portion of the records the panel uses to determine the appropriateness of CMR which includes any of the inmate's protected information is confidential and exempt from disclosure under s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution.

Further, the bill exempts from public records requirements any portion of the audio or video recording of, any transcript of, and any minutes and notes generated during, a closed hearing of the panel or closed portion of a hearing of the panel. The bill requires that such audio or video recording and minutes and notes be retained pursuant to s. 119.021, F.S.

The bill authorizes certain persons to be present during the closed portion of the meeting and provides that any closure of the meetings must be limited so that the public meetings policy of the state is maintained.

The bill provides that the exemptions in the bill are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will be repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution.

Because the bill creates a new public meetings and public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill does not appear to have a fiscal impact on state or local governments. Costs incurred by the DOC in closing such meetings and responding to public records requests regarding these exemptions should be offset by savings realized through the CMR program. See Section V. Fiscal Impact Statement.

The bill is effective on the same date that CS/CS/SB 556 or similar legislation takes effect if such legislation is enacted in the same legislative session or an extension thereof and becomes a law.

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.¹ 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.²

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.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ 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).

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

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.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

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.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

General exemptions from the public records requirements are contained in the Public Records Act.¹⁰ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹¹

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.¹² Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹³

⁵ 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.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ *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).

¹¹ *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).

¹² *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹³ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.¹⁴ Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.¹⁵ This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.¹⁶

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the “Government in the Sunshine Law,”¹⁷ or the “Sunshine Law,”¹⁸ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.¹⁹ The board or commission must provide the public reasonable notice of such meetings.²⁰ Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public’s access to the facility.²¹ Minutes of a public meeting must be promptly recorded and open to public inspection.²² Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.²³ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.²⁴

Constitutional Requirements for Passage of Public Records or Open Meetings Exemptions

The Legislature may create an exemption for public records or open meetings requirements by passing a general law by a two-thirds vote of both the House and the Senate.²⁵ The exemption must state with specificity the public necessity justifying the exemption and must be no broader

¹⁴ FLA. CONST., art. I, s. 24(b).

¹⁵ *Id.*

¹⁶ FLA. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: “The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

¹⁷ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

¹⁸ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

¹⁹ Section 286.011(1)-(2), F.S.

²⁰ *Id.*

²¹ Section 286.011(6), F.S.

²² Section 286.011(2), F.S.

²³ Section 286.011(1), F.S.

²⁴ Section 286.011(3), F.S.

²⁵ FLA. CONST. art. I, s. 24(c).

than necessary to accomplish the stated purpose of the exemption.²⁶ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.²⁷

Open Government Sunset Review Act

The Open Government Sunset Review Act²⁸ (the Act) prescribes a legislative review process for newly created or substantially amended²⁹ public records or open meetings exemptions, with specified exceptions.³⁰ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.³¹

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.³² An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;³³
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;³⁴ or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.³⁵

²⁶ *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).

²⁷ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a public records statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

²⁸ Section 119.15, F.S.

²⁹ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

³⁰ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

³¹ Section 119.15(3), F.S.

³² Section 119.15(6)(b), F.S.

³³ Section 119.15(6)(b)1., F.S.

³⁴ Section 119.15(6)(b)2., F.S.

³⁵ Section 119.15(6)(b)3., F.S.

The Act also requires specified questions to be considered during the review process.³⁶ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.³⁷ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.³⁸

Conditional Medical Release

Conditional Medical Release (CMR), outlined in s. 947.149, F.S., was created by the Florida Legislature in 1992,³⁹ as a discretionary release of inmates who are “terminally ill” or “permanently incapacitated” and who are not a danger to themselves or others.⁴⁰ The Florida Commission on Offender Review (FCOR), which consists of three members, reviews eligible inmates for release under the CMR program pursuant to the powers established in s. 947.13, F.S.⁴¹ In part, s. 947.149, F.S., authorizes the FCOR to determine what persons will be released on CMR, establish the conditions of CMR, and determine whether a person has violated the conditions of CMR and take actions with respect to such a violation.

Florida Statistics for CMR

The FCOR has approved and released 73 inmates for CMR in the last three fiscal years, including:

- 38 in FY 2018-19;
- 21 in FY 2017-2018; and
- 14 in FY 2016-2017.⁴²

³⁶ Section 119.15(6)(a), F.S. The specified questions are:

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

³⁷ See generally s. 119.15, F.S.

³⁸ Section 119.15(7), F.S.

³⁹ Chapter 92-310, L.O.F.

⁴⁰ The FCOR, *Release Types, Post Release*, available at <https://www.fcor.state.fl.us/postrelease.shtml#conditionalMedicalRelease> (last visited January 23, 2020).

⁴¹ Section 947.149(3), F.S. Section 947.01, F.S., provides that the membership of the FCOR is three-members.

⁴² Emails from Alexander Yarger, Legislative Affairs Director, Florida Commission on Offender Review, RE: Conditional Medical Release Data and RE: Updated Conditional Medical Release Numbers (attachments on file with the Senate Committee on Criminal Justice) (December 15, 2017 and November 1, 2019, respectively). See also FCOR Annual Report FY 2017-18, p. 8, available at <https://www.fcor.state.fl.us/docs/reports/Annual%20Report%202018%20WEB.pdf> (last visited January 23, 2020).

The DOC has recommended 149 inmates for release in the past three fiscal years, including:

- 76 in FY 2018-19;
- 39 in FY 2017-2018; and
- 34 in FY 2016-2017.⁴³

Currently, the DOC's only role in the CMR process is to make the initial designation of medical eligibility and to refer the inmate's case to the FCOR for an investigation and final decision.

Conditional Medical Release Program Created By CS/SB 556

PCS/CS/SB 556 repeals s. 947.149, F.S., which establishes the CMR program within the FCOR and creates s. 945.0911, F.S., to establish a CMR program within the DOC with the purpose of determining whether release is appropriate for eligible inmates, supervising the released inmates, and conducting revocation hearings. The CMR program established within the DOC retains similarities to the program currently in existence within the FCOR, including that the CMR program must include a panel of at least three people.

The bill provides that an inmate is eligible for consideration for release under the CMR program when the inmate, because of an existing medical or physical condition, is determined by the DOC to meet a specific definition enumerated in PCS/CS/SB 556. The bill requires the DOC to identify inmates who may be eligible for CMR based upon available medical information and authorizes the DOC to require additional medical evidence, including examinations of the inmate, or any other additional investigations it deems necessary for determining the appropriateness of the eligible inmate's release.

The bill requires the director of inmate health services to review specified evidence and provide a recommendation to the three-member panel, who must conduct a hearing within 45 days of the referral to determine whether CMR is appropriate for the inmate. A majority of the panel members must agree that release on CMR is appropriate for the inmate. Confidential records that are produced in the above-mentioned investigation may be discussed in the hearings by the panel members to aid in the determination of whether the inmate is appropriate for release.

Additionally, PCS/CS/SB 556 establishes a process for the revocation of CMR which may be based on two specified circumstances. The revocation hearing must be conducted by the three-member panel discussed above and a majority of the panel members must agree that revocation is appropriate for the medical releasee's CMR to be revoked. The bill requires the director of inmate health services or his or her designee to review any medical evidence pertaining to the medical releasee and provide the panel with a recommendation regarding the medical releasee's improvement and current medical or physical condition.

The panel may need to discuss confidential information in a similar manner during the revocation hearings as is possible during the original release hearing.

⁴³ *Id.*

III. Effect of Proposed Changes:

The bill adds a new subsection to s. 945.0911, F.S., to create an exemption to the public records and public meetings requirements related to the hearings conducted for the CMR program. Specifically, the bill provides that the portion of a panel review hearing conducted in accordance with s. 945.0911, F.S., during which the panel will discuss protected information that is exempt under state law or confidential under federal law, such as protected health information covered by the Health Insurance Portability and Protection Act, is exempt from s. 286.011, F.S., and s. 24(b), Art. I of the Florida Constitution. The bill also provides that certain requirements must be met if the panel must discuss exempt or confidential information during the course of its meeting, including that:

- The panel must announce at the public meeting that, in connection with the performance of the panel's duties, exempt or confidential information must be discussed;
- The panel must declare the specific reasons that it is necessary to close the meeting, or a portion thereof, in a document that is a public record and filed with the official records of the program; and
- The entire closed hearing must be recorded where the recording, which must be maintained by the DOC, includes the times of commencement and termination of the closed hearing or portion thereof, all discussion and proceedings, and the names of the persons present.

The bill also provides that the portion of the records the panel uses to determine the appropriateness of CMR which includes any of the inmate's exempt or confidential information is confidential and exempt from disclosure under s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution.

Further, the bill provides that any audio or video recording of, any transcript of, and any minutes and notes generated during, a closed hearing of the panel or closed portion of a hearing of the panel are confidential and exempt from disclosure under s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution. The bill requires that such audio or video recording, transcript, and minutes and notes be retained pursuant to s. 119.021, F.S.

The bill authorizes certain persons to be present during the closed portion of the meeting, including members of the panel, staff supporting the panel's functions, the inmate for whom the panel has convened, and licensed medical personnel the panel has called to provide testimony. The panel must limit any closure of its meetings so that the public meetings policy of the state is maintained.

The bill provides that the exemptions in the bill are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will be repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

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

The Legislature finds that it is a public necessity that the hearings or portions of hearings during which exempt or confidential information is discussed by the review panel considering the inmate's conditional

medical release be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. The Legislature finds that the rights of an inmate afforded under other state or federal laws that deem certain personal information confidential, such as protected health information covered by the Health Insurance Portability and Accountability Act, be upheld and that the inmate's personal information not be disclosed to the public during such hearings. The Legislature also finds that the recordings of a panel review hearing and the records used by the panel to make its determination be made confidential and exempt from disclosure under s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The inmate's exempt or confidential information, if publicly available, could be used to invade his or her personal privacy. Making these reports and discussions of such information confidential and exempt from disclosure will protect information of a sensitive personal nature, the release of which could cause unwarranted damage to the privacy rights of the inmate. The Legislature therefore finds that it is a public necessity that such information remain confidential and exempt.

The bill is effective on the same date that CS/CS/SB 556 or similar legislation takes effect if such legislation is enacted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records or open meeting requirements. This bill enacts a new exemption for portions of a panel meeting that discusses confidential information related to an inmate being considered for release into the CMR program from open meetings requirements as well as any records that are created in support of such exemptions. Thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires an exemption to the public records requirements and open meetings requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect confidential and exempt information of an inmate or medical releasee who is being considered for the program or for revocation of the release, respectively. This bill exempts only that portion of a panel meeting that discusses confidential information related to the inmate or releasee from open meetings requirements as well as any records that are created in support of such exemptions. The exemption does not appear to be broader than necessary to accomplish the purpose of the law

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill does not appear to have a fiscal impact on state or local governments. Costs incurred by the DOC in closing such meetings and responding to public records requests regarding these exemptions should be offset by savings realized through the CMR program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 945.0911 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Governmental Oversight and Accountability on February 10, 2020:

The CS:

- Revises the description of the information subject to the exemption to include all information exempt under state law or confidential under federal law.
- Adds to the public records portion an exemption for any transcript of the closed meeting produced.
- Revises the provision that the panel may authorize anyone they deem appropriate to remain in the closed meeting to be a list including the inmate for whom the panel has convened and licensed medical personnel called by the panel to provide testimony.
- Makes conforming changes to the public necessity statement and title.

CS by Criminal Justice on January 28, 2020:

The committee substitute provides the public records exempted by the bill are confidential and exempt, rather than just exempt, ensuring that the confidential status of protected health information that may be discussed in such hearings is maintained.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/10/2020	.	
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	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Present subsection (9) of section 945.0911,
Florida Statutes, as created by SB 556 or other similar
legislation, 2020 Regular Session, is redesignated as subsection
(10), and a new subsection (9) is added to that section, to
read:

945.0911 Conditional aging inmate release.—



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(9) PUBLIC MEETINGS AND RECORDS EXEMPTIONS.—

(a) That portion of a panel review hearing conducted in accordance with this section during which the panel will discuss information that is exempt from public inspection and copying requirements under state law or confidential under federal law, such as protected health information covered by the Health Insurance Portability and Accountability Act, is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. If the panel must discuss exempt or confidential information during the course of its meeting, the following requirements must be met:

1. The panel must announce at the public meeting that, in connection with the performance of the panel's duties, exempt or confidential information must be discussed;

2. The panel must declare the specific reasons that it is necessary to close the meeting, or a portion thereof, in a document that is a public record and filed with the official records of the program; and

3. The entire closed hearing must be recorded. The recording must include the times of commencement and termination of the closed hearing or portion thereof, all discussion and proceedings, and the names of the persons present.

(b)1. That portion of the records the panel uses to determine the appropriateness of conditional medical release which includes any exempt or confidential information is confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. Any audio or video recording or transcript of, and any minutes and notes generated during, a closed hearing of the panel or closed portion of a hearing of the panel are



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confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such audio or video recording, transcript, minutes and notes must be retained pursuant to the requirements of s. 119.021.

(c) Only members of the panel, staff supporting the panel's functions, the inmate for whom the panel has convened, and licensed medical personnel called by the panel to provide testimony regarding exempt or confidential information shall be allowed to attend the closed portions of panel hearings. The panel shall ensure that any closure of its meetings as authorized by this section is limited so that the policy of the state in favor of public meetings is maintained.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the hearings or portions of hearings during which exempt or confidential information is discussed by the review panel considering an inmate's conditional medical release be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. The Legislature finds that the rights of an inmate afforded under other state or federal laws that deem certain personal information confidential, such as protected health information covered by the Health Insurance Portability and Accountability Act, be upheld and that the inmate's exempt or confidential information not be disclosed to the public during such hearings. The Legislature also finds that the recordings and transcripts of a panel review hearing and the



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records used by the panel to make its determination be made
confidential and exempt from disclosure under s. 119.07(1),
Florida Statutes, and s. 24(a), Article I of the State
Constitution. The inmate's exempt or confidential information,
if publicly available, could be used to invade his or her
personal privacy. Making these reports and discussions of such
information confidential and exempt from disclosure will protect
information of a sensitive personal nature, the release of which
could cause unwarranted damage to the privacy rights of the
inmate. The Legislature therefore finds that it is a public
necessity that such information be made confidential and exempt.

Section 3. This act shall take effect on the same date that
SB 556 or similar legislation relating to conditional medical
release takes effect, if such legislation is adopted in the same
legislative session or an extension thereof and becomes a law

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to public meetings and records;
amending s. 945.0912, F.S.; exempting from public
meetings requirements that portion of a panel review
at which the exempt or confidential information of
specified inmates being considered for the conditional
medical release program is discussed; exempting from
public records requirements certain records used by
the reviewing panel to make a determination of the



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98 appropriateness of conditional medical release and the
99 recordings and transcripts of closed panel review
100 hearings; providing for legislative review and repeal
101 of the exemption; providing a statement of public
102 necessity; providing an effective date.

By the Committee on Criminal Justice; and Senator Brandes

591-02748-20

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A bill to be entitled

An act relating to public meetings and records; amending s. 945.0911, F.S.; exempting from public meetings requirements the protected health information of specified inmates being considered for the conditional medical release program; exempting from public records requirements certain records used by the reviewing panel to make a determination of the appropriateness of conditional medical release and the recordings of closed panel review hearings; providing for legislative review and repeal of the exemptions; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Present subsection (9) of section 945.0911, Florida Statutes, as created by SB 556 or other similar legislation, 2020 Regular Session, is redesignated as subsection (10), and a new subsection (9) is added to that section, to read:

945.0911 Conditional medical release.—

(9) PUBLIC MEETINGS AND RECORDS EXEMPTIONS.—

(a) That portion of a panel review hearing conducted in accordance with this section during which the panel will discuss protected information that is confidential and exempt under state or federal law, such as protected health information covered by the Health Insurance Portability and Accountability Act, is exempt from s. 286.011 and s. 24(b), Art. I of the State

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Constitution. If the panel must discuss exempt information during the course of its meeting, the following requirements must be met:

1. The panel must announce at the public meeting that, in connection with the performance of the panel's duties, protected information must be discussed;

2. The panel must declare the specific reasons that it is necessary to close the meeting, or a portion thereof, in a document that is a public record and filed with the official records of the program; and

3. The entire closed hearing must be recorded. The recording must include the times of commencement and termination of the closed hearing or portion thereof, all discussion and proceedings, and the names of the persons present. The department shall maintain the recording.

(b)1. That portion of the records the panel uses to determine the appropriateness of conditional medical release which includes any of the inmate's protected information is confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. Any audio or video recording of, and any minutes and notes generated during, a closed hearing of the panel or closed portion of a hearing of the panel are confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such audio or video recording and minutes and notes must be retained pursuant to the requirements of s. 119.021.

(c) Only members of the panel, staff supporting the panel's functions, and other persons whose presence has been authorized

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by the panel shall be allowed to attend the closed portions of panel hearings. The panel shall ensure that any closure of its meetings as authorized by this section is limited so that the policy of the state in favor of public meetings is maintained.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the hearings or portions of hearings during which an inmate's personal information is discussed by the review panel considering the inmate's conditional medical release be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. The Legislature finds that the rights of an inmate afforded under other state or federal laws that deem certain personal information confidential, such as protected health information covered by the Health Insurance Portability and Accountability Act, be upheld and that the inmate's personal information not be disclosed to the public during such hearings. The Legislature also finds that the recordings of a panel review hearing and the records used by the panel to make its determination be made confidential and exempt from disclosure under s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The inmate's personal health information, if publicly available, could be used to invade his or her personal privacy. Making these reports and discussions of such information confidential and exempt from disclosure will protect information of a sensitive personal nature, the release of which could cause unwarranted damage to

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the privacy rights of the inmate. The Legislature therefore finds that it is a public necessity that such protected information remain confidential and exempt.

Section 3. This act shall take effect on the same date that SB 556 or similar legislation relating to conditional medical release takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.



The Florida Senate

Committee Agenda Request

To: Senator Ed Hooper
Committee on Governmental Oversight and
Accountability

Subject: Committee Agenda Request

Date: January 28, 2020

I respectfully request that **Senate Bill #1728**, relating to **Public Records/Conditional Medical Release Program**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", is written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

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: SM 1756

INTRODUCER: Senator Flores

SUBJECT: Temporary Protected Status to Venezuelans in the United States

DATE: February 7, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	McVaney	GO	Favorable
2.			JU	
3.			RC	

I. Summary:

SM 1756 is a memorial to the Congress of the United States condemning Venezuelan President Nicolás Maduro's actions and urging Congress to grant temporary protected status to Venezuelans in the United States.

A memorial is not subject to the approval or veto powers of the Governor, is not subject to constitutional title requirements, and does not have the effect of law.

II. Present Situation:

Crisis in Venezuela

Venezuela has been governed for two decades by the United Socialist Party of Venezuela, first under President Hugo Chávez until his death in 2013, then under Nicolás Maduro. Under President Maduro, Venezuela's economy has substantially collapsed. The people of Venezuela regularly face shortages on products ranging from food to medicine, electricity outages are increasingly common, and children die of malnutrition. Hyperinflation has also wreaked havoc on the internal economy of Venezuela: a cup of coffee in the capital city, Caracas, increased in price by 9,900 percent from January 8, 2019, to January 9, 2020. According to experts, Venezuela, a once prosperous nation positioned over the largest oil reserves in the world, has been victim of government mismanagement and corruption.¹

¹ BBC News Latin America, Venezuela crisis in 300 words, January 6, 2020 (available at <https://www.bbc.com/news/world-latin-america-48121148>); Human Rights Watch, Venezuela: Events of 2018, HRW.org (available at <https://www.hrw.org/world-report/2019/country-chapters/venezuela>); Kiger, Patrick, How Venezuela Fell From the Richest Country in South America into Crisis, History.com, May 9, 2019 (available at <https://www.history.com/news/venezuela-chavez-maduro-crisis>); Reeves, Philip Venezuela's Maduro Faces Mounting Pressure To Quit, Yet He Persists, National Public Radio, March 25, 2019 (available at <https://www.npr.org/2019/03/25/706635580/venezuelas-maduro-faces-pressure-from-much-of-the-world-yet-he-persists>).

Venezuelan Presidential Crisis

Venezuelans and global spectators alike have greatly disputed both the process and results of the last Venezuelan presidential election, held in May 2018. Maduro called for the election months before it would regularly have been scheduled and prevented several opposition parties from participating at all. Consequently, the Organization of American States passed a resolution declaring Maduro's victory illegitimate. Juan Guaidó, the president of the National Assembly, which is controlled by the opposition social-democratic Popular Will party, was declared acting president and attempted to gain power. Guaidó's provisional government has been recognized by the Organization of American States, but in early 2020 Maduro's government continues to control state institutions.² Guaido attended President Donald Trump's February, 2020 State of the Union address as a guest of the White House.³

Venezuelan Refugees in America

At least 4.6 million Venezuelans have fled the political and economic crisis. Nearly a million have crossed into Brazil, where the United States Agency for International Development has financially backed programs to resettle Venezuelan emigrants, giving nearly \$15 million.⁴ The United States is also one of the top destinations for Venezuelan emigrants, and south Florida holds the highest concentration of Venezuelan Americans. Venezuelan emigrants must, wherever they enter the nation, apply for asylum, where their case is part of a million-case backlog along with a recent influx of Nicaraguan and Cuban asylum seekers.⁵

Temporary Protected Status

Temporary Protected Status is a status given to nationals of specified countries by the United States Secretary of Homeland Security. The designation means that an individual, after his or her asylum case's initial review, may not be removed from the United States, may pursue an Employment Authorization Document, and has access to an Application for Travel Document. Some individuals are ineligible for Temporary Protected Status, including those who:

- Have been convicted of any felony or two misdemeanors committed in the United States;
- Have been involved in the persecution of a person on the basis of their race, religion, nationality, social group, or political position; or

² Specia, Megan, *Five Things You Need to Know to Understand Venezuela's Crisis*, New York Times, May 3, 2019 (available at <https://www.nytimes.com/2019/05/03/world/americas/venezuela-crisis-facts.html>); BBC News Latin America, *Venezuela crisis: How the political situation escalated*, BBC, January 13, 2020 (available at <https://www.bbc.com/news/world-latin-america-36319877>).

³ Sink, Justin and Jennifer Jacobs, *Venezuela's Guaido Attends Trump's State of Union Speech*, Bloomberg, February 4, 2020 (available at <https://www.bloomberg.com/news/articles/2020-02-04/venezuela-s-guaido-plans-to-attend-trump-s-state-of-union-speech>).

⁴ Boadle, Anthony, *U.S. backs program to settle Venezuelan migrants in Brazil*, Reuters, January 28, 2020 (available at <https://www.reuters.com/article/us-venezuela-brazil-usa/u-s-backs-program-to-settle-venezuelan-migrants-in-brazil-idUSKBN1ZR2I8>).

⁵ Villareal, Alexandra, *Venezuelans, Cubans and Nicaraguans seeking U.S. asylum face long immigration backlog*, NBC News, January 31, 2020 (available at <https://www.nbcnews.com/news/latino/venezuelans-cubans-nicaraguans-seeking-u-s-asylum-face-long-immigration-n1123761>); Moreno, Aurelio, *Venezuelan expats in South Florida support opposition leader's call for military uprising*, Sun-Sentinel, April 30, 2019 (available at <https://www.sun-sentinel.com/news/florida/fl-ne-venezuela-south-florida-reacts-20190430-story.html>).

- Are subject to one of the criminal-related or terrorism-related grounds of inadmissibility without waiver.

Temporary protected status does not provide a path to permanent resident status (green card) or citizenship. Currently immigrants from the following countries are protected: El Salvador, Haiti, Honduras, Nepal, Nicaragua, Somalia, South Sudan, Sudan, Syria, and Yemen.⁶

Senate Memorial

A Senate Memorial is “a measure addressed to an executive agency or another legislative body, usually congress, which expresses the consensus of the Florida Legislature or urges that certain action be taken on a matter within the jurisdiction of the agency or body to which it is addressed. When both houses adopt the measure, the memorial is signed by the legislative officers and transmitted to the Secretary of State for presentation to the addressee. A memorial is not subject to the approval or veto powers of the Governor, is not subject to constitutional title requirements, and does not have the effect of law.”⁷

III. Effect of Proposed Changes:

The Senate Memorial condemns Venezuelan President Nicolas Maduro’s actions and urges Congress to grant temporary protected status to Venezuelans in the United States.

Copies of the memorial will be sent by Florida’s Secretary of State to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.

Legislative memorials are not subject to the Governor’s veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

The Senate Memorial contains ten whereas clauses. The clauses outline the economic, political, and humanitarian crisis currently afflicting Venezuela.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

⁶ U.S. Citizenship and Immigration Services, Temporary Protected Status, available at <https://www.uscis.gov/humanitarian/temporary-protected-status> (last visited February 5, 2020); Department of Justice, Temporary Protected Status, available at <https://www.justice.gov/eoir/temporary-protected-status> (last visited February 5, 2020); Congressional Research Service, Temporary Protected Status: Overview and Current Issues, updated March 29, 2019 (available at <https://fas.org/sgp/crs/homesec/RS20844.pdf>).

⁷ Senate Glossary, <https://www.flsenate.gov/Reference/Glossary>.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

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 Flores

39-01703-20

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Senate Memorial

A memorial to the Congress of the United States and the President of the United States, urging them to grant temporary protected status to Venezuelans in the United States.

WHEREAS, Venezuela is enduring an unprecedented economic, humanitarian, security, and refugee crisis, consisting of extreme food and medicine shortages, severe infant and child malnutrition, rampant crime, and government-sponsored repression, and

WHEREAS, Venezuela's economic crisis continues unabated, and the International Monetary Fund estimates that the annual inflation in Venezuela reached almost 265,000 percent in July 2019, and

WHEREAS, in 2017, the Office of the United Nations High Commissioner for Human Rights reported the deaths of 124 persons in Venezuela which could be attributed to violations of the right to freedom of peaceful assembly, and, in July 2019, the office reported the deaths of 66 persons during protests between January and May 2019, 52 of which were attributable to government security forces or pro-government armed groups, and

WHEREAS, from September 2017 through April 2018, a review of pharmacies in five major cities in Venezuela showed a shortage of nearly 85 percent of medicine essential to treat four of the most recurrent causes of morbidity in the country, including diarrhea, respiratory tract infections, diabetes, and high blood pressure, and

WHEREAS, according to the Office of the United Nations High

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

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Commissioner for Human Rights, Venezuelan intelligence and security forces have increasingly used arbitrary arrests and detentions to repress and intimidate civil society, political opponents, and voices of dissent, and

WHEREAS, in the June 2018 report published by the Office of the United Nations High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, the United Nations High Commissioner for Human Rights, stated, "The failure to hold security forces accountable for such serious human rights violations suggests that the rule of law is virtually absent in Venezuela," and

WHEREAS, according to United Nations figures, more than four million Venezuelans have fled the country, the largest exodus in the recent history of Latin America and the Caribbean, and

WHEREAS, by early 2018, more than half of all Venezuelans had lost between 19 and 24 pounds, and today 90 percent of all Venezuelans do not have enough money to buy food and 60 percent live in extreme poverty, and

WHEREAS, the minimum monthly wage in 2017 bought only 12 percent of one Venezuelan's basic food needs, and by 2018, approximately 5,000 people per day were leaving Venezuela in search of food, and

WHEREAS, the people of Venezuela are facing a dire need for temporary protected status, NOW, THEREFORE,

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

That Venezuela is in a humanitarian crisis, and the Legislature of the State of Florida condemns Venezuelan

Page 2 of 3

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

39-01703-20

20201756__

59 President Nicolás Maduro's authoritarian steps to undermine
60 democratic institutions and urges the Congress of the United
61 States and the President of the United States to grant temporary
62 protected status to Venezuelans in the United States.

63 BE IT FURTHER RESOLVED that the Secretary of State dispatch
64 copies of this memorial to the President of the United States,
65 to the President of the United States Senate, to the Speaker of
66 the United States House of Representatives, and to each member
67 of the Florida delegation to the United States Congress.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/10/2020

Meeting Date

1756

Bill Number (if applicable)

Topic TPS for Venezuelans

Amendment Barcode (if applicable)

Name Ida V. ESKamani

Job Title Public Policy

Address 126 N. Mills Ave

Street

Orlando FL 32801

City

State

Zip

Phone 4073764801

Email ida-eskaman@gmail

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Immigrant Coalition

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/CS/SB 1802

INTRODUCER: Governmental Oversight and Accountability Committee; Criminal Justice Committee
and Senator Pizzo

SUBJECT: Public Meetings/Urban Core Gun Violence Task Force

DATE: February 10, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Jones</u>	<u>CJ</u>	Fav/CS
2.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1802 creates a narrowly tailored public meetings exemption from the requirements of s. 286.011, F.S., and s. 24(b), Article I of the State Constitution for the portions of the meetings of the Urban Core Gun Violence Task Force (Task Force) during which exempt or confidential and exempt information is discussed. The bill provides for the recordation and transcription of any portion of an exempt meeting and makes such recordings and transcripts confidential and exempt from disclosure under s. 119.07(1), F.S., s. 24(a), Art. I of the State Constitution

CS/SB 652, which creates the Task Force, grants authority to the Task Force to request and be provided with access to any information or records pertaining to crime and gun violence in urban core neighborhoods and communities in order to fulfill its duties. It is likely that at least some of the information and records to which the Task Force has access may be otherwise exempt or confidential and exempt, including confidential investigative files.

CS/SB 652 provides that information or records that the Task Force receives shall retain such exempt or confidential and exempt status, and that the Task Force may not disclose any such information or records. The public meetings exemption will allow the Task Force to discuss the exempt or confidential and exempt information while maintaining the protected status of that information.

This bill provides a statement of the public necessity for the exemption. It is narrowly tailored to include only the portions of meetings at which the protected information is discussed. The bill requires a two-thirds vote of the members present and voting for final passage.

There is no anticipated fiscal impact from this bill.

The bill becomes effective on the same date that CS/SB 652 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law. At this point, CS/SB 652, if enacted, takes effect July 1, 2020.

II. Present Situation:

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.¹ Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.² This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.³

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the “Government in the Sunshine Law,”⁴ or the “Sunshine Law,”⁵ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.⁶ The board or commission must provide the public reasonable notice of such meetings.⁷ Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public’s access to the facility.⁸ Minutes of a public meeting must be promptly recorded and open to public inspection.⁹ Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.¹⁰ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.¹¹

¹ FLA. CONST., art. I, s. 24(b).

² *Id.*

³ FLA. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: “The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

⁴ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

⁵ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

⁶ Section 286.011(1)-(2), F.S.

⁷ *Id.*

⁸ Section 286.011(6), F.S.

⁹ Section 286.011(2), F.S.

¹⁰ Section 286.011(1), F.S.

¹¹ Section 286.011(3), F.S.

The Legislature may create an exemption to open meetings requirements by passing a general law by at least a two-thirds vote of each house of the Legislature.¹² The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.¹³ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.¹⁴

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records exemptions,¹⁵ with specified exceptions.¹⁶ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁷ The Act provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹⁸

Urban Core Gun Violence

In American urban centers with significant minority populations, like New Orleans, Detroit, and Baltimore, the homicide rate is up to 10 times higher than the national average—between 30 and 40 murders per 100,000 people.¹⁹ One study calculated that young black men living in a high-crime area of Rochester, NY, had a murder rate of 520 per 100,00, over 100 times higher than the national average.²⁰ Firearm homicide is the leading cause of death for black males ages 15–34.²¹

Urban cores can be defined as areas that have high population densities (7,500 or more per square mile or 2,900 per square kilometer or more) and high transit, walking and cycling work trip market shares (20 percent or more). Urban cores also include non-exurban sectors with median house construction dates of 1945 or before.²²

¹² FLA. CONST., art. I, s. 24(c).

¹³ *Id.*

¹⁴ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a public records statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

¹⁵ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹⁶ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁷ Section 119.15(3), F.S.

¹⁸ Section 119.15(6)(b), F.S.

¹⁹ Giffords Law Center to Prevent Gun Violence, *Healing Communities in Crisis, Lifesaving Solutions to the Urban Gun Violence Epidemic*, p. 11, available at <https://lawcenter.giffords.org/wp-content/uploads/2019/01/Healing-Communities-in-Crisis.pdf> (last visited January 23, 2020).

²⁰ *Id.* at 12.

²¹ *Id.*

²² Wendell Cox, *Urban Cores, Core Cities and Principal Cities*, Newgeography, August 1, 2014, available at <http://www.newgeography.com/content/004453-urban-cores-core-cities-and-principal-cities> (last visited January 23, 2020).

CS/SB 652 - the creation of the Urban Core Gun Violence Task Force

CS/SB 652 creates the Urban Core Gun Violence Task Force within the Florida Department of Law Enforcement (FDLE), which is tasked with investigating system failures and the causes of high crime rates and gun violence incidents in urban core neighborhoods and communities. The Task Force is expected to develop recommendations for solutions, programs, services, and strategies for improved interagency communications between local and state government agencies which will help facilitate the reduction of crime and gun violence in urban core neighborhoods and communities.

The Task Force will convene no later than September 1, 2020, and will be comprised of 10 members who will serve at the pleasure of the officer who appointed him or her. At least five of the members shall be women and at least six of the members shall be members of racial minority groups. The appointments will be made as follows:

- Two members will be appointed by the President of the Senate;
- Two members will be appointed by the Minority Leader of the Senate;
- Two members will be appointed by the Speaker of the House of Representatives;
- Two members will be appointed by the Minority Leader of the House of Representatives; and
- Two members will be appointed by the Governor.

The Governor will appoint the Chair from among the 10 members. Additionally, the chair of the Task Force will assign staff from the FDLE and the Department of Juvenile Justice (DJJ) to assist the Task Force in performing its duties.

The General Counsel of the FDLE will serve as the general counsel for the task force.

The Task Force has the authority to request and be provided with access to *any* information or records pertaining to crime and gun violence in urban core neighborhoods and communities. Because of the nature of the Task Force's responsibilities it is likely that at least some of the information and records to which the Task Force has access may be otherwise exempt or confidential and exempt.

CS/SB 652 provides that any information or records obtained by the Task Force which are exempt or confidential and exempt will retain such exempt or confidential and exempt status. Additionally, the Task Force may not disclose any such information or records. Any discussion at an open meeting of the Task Force related to the protected information or records would violate the exempt or confidential and exempt status of the information or records. Therefore, an exemption from the public meetings laws is necessary in order to maintain the exempt or confidential and exempt status of certain information or records the Task Force receives and discusses during the fulfillment of its duties.

III. Effect of Proposed Changes:

The bill creates a public meetings exemption from the requirements of s. 286.011, F.S., and s. 24(b), Article I of the State Constitution for the portions of the meetings of the Urban Core

Gun Violence Task Force during which exempt or confidential and exempt information is discussed.

The bill provides that all exempt portions of a meeting of the Urban Core Gun Violence Task Force must be recorded and transcribed. The recordings and transcripts are confidential and exempt from disclosure under s. 119.01(1), F.S. and s. 24(a), Art. I of the State Constitution unless a court of competent, after an in camera review, determines that the meeting was not restricted to the discussion of exempt or confidential and exempt information as obtained by the Urban Core Gun violence Task Force.

The bill sets forth the public necessity for the exemption by stating the following Legislative findings:

- The purpose of the Task Force is to investigate system failures and the causes of high crime rates and gun violence incidents in urban core neighborhoods and communities;
- The Task Force shall develop recommendations for solutions, programs, services, and strategies for improved interagency communications between local and state government agencies which will help facilitate the reduction of crime and gun violence in urban core neighborhoods and communities;
- In order to fulfill its directive, the Task Force must be able to discuss exempt or confidential and exempt information that it receives as part of its investigation;
- The public meetings exemption will allow the task force to review and discuss exempt or confidential and exempt information that will be useful in forming meaningful recommendations for system improvements and improved interagency communications;
- As such, it is necessary that those portions of meetings wherein exempt or confidential and exempt information is discussed be made exempt from public meetings requirements;
- If such portions of the meeting were not closed, the public records exemptions would be negated;
- Thus, the Legislature finds that the public meeting exemption is a public necessity in order to ensure the effective and efficient administration of the Urban Core Gun Violence Task Force.

The bill is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill becomes effective on the same date that CS/SB 652 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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:***Vote Requirement***

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the open meeting requirements. This bill enacts a new exemption for the portions of the meetings of the Urban Core Gun Violence Task Force during which exempt or confidential and exempt information is discussed, thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the open meetings requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect exempt or confidential and exempt information to which the Urban Core Gun Violence Task Force has access. This bill exempts only the portions of the meetings of the Task Force during which the exempt or confidential and exempt information is discussed by the Task Force from the open meetings requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 943.6872 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Governmental Oversight and Accountability on February 10, 2020:

The committee substitute adds language to provide for the recordation and transcription of those portions of the Task Force meetings that are made exempt under the bill.

CS by Criminal Justice on January 28, 2020:

The committee substitute amends the directory clause of the bill to redesignate certain subsections and to add a subsection to the language contained in s. 943.6872, F.S., as created by CS/SB 652.

- B. Amendments:

None.



289318

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/10/2020	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 18 - 25
and insert:

(6) (a) Any portion of a meeting of the Urban Core Gun
Violence Task Force at which exempt or confidential and exempt
information is discussed is exempt from s. 286.011 and s. 24(b),
Art. I of the State Constitution. This subsection is subject to
the Open Government Sunset Review Act in accordance with s.
119.15 and shall stand repealed on October 2, 2025, unless



289318

11 reviewed and saved from repeal through reenactment by the
12 Legislature.

13 (6)(b)No portion of an exempt meeting under paragraph (a)
14 may be off the record. All exempt portions of such meeting shall
15 be recorded and transcribed. Such recordings and transcripts are
16 confidential and exempt from disclosure under s. 119.07(1) and
17 s. 24(a), Art. I of the State Constitution unless a court of
18 competent jurisdiction, after an in-cameral review, determines
19 that the meeting was not restricted to the discussion of exempt
20 or confidential and exempt information as obtained by the Urban
21 Core Gun Violence Task Force.

22
23 ===== T I T L E A M E N D M E N T =====

24 And the title is amended as follows:

25 Delete line 7

26 and insert:

27 requiring the recording and transcription of exempt
28 portions of such meetings; providing an exemption from
29 public records requirements for such recordings and
30 transcripts; providing an exception;

By the Committee on Criminal Justice; and Senator Pizzo

591-02750A-20

20201802c1

A bill to be entitled

An act relating to public meetings; amending s. 943.6872, F.S.; providing an exemption from public meetings requirements for portions of the Urban Core Gun Violence Task Force meetings at which exempt or confidential and exempt information is discussed; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Present subsections (6) and (7) of section 943.6872, Florida Statutes, as created by SB 652 or similar legislation, 2020 Regular Session, are redesignated as subsections (7) and (8), respectively, and a new subsection (6) is added to that section, to read:

(6) Any portion of a meeting of the Urban Core Gun Violence Task Force at which exempt or confidential and exempt information is discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that any portion of a meeting of the Urban Core Gun Violence Task Force at which exempt or confidential and exempt information is discussed be made exempt from s. 286.011, Florida

Page 1 of 2

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

591-02750A-20

20201802c1

Statutes, and s. 24(b), Article I of the State Constitution. The purpose of the task force is to investigate system failures and the causes of high crime rates and gun violence incidents in urban core neighborhoods and communities. In addition, the task force shall develop recommendations for solutions, programs, services, and strategies for improved interagency communications between local and state government agencies which will help facilitate the reduction of crime and gun violence in urban core neighborhoods and communities. In order to fulfill its directive, the task force must be able to discuss exempt or confidential and exempt information that it receives as part of its investigation. The public meetings exemption will allow the task force to review and discuss exempt or confidential and exempt information that will be useful in forming meaningful recommendations for system improvements and improved interagency communications. As such, it is necessary that those portions of meetings wherein exempt or confidential and exempt information is discussed be made exempt from public meetings requirements. If such portions of the meeting were not closed, the public records exemptions would be negated. Thus, the Legislature finds that the public meeting exemption is a public necessity in order to ensure the effective and efficient administration of the Urban Core Gun Violence Task Force.

Section 3. This act shall take effect on the same date that SB 652 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

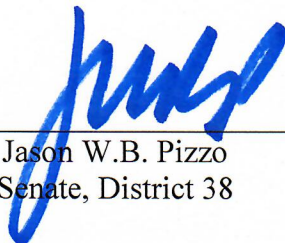
To: Senator Ed Hooper, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: January 30, 2020

I respectfully request that **CS/SB 1802**, relating to Public Meetings/Urban Core Gun Violence Task Force, be placed on the:

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



Senator Jason W.B. Pizzo
Florida Senate, District 38

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/10/2020

Meeting Date

1802

Bill Number (if applicable)

Topic

Urban Core Gun Violence

Amendment Barcode (if applicable)

Name

Dr. Danielle Thomas

Job Title

Legislation Chair

Address

1747 Orlando Central Pkwy

Phone

407 855 7604

Street

Orlando

FL

32809

City

State

Zip

Email

legislation@floridapter.org

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

Florida PTA

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

2-10-20

Bill Number (if applicable)

1802

Topic

Urban Core Violence Task Force

Amendment Barcode (if applicable)

Name

Barbara Devane

Job Title

Ms

Address

1625 E Brevard ST

Phone

251-4280

City

State

Zip

Email

barbadevane1@yahoo.com

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

FL NOW

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

1002
Bill Number (if applicable)

Topic Gun Violence

Amendment Barcode (if applicable)

Name Lisa Henning

Job Title Legislative Director

Address 248 Office Plaza Dr
Street

Phone 850-766-8808

Tallahassee FL 32301
City State Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Fraternal Order of Police

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

1802
Bill Number (if applicable)

Topic GUN VIOLENCE

Amendment Barcode (if applicable) _____

Name Timothy Morris

Job Title _____

Address 1161 Mill Creek DR
Street

Phone _____

DAK FL 32255
City State Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing BROTHERHOOD ORDER OF POLICE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

1802
Bill Number (if applicable)

Topic Gun Violence

Amendment Barcode (if applicable)

Name Harlan Peterson

Job Title _____

Address 1077 Waterfall Dr.
Street

Phone _____

JAX. FL 32225
City State Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Fraternal Order of Police

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 1872

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Hutson

SUBJECT: Public Records/Commissioner of Financial Regulation/Financial Technology Sandbox Applications

DATE: February 11, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney	GO	Fav/CS
2.			BI	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1872 creates public record exemptions for certain records related to the Financial Technology Sandbox. Specifically, the bill makes confidential and exempt from public disclosure the following records:

- The reasons why the general law or rule requirements for which an exception or waiver is sought prevent the innovative financial product or service from being made available to consumers;
- Certain proprietary business information submitted to the Office of Financial Regulation to consider in deciding whether to approve an application for the Financial Technology Sandbox;
- Comprehensive records that a sandbox participant must keep relating to the innovative financial product or service; and
- Any information related to the consultation between the OFR and a sandbox participant regarding the maximum number of consumers authorized to receive the innovative financial product or service.

The bill provides that this information may be released to appropriate state and federal agencies for the purposes of investigation.

The bill provides for repeal of the exemptions on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

Government agencies will incur costs related to the redaction of records in responding to public records requests.

This bill will take effect on the same date that SB 1870 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law. At this point, SB 1870 takes effect July 1, 2020.

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.¹ 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.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (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.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ 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.⁵

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ 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)

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

⁵ 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.”

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

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.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

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.¹⁰ 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.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

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.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *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).

¹² 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).

¹³ 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).

¹⁴ See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

Financial Technology Sandbox

SB 1870 (2020), which this bill is linked to, creates the Financial Technology Sandbox within the Office of Financial Regulation (OFR). The Financial Technology Sandbox is intended to allow financial technology innovators to test innovative financial products or services in a supervised, flexible regulatory sandbox, using waivers of specified general law and corresponding rule requirements under defined conditions.

III. Effect of Proposed Changes:

SB 1872 makes confidential and exempt from public inspection and copying the following records relating to the Financial Technology Sandbox:

- The reasons why the general law or rule requirements for which a waiver is sought prevent the innovative financial product or service from being made available to consumers;
- Specified information that the OFR must consider in deciding whether to approve or deny an application for the Financial Technology Sandbox;
- Comprehensive records that a sandbox participant must keep relating to the innovative financial product or service; and
- Any information related to the consultation between the OFR and a sandbox participant regarding the maximum number of consumers authorized to receive the innovative financial product or service.

The bill provides that this information may be released to appropriate state and federal agencies for the purposes of investigation.

The bill provides a statement of public necessity as required by the Florida Constitution. It includes the following legislative findings:

- The disclosure of the proprietary business information relating to the innovative financial technology products and services could adversely affect the business interests of the financial technology sandbox applicants.
- Those entities and individuals who would otherwise disclose proprietary business information in their applications to the Office of Financial Regulation to start a business in this state or who would maintain records relating to their innovative financial products or services were they already established here would hesitate to cooperate with the office, and this lack of cooperation would impair the effective and efficient administration of governmental functions.
- Disclosure of such information would impair competition in the financial technology industry because competitors could use the information to impede full and fair competition in the financial technology industry to the disadvantage of consumers.
- Without the exemption from public records requirements that would protect their proprietary business information, financial technology innovators might elect to establish their business in another state with a more secure business environment.
- Any proprietary business information in the Financial Technology Sandbox applications, any records maintained by financial technology innovators relating to their financial products or services, and specified discussions with the office on their financial products or services must be held confidential and exempt from disclosure.

The public record exemptions are subject to the Open Government Sunset Review Act and will be repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

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:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill exempts from public inspection and copying certain information used by the Office of Financial Regulation to decide whether to approve an application for the Financial Technology Sandbox. Thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to encourage innovative financial products or services to be made available to Florida consumer. This bill exempts proprietary information of the business entity developing a new product or service. The exemption does not appear to be more broad than necessary to accomplish the stated purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will be subject to the cost associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

Government agencies will incur costs related to the redaction of records in responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the section 559.952 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 February 10, 2020:

- Shifts the protected records from those “made available to the commissioner” to those “submitted to the office” of Financial Regulation.
- Narrows the public records exemption (consistent with the public necessity statement) to make confidential and exempt only proprietary business information submitted to the office.

B. Amendments:

None.



289714

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/10/2020	.	
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The Committee on Governmental Oversight and Accountability
(Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (h) is added to subsection (5) and
paragraph (f) is added to subsection (6) of section 559.952,
Florida Statutes, as created by SB 1870, 2020 Regular Session,
to read:

559.952 Financial Technology Sandbox.—

(5) FINANCIAL TECHNOLOGY SANDBOX APPLICATION; STANDARDS FOR



289714

11 APPROVAL.—

12 (h)1. The following information made available to the
13 office in a Financial Technology Sandbox application under this
14 subsection is confidential and exempt from s. 119.07(1) and s.
15 24(a), Art. I of the State Constitution:

16 a. The reasons why the general law or rule requirements for
17 which a waiver is sought prevent the innovative financial
18 product or service from being made available to consumers.

19 b. The information specified in paragraph (e).

20
21 However, the information made available to the office under this
22 subparagraph may be released to appropriate state and federal
23 agencies for the purposes of investigation.

24 2. This paragraph is subject to the Open Government Sunset
25 Review Act in accordance with s. 119.15 and shall stand repealed
26 on October 2, 2025, unless reviewed and saved from repeal
27 through reenactment by the Legislature.

28 (6) OPERATION OF THE FINANCIAL TECHNOLOGY SANDBOX.—

29 (f)1. The comprehensive records relating to the innovative
30 financial product or service maintained under paragraph (e) and
31 any information relating to the consultation described in
32 paragraph (b) are confidential and exempt from s. 119.07(1) and
33 s. 24(a), Art. I of the State Constitution. However, such
34 records and information may be released to appropriate state and
35 federal agencies for the purposes of investigation.

36 2. This paragraph is subject to the Open Government Sunset
37 Review Act in accordance with s. 119.15 and shall stand repealed
38 on October 2, 2025, unless reviewed and saved from repeal
39 through reenactment by the Legislature.



289714

Section 2. The Legislature finds that it is a public necessity that proprietary business information in the innovative Financial Technology Sandbox be expressly made confidential and exempt from public records requirements. The disclosure of the proprietary business information relating to the innovative financial technology products and services could adversely affect the business interests of the Financial Technology Sandbox applicants. Those entities and individuals who would otherwise disclose proprietary business information in their applications to the Office of Financial Regulation to start a business in this state or who would maintain records relating to their innovative financial products or services were they already established here would hesitate to cooperate with the office, and this lack of cooperation would impair the effective and efficient administration of governmental functions. Further, disclosure of such information would impair competition in the financial technology industry because competitors could use the information to impede full and fair competition in the financial technology industry to the disadvantage of consumers. Without the exemption from public records requirements which would protect their proprietary business information, financial technology innovators might elect to establish their business in another state with a more secure business environment. Therefore, the Legislature finds that any proprietary business information in the Financial Technology Sandbox applications, any records maintained by financial technology innovators relating to their financial products or services, and specified discussions with the office on their financial products or services must be held



289714

confidential and exempt from disclosure under s. 119.07(1),
Florida Statutes, and s. 24(a), Article I of the State
Constitution.

Section 3. This act shall take effect on the same date that
SB 1870 or similar legislation takes effect, if such legislation
is adopted in the same legislative session or an extension
thereof and becomes a law.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to public records; amending s.
559.952, F.S.; providing exemptions from public
records requirements for certain information made
available to the Office of Financial Regulation in
Financial Technology Sandbox applications, certain
records maintained by specified providers of
innovative financial products or services, and
information relating to certain consultations;
authorizing the office to disclose the information to
state and federal agencies for certain purposes;
providing for future legislative review and repeal of
the exemptions; providing a statement of public
necessity; providing a contingent effective date.



117964

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/10/2020	.	
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The Committee on Governmental Oversight and Accountability
(Hutson) recommended the following:

**Senate Amendment to Amendment (289714) (with title
amendment)**

Delete lines 5 - 28
and insert:

Section 1. Paragraph (h) is added to subsection (4) and
paragraph (f) is added to subsection (5) of section 559.952,
Florida Statutes, as created as SB 1870, 2020 Regular Session,
to read:

559.952 Financial Technology Sandbox.—



117964

(4) FINANCIAL TECHNOLOGY SANDBOX APPLICATION; STANDARDS FOR APPROVAL.—

(h)1. The following information submitted to the office in a Financial Technology Sandbox application under this subsection is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. The reasons why the general law or rule requirements for which an exception or waiver is sought prevent the innovative financial product or service from being made available to consumers.

b. The information specified in subparagraphs (e)1. - 4. and (e)7.

However, such information may be released to appropriate state and federal agencies for purposes of investigation.

2. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

(5) OPERATION OF THE FINANCIAL TECHNOLOGY SANDBOX.—

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

And the title is amended as follows:

Delete lines 84 - 85

and insert:

Records requirements for certain information submitted to the Office of Financial Regulation in

By Senator Hutson

7-01481A-20

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A bill to be entitled

An act relating to public records; amending s. 559.952, F.S.; providing exemptions from public records requirements for certain information made available to the Commissioner of Financial Regulation in Financial Technology Sandbox applications, certain records maintained by specified providers of innovative financial products or services, and information relating to certain consultations with the commissioner; authorizing the release of records and information under certain circumstances; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Paragraph (h) is added to subsection (5) and paragraph (f) is added to subsection (6) of section 559.952, Florida Statutes, as created by SB____, 2020 Regular Session, to read:

559.952 Financial Technology Sandbox Act.—

(5) FINANCIAL TECHNOLOGY SANDBOX APPLICATION; STANDARDS FOR APPROVAL; CONSUMER PROTECTION BOND.—

(h)1. The following information made available to the commissioner in a Financial Technology Sandbox application under this subsection is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. The general law or rule requirements for which a waiver

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

7-01481A-20

20201872__

is sought, and the reasons why these requirements prohibit the innovative financial product or service from being made available to consumers.

b. The information specified in subparagraphs (e)1.-7.

However, the information in sub-subparagraphs a. and b. may be released to appropriate state and federal agencies for the purposes of investigation.

2. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

(6) OPERATION OF THE FINANCIAL TECHNOLOGY SANDBOX.—

(f)1. The comprehensive records relating to the innovative financial product or service maintained under paragraph (e) and any information relating to the consultation described in paragraph (b) are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, such records and information may be released to appropriate state and federal agencies for the purposes of investigation.

2. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that proprietary business information in innovative financial technology sandbox be expressly made confidential and exempt from public records requirements. The disclosure of the proprietary business information relating to the innovative

Page 2 of 4

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

7-01481A-20

20201872__

59 financial technology products and services could adversely
 60 affect the business interests of the financial technology
 61 sandbox applicants. Those entities and individuals who would
 62 otherwise disclose proprietary business information in their
 63 applications to the Commissioner of Financial Regulation to
 64 start a business in this state or who would maintain records
 65 relating to their innovative financial products or services were
 66 they already established here would hesitate to cooperate with
 67 the Office of Financial Regulation, and this lack of cooperation
 68 would impair the effective and efficient administration of
 69 governmental functions. Further, disclosure of such information
 70 would impair competition in the financial technology industry
 71 because competitors could use the information to impede full and
 72 fair competition in the financial technology industry to the
 73 disadvantage of consumers. Without the exemption from public
 74 records requirements that would protect their proprietary
 75 business information, financial technology innovators might
 76 elect to establish their business in another state with a more
 77 secure business environment. Therefore, the Legislature finds
 78 that any proprietary business information in the Financial
 79 Technology Regulatory Sandbox applications, any records
 80 maintained by financial technology innovators relating to their
 81 financial products or services, and any discussions with the
 82 commissioner on their financial products or services must be
 83 held confidential and exempt from disclosure under s. 119.07(1),
 84 Florida Statutes, and s. 24(a), Article I of the State
 85 Constitution.

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

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7-01481A-20

20201872__

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

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The Florida Senate

Committee Agenda Request

To: Senator Ed Hooper, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: January 21, 2020

I respectfully request that **Senate Bill #1872**, relating to Public Records/Commissioner of Financial Regulation/Financial Technology Sandbox Applications, be placed on the:

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

A handwritten signature in black ink, reading "Travis J. Hutson". The signature is written in a cursive style with a long horizontal line extending from the end.

Senator Travis Hutson
Florida Senate, District 7

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/10/20
Meeting Date

1872
Bill Number (if applicable)

Topic FinTech Sandbox

Amendment Barcode (if applicable)

Name Alice Vickers

Job Title Attorney

Address 623 Beard St.

Phone 850 556 3121

Tallahassee FL 32303
City State Zip

Email alicevickers@flcp.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FL Alliance for Consumer Protection

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 1874

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Hutson

SUBJECT: Fees/Office of Financial Regulation/Financial Technology Sandbox Applications

DATE: February 11, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney	GO	Fav/CS
2.			BI	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

SB 1870 (2020), which is linked to this bill, creates the Financial Technology Sandbox within the Office of Financial Regulation. The Financial Technology Sandbox is intended to allow financial technology innovators to test innovative financial products or services in a supervised, flexible regulatory sandbox, using waivers of specified general law and corresponding rule requirements under defined conditions.

CS/SB 1874 prohibits the Office of Financial Regulation from waiving or modifying a fee provided in ch. 559, F.S., except as otherwise authorized for the Financial Technology Sandbox.

This bill has no fiscal impact on state government or local governments.

This bill takes effect on the same date that SB 1870 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law. At this point, SB 1870 takes effect July 1, 2020.

II. Present Situation:

The Florida Constitution provides that no state tax or fee may be imposed, authorized, or raised by the Legislature except through legislation approved by two-thirds of the membership of each

house of the Legislature.¹ For purposes of this requirement, a “fee” is any charge or payment required by law, including any fee or charge for services and fees or costs for licenses and to “raise” a fee or tax means to:²

- Increase or authorize an increase in the rate of a state tax or fee imposed on a percentage or per mill basis;
- Increase or authorize an increase in the amount of a state tax or fee imposed on a flat or fixed amount basis; or
- Decrease or eliminate a state tax or fee exemption or credit.

A bill that imposes, authorizes, or raises any state fee or tax may only contain the fee or tax provision(s) and may not contain any other subject.³

The constitutional provision does not authorize any state tax or fee to be imposed if it is otherwise prohibited by the constitution and does not apply to any tax or fee authorized or imposed by a county, municipality, school board, or special district.⁴

SB 1870 (2020), which is linked to this bill, creates the Financial Technology Sandbox within the Office of Financial Regulation. The Financial Technology Sandbox is intended to allow financial technology innovators to test innovative financial products or services in a supervised, flexible regulatory sandbox, using waivers of specified general law and corresponding rule requirements under defined conditions.

III. Effect of Proposed Changes:

The bill prohibits the Office of Financial Regulation from waiving or modifying a fee provided in ch. 559, F.S., except as otherwise authorized for the Financial Technology Sandbox.

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.

¹ Fla. Const. art. VII, s. 19(a)-(b). The amendment appeared on the 2018 ballot as Amendment 5.

² Fla. Const. art. VII, s. 19(d).

³ Fla. Const. art. VII, s. 19(e).

⁴ Fla. Const. art. VII s. 19(c).

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill is not expected to impact state revenues or expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 559.952 of the Florida Statutes, as created by SB 1870.

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 February 10, 2020:

The CS removes the application fee for the Financial Technology Sandbox and the fees associated with fingerprint processing and retention. While the companion bill, SB 1870, allows certain statutory fees to be waived, the CS prohibits the waiver or modification of any fees provided in chapter 559, F.S., except as otherwise provide in SB 1870.

B. Amendments:

None.



763104

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/10/2020	.	
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The Committee on Governmental Oversight and Accountability
(Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (12) is added to section 559.952,
Florida Statutes, as created by SB 1870, 2020 Regular Session,
to read:

559.952 Financial Technology Sandbox.—

(12) FEES.—The office may not waive or modify any fee
provided under this chapter except as authorized under this



763104

section.

Section 2. This act shall take effect on the same date that SB 1870 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to fees; amending s. 559.952, F.S.;
prohibiting the Office of Financial Regulation from
waiving or modifying fees for the Financial Technology
Sandbox except as specified; providing a contingent
effective date.



961478

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/10/2020	.	
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The Committee on Governmental Oversight and Accountability
(Hutson) recommended the following:

Senate Amendment to Amendment (763104)

Delete lines 5 - 9
and insert:

Section 1. Subsection (13) is added to section 559.952,
Florida Statutes, as created by SB 1870, 2020 Regular Session,
to read:

559.952 Financial Technology Sandbox.—

(13) FEES.—The office may not waive or modify any fee

By Senator Hutson

7-01643A-20

20201874__

1 A bill to be entitled
 2 An act relating to fees; amending s. 559.952, F.S.;
 3 requiring the Financial Technology Sandbox
 4 applications with the Office of Financial Regulation
 5 to be accompanied by a fee; requiring the office to
 6 deposit such fees into a trust fund; requiring
 7 applicants and specified individuals to bear the costs
 8 of fingerprint processing for the applications;
 9 providing a contingent effective date.
 10
 11 Be It Enacted by the Legislature of the State of Florida:
 12
 13 Section 1. Paragraphs (a) and (d) of subsection (5) of
 14 section 559.952, Florida Statutes, as created in SB ____, 2020
 15 Regular Session, are amended to read:
 16 559.952 Financial Technology Sandbox Act.—
 17 (5) FINANCIAL TECHNOLOGY SANDBOX APPLICATION; STANDARDS FOR
 18 APPROVAL; CONSUMER PROTECTION BOND.—
 19 (a) Before making an innovative financial product or
 20 service available to consumers in the Financial Technology
 21 Sandbox, a person must file an application with the
 22 commissioner. The commissioner shall, by rule, prescribe the
 23 form and manner of the application.
 24 1. In the application, the person must specify the general
 25 law or rule requirements for which a waiver is sought, and the
 26 reasons why these requirements prohibit the innovative financial
 27 product or service from being made available to consumers.
 28 2. The application must also contain the information
 29 specified in subparagraphs (e)1.-7. and must be accompanied by a

Page 1 of 3

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7-01643A-20

20201874__

30 fee that is equivalent to the statutory fee required in the
 31 applicable license provision being waived. The fee shall be
 32 deposited into the appropriate trust fund of the office.
 33 (d) The applicant must submit fingerprints for each
 34 individual filing an application under this section and each
 35 individual who is substantially involved in the development,
 36 operation, or management of the innovative financial product or
 37 service for live-scan processing in accordance with rules
 38 adopted by the office.
 39 1. The fingerprints may be submitted through a third-party
 40 vendor authorized by the Department of Law Enforcement to
 41 provide live-scan fingerprinting.
 42 2. The Department of Law Enforcement must conduct the state
 43 criminal history background check, and a federal criminal
 44 history background check must be conducted through the Federal
 45 Bureau of Investigation.
 46 3. All fingerprints submitted to the Department of Law
 47 Enforcement must be submitted electronically and entered into
 48 the statewide automated fingerprint identification system
 49 established in s. 943.05(2)(b) and available for use in
 50 accordance with s. 943.05(2)(g) and (h). The office shall pay an
 51 annual fee to the Department of Law Enforcement to participate
 52 in the system and shall inform the Department of Law Enforcement
 53 of any person whose fingerprints no longer must be retained.
 54 4. The costs of fingerprint processing, including the cost
 55 of retaining the fingerprints, shall be borne by the person
 56 subject to the background check.
 57 5.4. The office shall review the results of the state and
 58 federal criminal history background checks and determine whether

Page 2 of 3

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

7-01643A-20

20201874__

the applicant meets the office's requirements.

~~6.5-~~ For purposes of this paragraph, fingerprints are not required to be submitted if the applicant is a publicly traded corporation or is exempted under s. 560.104(1). The term "publicly traded" means a stock is currently traded on a national securities exchange registered with the Securities and Exchange Commission or traded on an exchange in a country other than the United States which is regulated by a regulator equivalent to the Securities and Exchange Commission and the disclosure and reporting requirements of such regulator are substantially similar to those of the Securities and Exchange Commission.

Section 2. This act shall take effect on the same date that SB ____ or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.



The Florida Senate

Committee Agenda Request

To: Senator Ed Hooper, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: January 21, 2020

I respectfully request that **Senate Bill #1874**, relating to Fees/Office of Financial Regulation/Financial Technology Sandbox Applications, be placed on the:

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

A handwritten signature in black ink, reading "Travis J. Hutson". The signature is written in a cursive style with a long horizontal line extending from the end.

Senator Travis Hutson
Florida Senate, District 7

1280

STATE OF FLORIDA
DEPARTMENT OF STATE

Division of Elections

I, Laurel M. Lee, Secretary of State,
do hereby certify that

Maria Teresa "Tere" Canida

is duly appointed a member of the

Investment Advisory Council

for a term beginning on the Twenty-Fourth day of September,
A.D., 2019, until the Twelfth day of December, A.D., 2022 and
is subject to be confirmed by the Senate during the next regular
session of the Legislature.

Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Twenty-Fourth day of January, A.D., 2020.



Secretary of State



STATE BOARD OF ADMINISTRATION
OF FLORIDA

1801 HERMITAGE BOULEVARD, SUITE 100
TALLAHASSEE, FLORIDA 32308
(850) 488-4406

POST OFFICE BOX 13300
32317-3300

RON DESANTIS
GOVERNOR
CHAIR

JIMMY PATRONIS
CHIEF FINANCIAL OFFICER

ASHLEY MOODY
ATTORNEY GENERAL

ASHBEL C. WILLIAMS
EXECUTIVE DIRECTOR &
CHIEF INVESTMENT OFFICER

RECEIVED

December 2, 2019

2019 DEC -3 AM 10:42

DIVISION OF ELECTIONS
TALLAHASSEE, FL

Inez Williams
Division of Elections
Department of State
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399

RE: Investment Advisory Council Appointment - Tere Canida

Dear Ms. Williams:

Mrs. Maria Teresa Alvarez Canida has been appointed by the Trustees of the State Board of Administration to serve on the Investment Advisory Council. Attached please find Mrs. Canida's original Questionnaire for Senate Confirmation, along with her Oath of Office, and the September 24, 2019 cabinet transcript reflecting approval of her appointment. Mrs. Canida's term will be September 24, 2019 through December 12, 2022.

Please let me know if any additional information is required.

Sincerely,

A handwritten signature in black ink, appearing to read "John Kuczwanski".

John Kuczwanski
Manager of External Affairs

Attachments

123422

CERTIFICATION

STATE OF FLORIDA

COUNTY OF Miami Dade

RECEIVED
DEPARTMENT OF STATE
2020 JAN 23 PM 4:03
DEPARTMENT OF STATE
DIVISION OF ELECTIONS

Before me, the undersigned Notary Public of Florida, personally appeared

MANIA TERESA (TERE) CAUWA

who, after being duly sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.

Mania Teresa Cauwa

Signature of Applicant-Affiant

Sworn to and subscribed before me this 22nd day of January, 2020.

Jason Garcia
Signature of Notary Public-State of Florida

Jason Garcia
(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: July 30 2021

Personally Known ☐ OR Produced Identification ☒

Type of Identification Produced FL Driver's License



JASON GARCIA
Commission # GG 102865
Expires July 30, 2021
Bonded Through Budget Notary Services

(seal)

RECEIVED

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

2020 JAN 23 PM 4:04

STATE OF FLORIDA

DIVISION OF ELECTIONS
TALLAHASSEE, FL

County of Miami Dade

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Investment Advisory Council, State Board of Administration
(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

Maria Teresa Canida
Signature

Sworn to and subscribed before me this 22nd day of January, 2020.

Jason Garcia
Signature of Officer Administering Oath or of Notary Public

Jason Garcia
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☐ OR Produced Identification ☒

Type of Identification Produced FL Driver's License



JASON GARCIA
Commission # GG 102865
Expires July 30, 2021
Bonded Thru Budget Notary Services

ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☒ Home ☐ Office

6900 Mira Flores Ave.
Street or Post Office Box

Coral Gables, FL 33143
City, State, Zip Code

Maria Teresa (Tere) Canida
Print Name

Maria Teresa Canida
Signature

RECEIVED

2019 DEC -3 AM 10:43

CANDID REPORTERS
TALLAHASSEE, FL

STATE OF FLORIDA

IN RE: MEETING OF THE GOVERNOR AND
CABINET

CABINET MEMBERS:

GOVERNOR RON DESANTIS
ATTORNEY GENERAL ASHLEY MOODY
CHIEF FINANCIAL OFFICER JIMMY
PATRONS
COMMISSIONER OF AGRICULTURE
NIKKI FRIED

DATE:

TUESDAY, SEPTEMBER 24, 2019

LOCATION:

CABINET MEETING ROOM
LOWER LEVEL, THE CAPITOL
TALLAHASSEE, FLORIDA

REPORTED BY:

NANCY S. METZKE, RPR, FPR
COURT REPORTER

C & N REPORTERS
POST OFFICE BOX 3093
TALLAHASSEE, FLORIDA 32315-3093
(850) 697-8314
nancy@metzke.com
candnreporters.com

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43

Department of Revenue
By Executive Director Zingale

48

Department of Highway Safety and
Motor Vehicles

54

Division of Bond Finance
By Executive Director Watkins

58

Board of Trustees of the Internal
Trust Fund

62

By Ms. Reed

State Board of Administration

By Executive Director Williams

68

Florida Land and Water Adjudicatory
Commission

91

By Mr. Kruse

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STATE BOARD OF ADMINISTRATION

GOVERNOR DESANTIS: State Board of Administration. Ash Williams, are you here?

EXECUTIVE DIRECTOR WILLIAMS: Good morning, Governor, Cabinet members, Trustees.

GOVERNOR DESANTIS: Good morning.

EXECUTIVE DIRECTOR WILLIAMS: By way of update, as of last night's close, the Florida Retirement System Trust Fund is up 11.97 percent calendar year to date. That's '78 basis points behind target. The balance stands at \$159.6 billion. That's 13.2 billion higher than we started the year.

And as I mentioned at our last meeting, the 78 basis points behind target is very unusual, and that is a function of the fact that you've seen very dramatic increases in liquid equity markets and also returns in fixed income. And a substantial part of our portfolio is private markets, meaning it's only priced quarterly; or in the case of real estate, annually.

So there's embedded value in the portfolio that's not showing. I think by the end of the year when we have audited numbers, we'll be at target.

I wouldn't be concerned about that.

Item 1, request approval of the July 25 meeting minutes.

GOVERNOR DESANTIS: Move to approve.

Is there a second?

CFO PATRONIS: Second.

GOVERNOR DESANTIS: Any objections? (NO RESPONSE).

GOVERNOR DESANTIS: Hearing none, the motion carries.

Item 2.

EXECUTIVE DIRECTOR WILLIAMS: Thank you.

We a series of resolutions here. This is a fiscal sufficiency for an amount not exceeding \$300 million, Florida DOT Turnpike revenue bonds. Request approval.

GOVERNOR DESANTIS: Move to approve.

Is there a second?

ATTORNEY GENERAL MOODY: Second.

CFO PATRONIS: Second.

GOVERNOR DESANTIS: No objections, the motion carries.

Item 3.

EXECUTIVE DIRECTOR WILLIAMS: Thank you.

Item 3 is a resolution of a fiscal

determination on the behalf of Florida Housing Finance Corporation in an amount not exceeding \$40,030,000. This is for acquisition and rehab of 216 units of affordable housing in Palm Beach County.

Request approval.

GOVERNOR DESANTIS: Move to approve.

Is there a second?

ATTORNEY GENERAL MOODY: Second.

GOVERNOR DESANTIS: Any objections?

(NO RESPONSE).

GOVERNOR DESANTIS: Okay. Hearing none, the motion carries.

Item 4.

EXECUTIVE DIRECTOR WILLIAMS: Thank you.

Item 4 is another resolution, the fiscal determination, again Florida Housing Finance Corporation, not to exceed \$19,500,000. This is for new construction of multi-family affordable housing in Miami-Dade County.

Request approval.

GOVERNOR DESANTIS: Okay. Recommend -- I move to approve.

Is there a second?

CFO PATRONIS: Second.

GOVERNOR DESANTIS: Any objections?

(NO RESPONSE).

GOVERNOR DESANTIS: Hearing none, the motion carries.

Item 5.

EXECUTIVE DIRECTOR WILLIAMS: Thank you.

Item 5 is a resolution of fiscal determination in an amount not exceeding 27,400,000, Florida Housing Finance Corporation multi-family mortgage revenue notes. This is for acquisition and rehab of 266 units of affordable housing, the Jordan Park Project in Pinellas County, Florida.

Request approval.

GOVERNOR DESANTIS: Move to approve.

Is there a second?

CFO PATRONIS: Second.

GOVERNOR DESANTIS: No objections, the motion carries.

Item 6.

EXECUTIVE DIRECTOR WILLIAMS: Thank you.

Item 6, another resolution, another fiscal determination. This in an issuance amount not to exceed \$12 million, Florida Housing Finance Corporation new construction, 139 units of affordable senior housing in Polk County.

1 Request approval.
 2 GOVERNOR DESANTIS: Move to approve.
 3 Is there a second?
 4 ATTORNEY GENERAL MOODY: Second.
 5 GOVERNOR DESANTIS: No objection, the motion
 6 carries.
 7 Item 7.
 8 EXECUTIVE DIRECTOR WILLIAMS: Thank you.
 9 Item 7 is a resolution of the State Board,
 10 another fiscal determination, Florida Housing
 11 Finance Corporation. This is acquisition and
 12 construction of 115 units of affordable housing in
 13 Broward County.
 14 Request approval.
 15 GOVERNOR DESANTIS: Move to approve.
 16 Is there a second?
 17 CFO PATRONIS: Second.
 18 GOVERNOR DESANTIS: No objections, the motion
 19 carries.
 20 Item 8.
 21 EXECUTIVE DIRECTOR WILLIAMS: Thank you.
 22 Item 8 is a resolution of the SBA, a fiscal
 23 determination for the Florida Housing Finance
 24 Corporation not to exceed \$12,100,000. New
 25 construction, 132 units of affordable housing in

1 Polk County.
 2 Request approval.
 3 GOVERNOR DESANTIS: Move to approve.
 4 Is there a second?
 5 CFO PATRONIS: Second.
 6 GOVERNOR DESANTIS: Any objections?
 7 (NO RESPONSE). Hearing none, the motion
 8 carries.
 9 Item 9.
 10 EXECUTIVE DIRECTOR WILLIAMS: Thank you.
 11 Item 9, another resolution -- another fiscal
 12 determination for the Florida Housing Finance
 13 Corporation in an amount not to exceed \$14,250,000.
 14 This is for new construction of 128 units of
 15 affordable housing in Miami-Dade.
 16 Request approval.
 17 GOVERNOR DESANTIS: Move to approve.
 18 Is there a second?
 19 CFO PATRONIS: Second.
 20 ATTORNEY GENERAL MOODY: Second.
 21 GOVERNOR DESANTIS: Any objection?
 22 (NO RESPONSE).
 23 GOVERNOR DESANTIS: Hearing none, the motion
 24 carries.
 25 Item 10.

EXECUTIVE DIRECTOR WILLIAMS: Thank you.

Item 10 is a resolution of the State Board approving fiscal sufficiency of an amount not exceeding \$200,000, State of Florida, Board of Governors, University of Central Florida parking facility revenue bonds.

Request approval.

GOVERNOR DESANTIS: Move to approve.

Is there a second?

CFO PATRONIS: Second.

GOVERNOR DESANTIS: Any objections?

(NO RESPONSE).

GOVERNOR DESANTIS: Hearing none, the motion carries.

Item 11.

EXECUTIVE DIRECTOR WILLIAMS: Item 11 is another resolution of fiscal determination in connection with the Florida Housing Finance Corporation not to exceed \$39,050,000. This is for acquisition and rehab and permanent financing of 161 units of affordable housing.

Request approval.

GOVERNOR DESANTIS: Move to approve.

Is there a second?

CFO PATRONIS: Second.

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GOVERNOR DESANTIS: Any objections?

(NO RESPONSE).

GOVERNOR DESANTIS: Hearing none, the motion carries.

Item 12.

EXECUTIVE DIRECTOR WILLIAMS: Thank you.

Item 12 is a resolution for a fiscal determination, Florida Housing Finance Corporation, not to exceed \$28,245,000, acquisition and rehabilitation of 114 units of affordable housing in Miami-Dade.

Request approval.

GOVERNOR DESANTIS: Move to approve.

Is there a second?

CFO PATRONIS: Second.

GOVERNOR DESANTIS: Any objections?

(NO RESPONSE).

GOVERNOR DESANTIS: Hearing none, the motion carries.

Item 13.

EXECUTIVE DIRECTOR WILLIAMS: Thank you.

Item 13 is a request for approval of updates to the Comprehensive Investment Plan for the Florida Prepaid College Board.

These are changes that would allow them to

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invest in bank loans and real estate in certain of their funds. They have been reviewed by Aon, the same financial advisory firm that advises the SBA. They've been aired in public meeting of the Prepaid Board, and our staff has reviewed them as well.

Recommend adoption.

GOVERNOR DESANTIS: Move to approve.

Is there a second?

CFO PATRONIS: Second.

GOVERNOR DESANTIS: Any objection?

(NO RESPONSE).

GOVERNOR DESANTIS: Hearing none, the motion carries.

Item 14.

EXECUTIVE DIRECTOR WILLIAMS: Thank you.

Item 14 is a request for approval an authority to -- approval of an authority to file a notice of proposed rulemaking for the Hurricane Catastrophe Fund.

We're actually looking ahead. This is the contract for the 2021 storm season. We need to have that finished and in place by February by law, so we're starting the process now.

GOVERNOR DESANTIS: All right. Move to approve.

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Is there a second?

CFO PATRONIS: Second.

GOVERNOR DESANTIS: Hearing none -- no objections, the motion carries.

Next.

EXECUTIVE DIRECTOR WILLIAMS: Thank you.

Item 15, request approval of the appointment of Mayor Brian Nelson as the consumer member of the Florida Hurricane Catastrophe Fund Advisory Council. This fills a vacancy currently on the Council.

GOVERNOR DESANTIS: All right. Move to approve.

Is there a second?

CFO PATRONIS: Second.

GOVERNOR DESANTIS: Any objections?

(NO RESPONSE).

GOVERNOR DESANTIS: Hearing none, the motion carries.

Sixteen.

EXECUTIVE DIRECTOR WILLIAMS: Thank you.

Item 16, requests the annual approval of the charter of the Audit Committee of the State Board of Administration. We didn't make any changes in the audit document.

GOVERNOR DESANTIS: Move to approve.

Is there a second?

ATTORNEY GENERAL MOODY: Second.

CFO PATRONIS: Second.

GOVERNOR DESANTIS: All right. The motion carries.

Next.

EXECUTIVE DIRECTOR WILLIAMS: Thank you.

Item 17, request approval of draft letters to the Joint Legislative Auditing Committee affirming that the SBA trustees have reviewed and approved the monthly Florida Primary summary reports and actions taken, if any, to address any impacts for the fourth quarter of 2018 and the first and second quarters of 2019.

There were no impacts. There were no associated actions of course. And I would say, we are slightly behind the curve. We normally get these approved timely. We got behind. That's why you're seeing three of these at once. That won't happen in the future.

Request approval.

GOVERNOR DESANTIS: All right. Move to approve.

Is there a second?

CFO PATRONIS: Second.

GOVERNOR DESANTIS: All right. Motion carries.

18.

EXECUTIVE DIRECTOR WILLIAMS: Thank you.

Item 18, we request approval of the quarterly report of the Protecting Florida's Investments Act. This is the omnibus act that covers things relating to Iran, Sudan, the anti-boycott divest in sanction issue, Cuba, et cetera.

And in this case, we have added six companies to the scrutinized list with regard to Sudan. We've removed one.

With regard to Iran, we've added one and taken two away. There was no change in the continued exam list.

And there was no activity in this period relating to Cuba or BDS.

GOVERNOR DESANTIS: All right. I move to approve.

Is there a second?

CFO PATRONIS: Second.

GOVERNOR DESANTIS: All right. The motion carries.

Nineteen.

EXECUTIVE DIRECTOR WILLIAMS: Thank you.
 Item 19 -- Items 19 and 20 are two appointments to the Investment Advisory Council. The first in Item 19 is Mr. John Goetz. Mr. Goetz was one of the founders of a very successful institutional asset management firm called Pzena. He previously served at Amoco and at Northern Trust; is a Florida resident and will soon be down here full time as he retires from Pzena.

He's eminently qualified, and I recommend approval.

GOVERNOR DESANTIS: All right. Move to approve.

Is there a second?

CFO PATRONIS: Second.

GOVERNOR DESANTIS: All right. The motion carries.

EXECUTIVE DIRECTOR WILLIAMS: Thank you.

Item 12 (sic) is another IAC appointment, this for Ms. Teresa Alvarez Canida. Tere Canida was one of the founders of a firm called Taplin Canida Hambrecht (sic) -- Hambrecht, which the State Board first started investing with back when I was here the first time in the '90s.

It became a very large, very well-regarded

firm. And she has since sold her interest and retired from the firm and is managing a multi-family office, primarily her own family's capital.

But Tere Canida is a super well known and highly regarded investor known all over the world and a native Florida, and I believe will be our first Hispanic female on the IAC.

GOVERNOR DESANTIS: All right. Move to approve.

Is there a second?

ATTORNEY GENERAL MOODY: Second.

CFO PATRONIS: Second.

GOVERNOR DESANTIS: Okay. The motion carries.

EXECUTIVE DIRECTOR WILLIAMS: Thank you.

Item 21 is the quarterly reports for the Florida State Board. I'm going to divide these into two sections and hit them very quickly.

The first will be controls. We have the quarterly reports in here from our Audit Committee, our Inspector General, and our Chief Risk and Compliance Officer. There are no exceptions or material issues of any kind in any of the reports, so all good on the control side.

On the investment performance, if we look at

The Florida Senate
**COMMITTEE RECOMMENDATION ON
EXECUTIVE APPOINTMENT**

COMMITTEE: Committee on Governmental Oversight and Accountability
MEETING DATE: Monday, February 10, 2020
TIME: 1:30—3:30 p.m.
PLACE: 301 Senate Building

TO: The Honorable Bill Galvano, President

FROM: Committee on Governmental Oversight and Accountability

The committee was referred the following executive appointment subject to confirmation by the Senate:

Office: Investment Advisory Council

Appointee: Canida, Maria Teresa

Term: 9/24/2019-12/12/2022

After inquiry and due consideration, the committee recommends that the Senate **confirm** the aforesaid executive appointment made by the Board of Administration.

1280

STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections

I, Laurel M. Lee, Secretary of State,
do hereby certify that

Vinny Olmstead

is duly appointed a member of the

Investment Advisory Council

for a term beginning on the Twelfth day of March, A.D., 2019,
until the First day of February, A.D., 2023 and is subject to be
confirmed by the Senate during the next regular session of the
Legislature.

Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Sixteenth day of January, A.D., 2020.



Laurel M. Lee

Secretary of State

DSDE 99 (3/03)

The original document has a reflective line mark in paper. Hold at an angle to view when checking.



STATE BOARD OF ADMINISTRATION
OF FLORIDA

1801 HERMITAGE BOULEVARD, SUITE 100
TALLAHASSEE, FLORIDA 32308
(850) 488-4406

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32317-3300

RON DESANTIS
GOVERNOR
CHAIR

JIMMY PATRONIS
CHIEF FINANCIAL OFFICER

ASHLEY MOODY
ATTORNEY GENERAL

ASHBEL C. WILLIAMS
EXECUTIVE DIRECTOR &
CHIEF INVESTMENT OFFICER

January 13, 2020

Inez Williams
Division of Elections
Department of State
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399

RECEIVED
DEPARTMENT OF STATE
DIVISION OF ELECTIONS
2020 JAN 13 AM 11:38

RE: Investment Advisory Council Appointment – Robert Vincent “Vinny” Olmstead

Dear Ms. Williams:

I am writing to provide the correct term for Mr. Olmstead's term on the Investment Advisory Council. Mr. Olmstead's term will be March 12, 2019 through February 1, 2023.

Please let me know if any additional information is required.

Sincerely,

A handwritten signature in black ink, appearing to read "John Kuczewski".

John Kuczewski
Manager of External Affairs

RECEIVED

CERTIFICATION

2020 JAN 14 PM 4:11

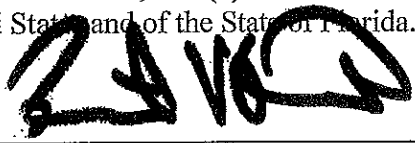
STATE OF FLORIDA

COUNTY OF Indian River

DIVISION OF ELECTIONS
TALLAHASSEE, FL

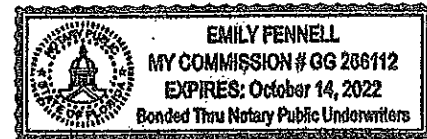
Before me, the undersigned Notary Public of Florida, personally appeared

Robert Olmstead,
who, after being duly sworn, say: (1) that he/she has carefully and personally prepared or read
the answers to the foregoing questions; (2) that the information contained in said answers is
complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the
United States and of the State of Florida.


Signature of Applicant-Affiant

Sworn to and subscribed before me this 16th day of December, 2019.

Emily Fennell
Signature of Notary Public-State of Florida



(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: 10/14/2022

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced _____

(seal)

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

STATE OF FLORIDA

County of Indian River

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DEPARTMENT
2020 JAN 15 AM 9:21

DIVISION OF ELECTIONS

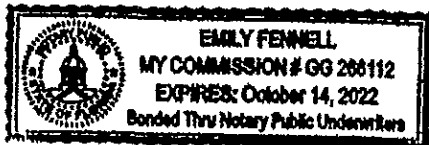
I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Investment Advisory Council, State Board of Administration

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]



Signature

Sworn to and subscribed before me this 13 day of January, 2020

Emily Fennell
Signature of Officer Administering Oath or of Notary Public

Emily Fennell
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced _____

ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☐ Home ☒ Office

2770 Indian River Blvd, Ste. 501

Street or Post Office Box

Vero Beach, FL 32960

City, State, Zip Code

Vinny Olmstead

Print Name

Signature

1	STATE OF FLORIDA
2	
3	
4	IN RE: MEETING OF THE GOVERNOR AND
5	CABINET
6	
7	
8	
9	CABINET MEMBERS:
10	GOVERNOR RON DESANTIS
11	ATTORNEY GENERAL ASHLEY MOODY
12	CHIEF FINANCIAL OFFICER JIMMY
13	PATRONIS
14	COMMISSIONER OF AGRICULTURE
15	NIKKI FRIED
16	
17	DATE: TUESDAY, MARCH 12, 2019
18	
19	LOCATION:
20	CABINET MEETING ROOM
21	LOWER LEVEL, THE CAPITOL
22	TALLAHASSEE, FLORIDA
23	
24	REPORTED BY: NANCY S. METZKE, RPR, FPR
25	COURT REPORTER
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	nancy@metzke.com
	candnreporters.com

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2019 DEC 27 PM 3:49
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TALLAHASSEE, FL

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STATE BOARD OF ADMINISTRATION

GOVERNOR DESANTIS: SBA.

EXECUTIVE DIRECTOR WILLIAMS: Good morning, Governor.

GOVERNOR DESANTIS: Good morning.

EXECUTIVE DIRECTOR WILLIAMS: Trustees, Cabinet members.

As an opener, performance update, fiscal year to date as of the close on March 11, the Fund is plus 1.82 percent. That is 84 basis points ahead of target. The balance in the Fund is down 1.8 billion from the beginning of the fiscal year, and that is net of approximately \$5.6 billion in benefit payment distributions.

I also wanted to share with you some information that came to us last Friday. I believe it was. We had a firm called Cost Effectiveness Management in. They are a private third-party cost analysis and performance analysis firm that covers pension funds across north America. And we have them in every year to analyze our cost structure and validate where we are in our efficiency relative to our peers and how our performance is in terms of value added relative to risk taken,

et cetera.

And they gave us a trailing five-year number that breaks out as follow -- numbers and qualifications as follows: Five years trailing, net return, 9.8 percent; policy return target, which is if we had simply hit what our benchmarks provide for the exposures we choose and you approve, 8.8 percent for a net value added of 1.0 percent over five years.

The context on that is where the real message is. I'll read directly from the report: Your five-year net value added of 1.0 percent compares to a median of 0.1 percent for your peers --

Meaning other very large U.S. funds.

-- and 0.2 percent for the U.S. public fund universe.

That's all of the public pension funds in the U.S.

Your 1.0 percent five-year value added translates into approximately \$9.3 billion of cumulative value added over five years or 7.7 billion more than if you had earned the U.S. public fund median of .2 percent.

So if we had performed like all of the other public funds in the country, we'd be 7.7 billion

poorer, is the conclusion I take from that. I just thought you might find that of interest.

So absent any questions, I'll go on into the agenda.

(NO RESPONSE).

EXECUTIVE DIRECTOR WILLIAMS: Item 1, a resolution of the State Board of Administration approving the fiscal sufficiency of an amount not exceeding \$28 million, State of Florida, Department of Environmental Protection, Everglades restoration revenue refunding bonds.

Request approval.

GOVERNOR DESANTIS: Is there a motion?

CFO PATRONIS: So move.

GOVERNOR DESANTIS: Second?

ATTORNEY GENERAL MOODY: Second.

GOVERNOR DESANTIS: Any comments or objection? (NO RESPONSE).

GOVERNOR DESANTIS: Hearing none, the motion carries.

EXECUTIVE DIRECTOR WILLIAMS: Thank you.

Item 2, a resolution of the State Board of Administration approving the fiscal sufficiency of an amount not exceeding \$500 million, State of Florida, full faith and credit, State Board of

Education, public education capital outlay refunding bonds.

Request approval.

GOVERNOR DESANTIS: Is there a motion?

CFO PATRONIS: So move.

GOVERNOR DESANTIS: Second?

ATTORNEY GENERAL MOODY: Second.

GOVERNOR DESANTIS: Any objections? (NO RESPONSE).

GOVERNOR DESANTIS: Hearing none, the motion carries.

EXECUTIVE DIRECTOR WILLIAMS: Thank you.

Items 3 and 4 are both appointments to the State Board of Administration's Investment Advisory Council or IAC.

The individuals who are here, Bobby Jones and Vinny Olmstead, are both serving currently and have done so with distinction and have extraordinarily strong backgrounds for this work. Both of them would be confirmed or appointed effective 12, March, and they're both subject to Senate confirmation.

I would request approval of both appointments.

GOVERNOR DESANTIS: A motion to approve both appointees?

1 CFC PATRONIS: So move.
 2 GOVERNOR DESANTIS: Second?
 3 ATTORNEY GENERAL MOODY: Second.
 4 GOVERNOR DESANTIS: Any comments or objection?
 5 (NO RESPONSE).
 6 GOVERNOR DESANTIS: Hearing none, the motion
 7 carries for both Items 3 and 4.
 8 Anything else?
 9 EXECUTIVE DIRECTOR WILLIAMS: No, sir, we're
 10 good. Thank you.
 11 GOVERNOR DESANTIS: All right. Thank you very
 12 much.
 13 And that concludes today's Cabinet meeting.
 14 Our next meeting is scheduled for Tuesday,
 15 April 2nd.
 16 (WHEREUPON, THE MEETING WAS ADJOURNED).
 17
 18
 19 * * * * *

CERTIFICATE

1
 2
 3 STATE OF FLORIDA)
 4 COUNTY OF LEON)

5 I, NANCY S. METZKE, RPR, FPR, certify that I
 6 was authorized to and did stenographically report the
 7 foregoing proceedings and that the transcript is a true
 8 and complete record of my stenographic notes.

9 DATED this 20th day of March, 2019.

10 *Nancy S. Metzke*
 11 NANCY S. METZKE, RPR, FPR
 12 Court Reporter

The Florida Senate
**COMMITTEE RECOMMENDATION ON
EXECUTIVE APPOINTMENT**

COMMITTEE: Committee on Governmental Oversight and Accountability
MEETING DATE: Monday, February 10, 2020
TIME: 1:30—3:30 p.m.
PLACE: 301 Senate Building

TO: The Honorable Bill Galvano, President

FROM: Committee on Governmental Oversight and Accountability

The committee was referred the following executive appointment subject to confirmation by the Senate:

Office: Investment Advisory Council

Appointee: Olmstead, Vinny

Term: 3/12/2019-2/1/2023

After inquiry and due consideration, the committee recommends that the Senate **confirm** the aforesaid executive appointment made by the Board of Administration.

CourtSmart Tag Report

Room: SB 301
Caption: Senate Governmental Oversight and Accountability Committee

Type:
Judge:

Started: 2/10/2020 1:30:50 PM

Ends: 2/10/2020 2:58:24 PM

Length: 01:27:35

1:30:49 PM Meeting called to order
1:30:54 PM Roll Call - Quorum is present
1:31:07 PM Comments by Chair Hooper
1:31:11 PM Tab 6 - CS/SB 1030 by Senator Stargel is Temporarily Posponed
1:31:34 PM Chair
1:31:47 PM Tab 17 - SB 1872 by Senator Hutson - Public Records/Commissioner of Financial Regulation/Financial Technology Sandbox Applications
1:32:53 PM Delete-all amendment 289714 by Senator Hutson
1:33:08 PM Amendment to delete-all 117964 by Senator Hutson
1:33:27 PM Questions to delete-all amendment? None
1:33:38 PM Debate to delete-all amendment? None
1:33:39 PM Senator Huston waives close
1:33:49 PM Objections to amendment to delete-all amendment?
1:33:50 PM Seeing no objections, to the amendment to the delete-all amendment is adopted.
1:33:54 PM Back on main amendment as amended
1:34:01 PM Questions? None
1:34:05 PM Appearance Cards? None
1:34:13 PM Debate? None
1:34:22 PM Senator Hutson waives close
1:34:23 PM Objection to amendment?
1:34:30 PM No objections. Show amendment (as amended) adopted.
1:34:32 PM Back on bill as amended
1:34:36 PM Questions? None
1:34:44 PM Appearance Cards?
1:34:49 PM Alice Vickers with Florida Alliance for Consumer Protection is opposed to the bill.
1:34:58 PM Debate? No
1:35:01 PM Senator Hutson waives close
1:35:05 PM Roll Call - CS/SB 1872
1:35:21 PM Tab 18 - by Senator Hutson
1:35:54 PM Delete all Amendment 763104 by Senator Hutson
1:36:04 PM Senator Huston explains the amendment
1:36:28 PM Amendment to delete-all 961748 is explained by Senator Hutson
1:36:42 PM Questions on amendement to delete-all?
1:36:49 PM Debate? None
1:36:50 PM Senator Hutson waives close
1:36:58 PM Objections? None. Delete-all amendment is adopted
1:37:10 PM Questions? None
1:37:13 PM Appearance Cards? None
1:37:18 PM Objections to main amendment?
1:37:28 PM Back on bill as amended
1:37:32 PM Senator Hutson waives close
1:37:37 PM Roll Call on CS/SB 1874
1:38:02 PM Tab 3 - CS/SB 928 by Senator Harrell - Pub Recs & Mtgs/Interstate Medical Licensure Compact
1:38:53 PM Questions? None
1:39:52 PM Appearance Cards? None
1:39:58 PM Debate? None
1:39:59 PM Senator Harrell to close
1:40:02 PM Roll Call on CS/CS SB 928
1:40:17 PM Tab 4 - SB 966 by Senator Gainer - Public Records/Disaster Recovery Assistance
1:40:32 PM Delete-all amendment 424964 by Senator Gainer
1:41:17 PM Questions? None
1:41:33 PM Appearance Cards? None

1:41:40 PM Debate?
 1:41:40 PM Objections to adopting the Delete-all amendment?
 1:41:41 PM No objections.
 1:41:47 PM Delete-all amendment is adopted
 1:41:52 PM Back on bill as amended
 1:41:56 PM Questions?
 1:41:58 PM Appearance Cards?
 1:42:02 PM Rebecca De La Rosa from Palm Beach County, waives in support
 1:42:08 PM Tonnette Graham, Florida Association of Counties, waives in support
 1:42:13 PM Jess McCarty from Miami-Dade County, waives in support
 1:42:28 PM Debate? None
 1:42:32 PM Senator Gainer waives close
 1:42:37 PM Roll Call on CS/SB 966
 1:43:02 PM Tab 13 - CS/SB 1718 by Senator Brandes - Pub Mtgs and Recs/Conditional Aging Inmate Release Program
 1:43:16 PM Delete-all amendment 607638 by Senator Brandes
 1:43:34 PM Questions? None
 1:43:49 PM Appearance Cards? None
 1:43:54 PM Debate? None
 1:43:59 PM Objections to delete-all amendment? None
 1:44:06 PM Delete-all amendment is adopted
 1:44:08 PM Back on bill as amended
 1:44:14 PM Debate?
 1:44:17 PM Senator Brandes is recognized to close on the bill
 1:44:17 PM No debate.
 1:44:19 PM Senator Brandes waives close
 1:44:22 PM Roll Call CS/CS/SB 1718
 1:44:36 PM Tab 14 - CS/SB 1728 by Senator Brandes - Pub Mtgs and Records/Conditional Medical Release Program
 1:44:44 PM Delete-all amendment 222838 by Sen. Brandes
 1:45:08 PM Questions? None
 1:45:12 PM Appearance Cards? None
 1:45:17 PM Debate? None
 1:45:21 PM Sen. Brandes to close on amendment
 1:45:25 PM Amendment is adopted
 1:45:28 PM Back on bill as amended
 1:45:32 PM Questions?
 1:45:36 PM Appearance Cards
 1:45:40 PM Debate?
 1:45:41 PM Roll Call
 1:46:01 PM Tab 1 - CS/SB 666 - By Senator Mayfield - Florida Development Finance Corporation
 1:46:58 PM Questions? None
 1:48:01 PM Amendment 393200 by Senator Mayfield
 1:48:19 PM Questions? None
 1:48:24 PM Appearance Cards?
 1:48:28 PM Debate?
 1:48:30 PM Senator Mayfield waives close
 1:48:37 PM Objections?
 1:48:40 PM Amendment 864692 by Senator Mayfield
 1:48:50 PM Questions?
 1:48:53 PM Appearance Cards?
 1:48:57 PM Debate? None
 1:49:01 PM Senator Mayfield waives close
 1:49:07 PM Objection to adoption of amendment?
 1:49:09 PM Amendment adopted
 1:49:13 PM Back on bill as amended
 1:49:18 PM Questions? None
 1:49:22 PM Appearance Cards?
 1:49:26 PM Edgar Fernandez from Indian River County, in support of bill.
 1:49:28 PM Debate? None
 1:49:32 PM Senator Mayfield waives close
 1:49:38 PM Roll Call on CS/CS/SB 666
 1:50:06 PM Tab 5 - CS/SB 1024 by Senator Bean - Public Records/Postconviction Reinvestigative Information

1:51:08 PM Delete-all amendment 216858 by Senator Bean
 1:52:07 PM Questions on delete-all amendment? None
 1:52:16 PM Appearance Cards on delete-all amendment? None
 1:52:21 PM Debate on delete all amendment? None
 1:52:24 PM Senator Bean waives close
 1:52:29 PM Objection to the delete-all amendment? None
 1:52:32 PM Delete-all amendment is adopted.
 1:52:32 PM Back on the bill as amended
 1:52:34 PM Questions?
 1:52:40 PM Senator Torres
 1:52:53 PM Senator Bean
 1:53:15 PM Senator Torres
 1:53:22 PM Senator Bean
 1:54:15 PM Senator Torres
 1:54:18 PM Senator Bean
 1:54:49 PM Senator Torres
 1:54:57 PM Senator Bean
 1:55:41 PM Senator Torres
 1:56:07 PM Senator Bean
 1:56:22 PM Appearance Cards? None
 1:56:57 PM Debate? None
 1:56:59 PM Senator Bean waives close
 1:57:04 PM Roll Call on CS/CS SB 1024
 1:57:16 PM Tab 16 - CS/SB 1802 by Senator Pizzo - Public Mtgs/Urban Core Gun Violence Task Force
 1:58:16 PM Amendment 289318 by Senator Pizzo
 1:58:36 PM Questions?
 1:58:38 PM Appearance Cards?
 1:58:42 PM Debate? None
 1:58:46 PM Senator waives close
 1:58:50 PM Objection to the adoption of the amendment? None
 1:58:55 PM Amendment is adopted
 1:59:03 PM Questions on bill?
 1:59:05 PM Appearance Cards?
 1:59:12 PM Appearance Cards?
 1:59:12 PM Barbara DeVane waives in support
 1:59:14 PM Lisa Henning waives in support
 1:59:21 PM Timothy Morris, Fraternal Order of Police, waives in support
 1:59:36 PM Harlan Peterson waives in support
 1:59:43 PM Questions? None
 1:59:46 PM Debate?
 1:59:51 PM Senator Pizzo to close
 2:00:00 PM Roll Call CS/CS/SB 1802
 2:00:36 PM Tab 8 - SB 1270 by Senator Lee - Fiduciary Duty of Care for Appointed Public Officials and Executive Officers
 2:03:25 PM Delete-all amendment 116502 by Senator Lee
 2:05:18 PM Questions on delete-all amendment?
 2:06:32 PM Appearance cards on the amendment?
 2:07:32 PM Debate?
 2:07:36 PM Senator Lee waives close
 2:07:41 PM Any objection to adoption of the delete-all amendment? None
 2:07:44 PM Amendment is adopted
 2:07:48 PM Back on bill as amended
 2:07:51 PM Questions? None
 2:07:55 PM Appearance Cards?
 2:08:00 PM Rebecca O'Hara, Deputy General Counsel, FL League of Cities speaking for information
 2:12:26 PM Diego Echeverri, Americans for Prosperity, waives in support
 2:13:26 PM Greg Pound, speaking for information
 2:15:18 PM Debate?
 2:15:27 PM Senator Torres
 2:16:15 PM Senator Lee to close on bill
 2:16:34 PM Roll Call on CS/SB 1270
 2:18:39 PM Tab 10- SB 1466 by Senator Baxley - Special Districts

2:19:34 PM Late-filed delete-all amendment 642110 by Senator Baxley
2:20:08 PM Any objections to the introduction of the late-filed amendment? None
2:20:23 PM Senator Baxley explains the delete-all amendment
2:21:24 PM Chris Lyon in support of amendment
2:21:26 PM Michael Eckert in support of amendment
2:21:36 PM Debate on delete-all?
2:21:44 PM Senator Baxley waives close
2:21:49 PM Any objection to the adoption of the delete-all amendment? None
2:21:52 PM Amendment is adopted
2:21:56 PM Back on bill as amended
2:22:02 PM Questions?
2:22:06 PM Appearance cards?
2:22:08 PM Michael Eckert in support of bill
2:22:11 PM Chris Lyon in support of bill
2:22:15 PM Jim Millican in support of bill
2:22:18 PM Debate on bill as amended?
2:22:28 PM Senator Baxley to close
2:22:51 PM Roll Call CS/SB 1466
2:23:05 PM Tab 12 - SB 1636 by Senator Baxley - Repeal of Bodies and Councils
2:23:26 PM Questions?
2:23:33 PM Amendment 842778 by Senator Baxley
2:24:29 PM Questions on amendment? None
2:24:43 PM Appearance Cards? None
2:24:47 PM Debate? None
2:24:50 PM Senator Torres
2:25:19 PM Senator Baxley waives close
2:25:31 PM Objections to the amendment?
2:25:33 PM Amendment is adopted
2:25:37 PM Back on bill as amended
2:25:41 PM Questions?
2:25:45 PM Debate?
2:25:55 PM Senator Baxley to close
2:26:01 PM Roll Call on CS/SB 1636
2:26:24 PM Tab 9 - SB 1312 by Senator Montford - Voting Systems
2:27:28 PM Question on delete-all amendment
2:28:29 PM Appearance Cards?
2:28:34 PM David Ramba, FL Supervisor of Elections, waives in support
2:28:42 PM French Brown, Verified Voting, speaking for information
2:30:23 PM Questions?
2:31:24 PM Senator Rader asks questions
2:31:30 PM French Brown responds
2:31:34 PM More questions?
2:31:51 PM Senator Torres
2:33:14 PM Mark Earley, Supervisor of Elections, Leon County, speaking for the bill
2:33:58 PM Gavel turned over to Vice Chair Rader
2:35:28 PM Questions? None
2:35:37 PM Barbara DeVane, waives in support
2:35:47 PM Debate? None
2:35:54 PM Senator Montford to close
2:36:31 PM Roll Call on CS/SB 1312
2:37:20 PM Tab 11 - SB 1632 by Senator Rouson - Cultural Affairs
2:37:46 PM Amendment 211178 by Senator Rouson
2:38:03 PM Questions? None
2:38:13 PM Appearance Cards? None
2:38:17 PM Debate? None
2:38:21 PM Senator Rouson waives close
2:38:26 PM Amendment is adopted
2:38:29 PM Senator Bean asks question about bill
2:39:11 PM Senator Rouson
2:39:22 PM Senator Bean
2:39:55 PM Senator Rouson
2:39:59 PM Appearance Forms?

2:40:06 PM Brittany Dover, Department of State, waives in support
 2:40:12 PM Debate?
 2:40:18 PM No debate.
 2:40:19 PM Senator Rouson waives close
 2:40:25 PM Roll Call CS/SB 1632
 2:40:41 PM Tab 15 - CS/SB 1756 by Senator Flores - Temporary Protected Status to Venezuelans in the United States
 2:41:07 PM Questions?
 2:42:07 PM Appearance Cards?
 2:42:13 PM Ida Eskamani waives in support
 2:42:20 PM Debate? None
 2:42:25 PM Senator Flores to close
 2:42:30 PM Roll Call on CS/SB 1756
 2:43:01 PM Tab 7 - SB 1260 by Senator Albritton - Florida Space Exploration Monument
 2:43:35 PM Amendment 503060 by Senator Albritton
 2:43:56 PM Questions?
 2:43:59 PM Appearance Cards?
 2:44:04 PM Debate? None
 2:44:06 PM Senator Albritton waives close
 2:44:13 PM Amendment is adopted
 2:44:18 PM Back on bill as amended?
 2:44:24 PM Questions?
 2:44:27 PM Appearance Cards?
 2:44:29 PM Lindsay Pierce waives in support
 2:44:35 PM Debate? None
 2:44:40 PM Senator Albritton waives closes
 2:44:47 PM Roll Call on CS/SB 1260
 2:45:44 PM Tab 19 - Appointments - Maria Teresa Canida and Vinny Olmstead
 2:46:06 PM Consideration of appointee Maria Teresa Canida to the Investment Advisory Council
 2:46:17 PM Appearance Cards? None
 2:46:20 PM Debate
 2:46:23 PM Motion by Senator Bean to recommend confirmation of Maria Teresa Canida
 2:46:32 PM Any objections? None
 2:46:36 PM Motion is adopted?
 2:46:41 PM Roll Call on confirmation of appointee
 2:47:03 PM Consideration of appointee Vinny Olmstead to the Investment Advisory Council
 2:47:11 PM Appearance cards? None
 2:47:14 PM Debate?
 2:47:21 PM Debate?
 2:47:25 PM Motion by Senator Torres to recommend confirmation of Vinny Olmstead
 2:47:41 PM No objections
 2:47:48 PM Roll call on confirmation of appointee Vinny Olmstead
 2:48:34 PM Recording Paused
 2:48:37 PM Recording Resumed
 2:48:45 PM Gavel turned back over to Chair Hooper
 2:49:46 PM TAB 2 - SB 858 by Senator Gruters - Cost-of-Living Adjustment for Special Risk Class Retirees
 2:50:14 PM Questons?
 2:50:22 PM Amendment 873758 by Senator Gruters
 2:50:52 PM Questions on amendment? None
 2:51:01 PM Appearance Cards?
 2:51:07 PM Debate?
 2:51:08 PM Senator Gruters waives close
 2:51:12 PM Any objection to adoption of amendment? None
 2:51:15 PM Amendment is adopted
 2:51:20 PM Back on bill as amended
 2:51:25 PM Appearance Cards?
 2:51:29 PM Wayne "Bernie" Bernoska, Florida Professional Firefighters, in support of bill
 2:52:34 PM Matt Puckett, waives in support
 2:52:41 PM Timothy Morris, waives in support
 2:52:46 PM Harlan Peterson, waives in support
 2:52:53 PM Lisa Henning, waives in support
 2:53:02 PM Debate?

2:53:08 PM Senator Torres
2:53:50 PM Senator Gruters to close
2:55:09 PM Roll Call CS/SB 858
2:55:43 PM Motion by Senator Albritton to be shown as voting favorably for the following SB's: 1872, 1874, 928, 966, 1718 and 1728.
2:56:18 PM Motion is adopted
2:56:23 PM Gavel turned over to Vice Chair Rader
2:56:33 PM Motion by Senator Hooper as voting favorably for the following SB's: 1312, 1632, 1756, 1260, and confirmation of the two appointees.
2:57:09 PM Gavel turned back over to Chair Hooper
2:57:23 PM Senator Rader comments
2:57:50 PM Chair comments
2:58:09 PM Motion by Vice-Chair Rader to adjourn. Motion is adopted, the meeting is adjourned.